WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

Senate Bill No. 505

(By Senators Foster and Unger)

[Passed March 10, 2007; in effect ninety days from passage.]
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armed forces in time of armed conflict; qualified military service; awards and benefits for disability incurred in performance of duty; awards and benefits for disability due to other causes; disability physical examinations; termination; application for disability benefit; determinations; annual report on disability retirement experience; retirant not to exercise police authority; retention of group insurance; awards and benefits to dependents of member when the member dies in performance of duty; dependents of a duty disability retirant; dependent child scholarship and amount; awards and benefits to dependents of employee when the employee dies from nonservice-connected causes; awards and benefits to dependents of retirant or after employee serves twenty years; refunds to certain employees upon discharge or resignation; deferred retirement; refunds to dependents upon death of member not eligible for benefits; dependent child or children; and federal law maximum benefit limitations.

Be it enacted by the Legislature of West Virginia:


ARTICLE 2. WEST VIRGINIA STATE POLICE.


Any term used in this article relating to the Death, Disability and Retirement Fund has the same meaning as when used in a comparable context of the laws of the United States, unless a different meaning is clearly
required. Any reference in this article to the Internal Revenue Code means the Internal Revenue Code, as it has been amended.


1 As used in this article, unless the context clearly requires a different meaning:

3 (a) “Agency” means the West Virginia State Police.

4 (b) “Beneficiary” means a surviving spouse or other surviving beneficiary who is entitled to, or will be entitled to, an annuity or other benefit payable by the fund.

8 (c) “Board” means the West Virginia Consolidated Public Retirement Board created pursuant to article ten-d, chapter five of this code.

11 (d) “Dependent child” means any unmarried child or children born to or adopted by a member of the fund who is:

14 (1) Under the age of eighteen;

15 (2) After reaching eighteen years of age, continues as a full-time student in an accredited high school, college, university, business or trade school, until the child or children reaches the age of twenty-three years; or

19 (3) Is financially dependent on the member by virtue of a permanent mental or physical disability upon evidence satisfactory to the board.
(e) "Dependent parent" means the member's parent or step-parent claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(f) "Employee" means any person regularly employed in the service of the agency as a law-enforcement officer before the twelfth day of March, one thousand nine hundred nine-four, and who is eligible to participate in the fund.

(g) "Fund", "plan" or "system" means the West Virginia State Police Death, Disability and Retirement Fund.

(h) "Law-enforcement officer" means an individual employed or otherwise engaged in either a public or private position which involves the rendition of services relating to enforcement of federal, state or local laws for the protection of public or private safety, including, but not limited to, positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any other law-enforcement position which requires certification, but excluding positions held by elected sheriffs or appointed chiefs of police whose duties are determined by the board to be purely administrative in nature.

(i) "Member" means any person who has contributions standing to his or her credit in the fund and who has not yet entered into retirement status.

(j) "Partially disabled" means an employee's inability, on a probable permanent basis, to perform the essential duties of a law-enforcement officer by reason of any
medically determinable physical or mental impairment
which has lasted or can be expected to last for a
continuous period of not less than twelve months, but
which impairment does not preclude the employee from
engaging in other types of nonlaw-enforcement
employment.

(k) "Physical or mental impairment" means an
impairment that results from an anatomical,
physiological or psychological abnormality that is
demonstrated by medically accepted clinical and
laboratory diagnostic techniques.

(l) "Retirant" or "retiree" means any former member
who is receiving an annuity payable by the fund;

(m) "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.

(n) "Totally disabled" means an employee's probable
permanent 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 subsection, an employee is totally
disabled only if his or her physical or mental
impairments are so severe that he or she is not only
unable to perform his or her previous work as an
employee of the agency 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: (1) The work
exists in the immediate area in which the employee
lives; (2) a specific job vacancy exists; or (3) the employee would be hired if he or she applied for work.

§15-2-26. Continuation of Death, Disability and Retirement Fund; designating the Consolidated Public Retirement Board as administrator of fund.

(a) There is continued the Death, Disability and Retirement Fund created for the benefit of members, retirants and any dependents of retirants or deceased members of the fund.

(b) There shall be deducted from the monthly payroll of each employee and paid into the fund six percent of the amount of his or her salary: Provided, That beginning on the first day of July, one thousand nine hundred ninety-four, there shall be deducted from the monthly payroll of each employee and paid into the fund seven and one-half percent of the amount of his or her salary: Provided, however, That on and after the first day of July, one thousand nine hundred ninety-five, there shall be deducted from the monthly payroll of each employee and paid into the fund nine percent of the amount of his or her salary. An additional twelve percent of the monthly salary of each employee shall be paid by the State of West Virginia monthly into the fund out of the annual appropriation for the agency: Provided further, That beginning on the first day of July, one thousand nine hundred ninety-five, the agency shall pay thirteen percent of the monthly salary of each employee into the fund: And provided further, That beginning on the first day of July, one thousand nine hundred ninety-six, the agency shall pay fourteen percent of the monthly salary of each employee into the fund: And provided further, That on and after the first
day of July, one thousand nine hundred ninety-seven, 
the agency shall pay fifteen percent of the monthly 
salary of each employee into the fund. There shall also 
be paid into the fund amounts that have previously been 
collected by the superintendent of the agency on 
account of payments to employees for court attendance 
and mileage, rewards for apprehending wanted persons, 
fees for traffic accident reports and photographs, fees 
for criminal investigation reports and photographs, fees 
for criminal history record checks, fees for criminal 
history record reviews and challenges or from any other 
sources designated by the superintendent. All moneys 
payable into the fund shall be deposited in the State 
Treasury and the board shall keep a separate account 
thereof.

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

(d) The moneys in this fund, and the right of a member 
to a retirement allowance, to the return of 
contributions, or to any benefit under the provisions of 
this article, are exempt from any state or municipal tax; 
are not subject to execution, garnishment, attachment 
or any other process whatsoever, with the exception 
that the benefits or contributions under the fund are 
subject to “qualified domestic relations orders” as that 
term is defined in Section 414(p) of the Internal 
Revenue Code with respect to governmental plans; and 
are unassignable except as is provided in this article. 
The fund shall be administered by the board created 
pursuant to article ten-d, chapter five of this code.
§15-2-27. Retirement; awards and benefits; leased employees.

(a) The board shall retire any member of the fund who has filed with the board his or her voluntary petition in writing for retirement and:

(1) Has or shall have completed twenty-five years of service as a member of the fund (including military service credit granted under the provisions of section twenty-eight of this article);

(2) Has or shall have attained the age of fifty years and has or shall have completed twenty years of service as a member of the fund (excluding military service credit granted under section twenty-eight of this article); or

(3) Being under the age of fifty years has or shall have completed twenty years of service as a member of the fund (excluding military service credit granted under section twenty-eight of this article).

(b) When the board retires any member under any of the provisions of this section, the member is entitled to receive annually and shall be paid from the fund in equal monthly installments during his or her lifetime while in status of retirement, one or the other of two amounts, whichever is the greater:

(1) An amount equal to five and one-half percent of
the aggregate of salary paid to the employee during the whole period of service as an employee of the agency; or

(2) The sum of six thousand dollars.

When a member has or shall have served twenty years or longer but less than twenty-five years as a member of the fund and is retired under any of the provisions of this section before he or she has attained the age of fifty years, payment of monthly installments of the amount of retirement award to the member shall commence on the day following the date he or she attains the age of fifty years. Beginning on the fifteenth day of July, one thousand nine hundred ninety-four, in no event may the provisions of section thirteen, article sixteen, chapter five of this code be applied in determining eligibility to retire with either immediate or deferred commencement of benefit.

(c) A member meeting the age and service requirements of this section who terminates employment at two thousand four hundred hours may begin to receive retirement annuity payments immediately upon termination of employment. Any member meeting the age and service requirements of this section who terminates employment at a time other than two thousand four hundred hours shall receive a pro rata share of a full day's amount for that day. Upon receipt of properly executed forms from the agency and the member, the board shall process the member's retirement petition and commence annuity payments as soon as administratively feasible.

(d) Any individual who is a leased employee is not eligible to participate in the fund. For purposes of this
fund, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee-leasing organization or other 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.


(a) Every retirant of the fund who is fifty-five years of age or older and who is retired by the board under the provisions of section twenty-seven of this article; every retirant of the fund who is retired by the board under the provisions of section twenty-nine or thirty of this article; and every beneficiary receiving a benefit pursuant to section thirty-three or thirty-four of this article is eligible to receive an annual retirement annuity adjustment equal to three and seventy-five hundredths percent of his or her retirement award or beneficiary award. The adjustments may not be retroactive. Yearly adjustments shall begin upon the first day of July of each year. The annuity adjustments shall be paid to the retirants or beneficiaries from the fund in equal monthly installments while in status of retirement or payment of beneficiary award. The annuity adjustments shall supplement the retirement awards and benefits as provided in this article.

(b) Any retirant or beneficiary who receives a benefit pursuant to the provisions of section twenty-nine, thirty, thirty-three or thirty-four of this article shall begin to receive the annual annuity adjustment one year after the commencement of the benefit on the next July first: Provided, That if the retirant has been retired for
less than one year or if the beneficiary has been in receipt of beneficiary payments for less than one year when the first annuity adjustment is given on that July first, that first annuity adjustment shall be a pro rata share of the full year's annuity adjustment.

§15-2-28. Credit toward retirement for member's prior military service; credit toward retirement when employee has joined armed forces in time of armed conflict; qualified military service.

(a) For purposes of this section, the term "active military duty" means full-time active duty with the armed forces of the United States, namely the United States Air Force, Army, Coast Guard, Marines or Navy; and service with the National Guard or reserve military forces of any of the armed forces when the employee has been called to active full-time duty and has received no compensation during the period of the duty from any person other than the armed forces.

(b) Any member of the fund who has previously served on active military duty is entitled to and shall receive credit on the minimum period of service required by law for retirement pay from the service of the West Virginia State Police under the provisions of this article for a period equal to the active military duty not to exceed five years, subject to the following:

(1) That he or she has been honorably discharged from the armed forces;

(2) That he or she substantiates by appropriate documentation or evidence his or her period of active military duty;
(3) That he or she is not receiving credit from any other retirement system administered by the board for his or her active military duty; and

(4) That, except with respect to disability retirement pay awarded under section thirty of this article, he or she has actually served with the fund for twenty years exclusive of his or her active military duty.

(c) The amount of retirement pay to which any member is entitled shall be calculated and determined as if he or she had been receiving for the period of his or her active military duty a monthly salary from the agency equal to the average monthly salary which he or she actually received from the agency for his or her total service with the agency exclusive of the active military duty. The superintendent shall transfer and pay into the fund from moneys appropriated for the agency, a sum equal to eighteen percent of the aggregate of the salaries on which the retirement pay of all members has been calculated and determined for their periods of active military duty. In addition, any person who, while an employee of the agency was commissioned, enlisted or inducted into the armed forces of the United States or, being a member of the reserve officers' corps, was called to active duty in the armed forces between the first day of September, one thousand nine hundred forty, and the close of hostilities in World War II, or between the twenty-seventh day of June, one thousand nine hundred fifty, and the close of the armed conflict in Korea on the twenty-seventh day of July, one thousand nine hundred fifty-three, between the first day of August, one thousand nine hundred sixty-four, and the close of the armed conflict in Vietnam, or during any other period of armed conflict by the United States whether
sanctioned by a declaration of war by the Congress or
by executive or other order of the President, is entitled
to and shall receive credit on the minimum period of
service required by law for retirement pay from the
service of the West Virginia State Police for a period
equal to the full time he or she has or shall, pursuant to
the commission, enlistment, induction or call, have
served with the Armed Forces subject to the following:

(1) That he or she has been honorably discharged from
the armed forces;

(2) That within ninety days after honorable discharge
from the armed forces he or she has presented himself
or herself to the superintendent and offered to resume
service as an active employee of the agency; and

(3) That he or she has made no voluntary act, whether
by reenlistment, waiver of discharge, acceptance of
commission or otherwise, to extend or participate in
extension of the period of service with the armed forces
beyond the period of service for which he or she was
originally commissioned, enlisted, inducted or called.

(d) That amount of retirement pay to which any
employee is entitled shall be calculated and determined
as if the employee has continued in the active service of
the agency at the rank or grade to him or her
appertaining at the time of the commission, induction,
enlistment or call, during a period coextensive with the
time the employee served with the armed forces
pursuant to the commission, induction, enlistment or
call. The superintendent of the agency shall transfer and
pay each month into the fund from moneys
appropriated for the agency a sum equal to eighteen
percent of the aggregate of salary which all employees
would have been entitled to receive had they continued
in the active service of the agency during a period
coeextensive with the time the employee served with the
armed forces pursuant to the commission, induction,
enlistment or call: Provided, That the total amount of
military service credit allowable under this section shall
not exceed five years.

(e) Notwithstanding any of the preceding provisions of
this section, contributions, benefits and service credit
with respect to qualified military service shall be
provided in accordance with Section 414(u) of the
Internal Revenue Code. For purposes of this section,
"qualified military service" has the same meaning as in
Section 414(u) of the Internal Revenue Code. The board
may determine all questions and make all decisions
relating to this section and, pursuant to the authority
granted to the board in section one, article ten-d,
chapter five of this code, may promulgate rules relating
to contributions, benefits and service credit to comply
with Section 414(u) of the Internal Revenue Code.

§15-2-29. Awards and benefits for disability incurred in
performance of duty.

(a) Any member of the fund who has not yet entered
retirement status on the basis of age and service and
who becomes partially disabled by injury, illness or
disease resulting from any occupational risk or hazard
inherent in or peculiar to the services required of
employees of the agency or incurred pursuant to or
while the employee was engaged in the performance of
his or her duties as an employee of the agency shall, if,
in the opinion of the board, he or she is by reason of
that cause probably permanently unable to perform adequately the duties required of him or her as an employee of the agency, but is able to engage in any other gainful employment in a field other than law enforcement, be retired from active service by the board. The member thereafter is entitled to receive annually from the fund in equal monthly installments during his or her lifetime; or until the disability eligibility sooner terminates, 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 during actual service if more than twenty-five years in the fund, based on the average earnings of the retirant while employed as an employee of the agency; or

(2) The sum of six thousand dollars.

(b) A retirant who is partially disabled under this article may not, while in receipt of benefits for partial disability, be employed as a law-enforcement officer: Provided, That a retirant retired on partial disability under this article may serve as an elected sheriff or appointed chief of police in the state without a loss of disability retirement benefits so long as the elected or appointed position is shown, to the satisfaction of the board, to require the performance of administrative duties and functions only, as opposed to the full range of duties of a law-enforcement officer.

(c) If any member not yet in retirement status on the basis of age and service is found by the board to be permanently and totally disabled as the result of a
physical or mental impairment resulting from any occupational risk or hazard inherent in or peculiar to the services required of employees of the agency or incurred pursuant to or while the member was engaged in the performance of his or her duties as an employee of the agency, the member is entitled to receive annually and there shall be paid from the fund in equal monthly installments during his or her lifetime or until the disability eligibility sooner terminates, an amount equal to eight and one-half percent of the total salary which would have been earned by the employee during twenty-five years, or during actual service if more than twenty-five years of service in the fund, based on the average earnings of the retirant while employed as an employee of the agency: Provided, That in no event may the amount be less than fifteen thousand dollars per annum, unless otherwise required by this article.

Provided,
That in no event may funds appropriated for the agency in payment of medical, surgical, laboratory, X ray, hospital, ambulance and dental expenses and fees and reasonable costs and expenses incurred in the purchase of artificial limbs and other approved appliances which may be reasonably necessary for any member or disability retirant who has or becomes 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 employees of the agency or incurred pursuant to or while the member was or shall be engaged in the performance of duties as an employee of the agency. Whenever the superintendent determines that any disabled member or retirant is ineligible to receive any of the aforesaid benefits at public expense, the superintendent shall, at
the request of the disabled member or retirant, refer the
matter to the board for hearing and final decision. In no
case will the compensation rendered to health care
providers for medical and hospital services exceed the
then current rate schedule approved by the West
Virginia Insurance Commission.

(e) Any member awarded a disability benefit under
the provisions of this section may receive retirement
disability annuity payments on the day following the
board's approval of his or her disability application.
Upon termination of employment and receipt of
properly executed forms from the agency and the
member, the board shall process the member's disability
retirement benefit and commence annuity payments as
soon as administratively feasible.

(f) For the purposes of this section, the term "salary"
does not include any compensation paid for overtime
service.

§15-2-30. Awards and benefits for disability due to other
causes.

(a) If any employee who has served less than twenty
years and who remains in the active service of the
agency has, in the opinion of the board, become
permanently partially or totally disabled to the extent
that the employee cannot adequately perform the duties
required of an employee of the agency from any cause
other than those set forth in the preceding section and
not due to vicious habits, intemperance or willful
misconduct on his or her part, the employee shall be
retired by the board. The employee is entitled to receive
annually and shall be paid from the fund in equal
monthly installments during a period equal to one-half
the time he or she served as an employee of the agency
or until the disability eligibility sooner terminates, a
sum equal to five and one-half percent of the total
salary which would have been earned during twenty-
five years of service. At the end of the one-half time
period of service, the benefit payable for the remainder
of the retirant's life is an annual sum paid in monthly
installments equal to one-half the base salary received
by the retirant from the agency in the preceding twelve-
month period immediately prior to the disability award:
Provided, That if the retirant was not employed with
the agency for twelve months immediately prior to the
disability award, the amount of monthly salary shall be
annualized for the purpose of determining the benefit.

(b) If the employee, at the time of retirement under the
terms of this section, has served twenty years or longer
as an employee of the agency, the employee is entitled
to receive annually and shall be paid from the fund in
equal monthly installments, commencing on the date
the employee is retired and continuing during his or her
lifetime while in status of retirement or until the
disability eligibility sooner terminates, a sum equal to
five and one-half percent of the aggregate of salary paid
to the retirant through the day immediately preceding
his or her disability award, to be determined in the
manner provided by subsection (c), section twenty-
seven of this article.

(c) An employee awarded a disability benefit under
the provisions of this section may receive retirement
disability annuity payments on the day following the
board's approval of his or her disability application.
Upon termination of employment and receipt of
properly executed forms from the agency and the employee, the board shall process the disability retirement benefit and commence annuity payments as soon as administratively feasible.

(d) For the purposes of this section, the term "salary" does not include any compensation paid for overtime service.

§15-2-31. Disability physical examinations; termination.

The board may require any retirant who has been retired with compensation on account of disability to submit to a physical and/or mental examination by a physician or physicians selected or approved by the board and cause all costs incident to the examination including hospital, laboratory, X ray, medical and physicians' fees to be paid out of funds appropriated to defray the current expense of the agency and a report of the findings of the physician or physicians shall be submitted in writing to the board for its consideration. If, from the report or from the report and hearing on the report, the board is of the opinion and finds that the disabled retirant has recovered from the disability to the extent that he or she is able to perform adequately the duties of a law-enforcement officer, the board shall order that all payments from the fund to that disabled retirant be terminated. If, from the report or the report and hearing on the report, the board is of the opinion and finds that the disabled retirant has recovered from his or her previously determined probable permanent disability to the extent that he or she is able to engage in gainful employment but remains unable to adequately perform the duties of a law-enforcement officer, the board shall order the payment, in monthly
installments of an amount equal to two thirds of the salary, in the case of a retirant retired under the provisions of section twenty-nine of this article or equal to one half of the salary, in the case of a retirant retired under the provisions of section thirty of this article, excluding any compensation paid for overtime service, for the twelve-month employment period immediately preceding the disability award: Provided, That if the retirant had not been employed with the fund for twelve months immediately prior to the disability award, the amount of monthly salary shall be annualized for the purpose of determining the benefit.

§15-2-31a. Application for disability benefit; determinations.

(a) Application for a disability benefit may be made by a member under the provisions of section twenty-nine of this article, by an employee under the provisions of section thirty of this article or, if the member or employee is under an incapacity, by a person acting with legal authority on the member's or the employee's behalf. After receiving an application for a disability benefit, the board shall notify the superintendent of the agency that an application has been filed: Provided, That when, in the judgment of the superintendent, an employee is no longer physically or mentally fit for continued duty as an employee of the West Virginia State Police and the employee has failed or refused to make application for disability benefits under this article, the superintendent may petition the board to retire the employee on the basis of disability pursuant to rules which may be established by the board. Within thirty days of the superintendent's receipt of the notice from the board or the filing of the superintendent's petition with the board, the superintendent shall
forward to the board a statement certifying the duties
of the employee's employment, information relating to
the superintendent's position on the work relatedness of
the employee's alleged disability, complete copies of the
employee's medical file and any other information
requested by the board in its processing of the
application, if this information is requested timely.

(b) The board shall propose legislative rules in
accordance with the provisions of article three, chapter
twenty-nine-a of this code relating to the processing of
applications and petitions for disability retirement
under this article.

(c) The board shall notify the member and the
superintendent of its final action on the disability
application or petition within ten days of the board's
final action. The notice shall be sent by certified mail,
return receipt requested. If either the member or the
superintendent is aggrieved by the decision of the board
and intends to pursue judicial review of the board's
decision as provided in section four, article five, chapter
twenty-nine-a of this code, the party so aggrieved shall
notify the board within twenty days of the member's or
superintendent's receipt of the board's notice that they
intend to pursue judicial review of the board's decision.

(d) (1) The board shall require each disability benefit
recipient to file an annual certified statement of
earnings, to include the amount and source of earnings
and any other information required in legislative rules
which may be proposed by the board. The board may
waive or modify the requirement that a recipient of
total disability benefits file the annual statement of
earnings if the board's physician certifies that the
recipient's disability is ongoing. The board shall annually examine the information submitted by each recipient. If a disability retirant refuses to file a statement and other information required by the board, the disability benefit shall be suspended, after notice and opportunity to be heard, until the statement and information are filed.

(2) The board shall annually examine any information available from the State Tax Commissioner on all recipients of disability benefits pursuant to article ten, chapter eleven of this code.

(e) (1) A nonblind recipient earning annual income exceeding the equivalent of eight hundred sixty dollars per month in the year two thousand six, after impairment-related work expenses are subtracted from earnings, has engaged in substantial gainful activity. A statutorily blind recipient has engaged in substantial gainful activity in the year two thousand six if the recipient has earned annual income exceeding the equivalent of one thousand four hundred fifty dollars per month after impairment-related work expenses are subtracted from earnings.

(2) The substantial gainful activity dollar limit shall be automatically adjusted annually to correspond to the dollar limit as established and published by the United States Social Security Administration for each year in accordance with methods published in the Federal Register (FR6582905 December 29, 2000) and similar methods used by the Social Security Administration applying the average annual wage index.

(3) If after review of a disability retirant's annual
statement of earnings, tax records or other financial
information, as required or otherwise obtained by the
board, the board determines that earnings of the
recipient of total disability benefits in the preceding
year are sufficient to show that the recipient engaged in
substantial gainful activity, the disability retirant's
disability annuity shall be terminated by the board,
upon recommendation of the board's disability review
committee and after notice and opportunity to be heard,
on the first day of the month following the board's
action.

(4) If the board obtains information that a recipient of
partial disability benefits is employed as a law-
enforcement officer, upon recommendation of the
board's disability review committee and after notice
and an opportunity to be heard, the board shall
terminate the recipient's disability benefits on the first
day of the month following the board's action.

(f) Any person who wishes to reapply for disability
retirement and whose disability retirement has been
terminated by the board pursuant to this section may do
so within ninety days of the effective date of
termination: Provided, That any person reapplying for
disability benefits shall undergo an examination at the
applicant's expense by an appropriate medical
professional selected by the board as part of the
reapplication process.

(g) Notwithstanding other provisions in this section, any
person whose disability retirement has been terminated by the
board pursuant to this section may apply for regular retirement
benefits upon meeting the eligibility requirements of age and
years of service.

Not later than the first day of January, two thousand six, and each first day of January thereafter, the board shall prepare a report for the preceding fiscal year of the disability retirement experience of the West Virginia State Police Death, Disability and Retirement Fund. The report shall specify the total number of disability applications submitted, the status of each application as of the last day of the fiscal year, total applications granted or denied, and the percentage of disability benefit recipients to the total number of West Virginia State Police employees who are members of the fund. The report shall be submitted to the Governor and the chairpersons of the standing committees of the Senate and House of Delegates with primary responsibility for retirement legislation.

§15-2-32. Retirant not to exercise police authority; retention of group insurance.

A retirant may not exercise any of the powers conferred upon active employees by section twelve of this article; but is entitled to receive free of cost to the retirant and retain as his or her separate property one complete standard uniform prescribed by section ten of this article: Provided, That the uniform may be worn by a retirant on occasions prescribed by the superintendent. The superintendent shall maintain at public expense for the benefit of all retirants that group life insurance mentioned in section ten of this article. The superintendent, when he or she is of opinion that the public safety shall require, may recall to active duty during any period determined by the superintendent, any retiree who is retired under the provisions of
section twenty-seven of this article, provided the consent of the retiree to reassume duties of active membership shall first be obtained. Any retirant who resumes status of active membership is not entitled to receive retirement pay or benefits, but in lieu thereof, is entitled to receive that rate of salary and allowance pertinent to the rank or grade previously held by the retirant. When the former retirant is released from active duty, he or she shall reassume the status of retirement and shall be entitled to receive appropriate benefits as provided by this article. Provided, That the amount of the benefits shall in no event be less than the amount determined by the order of the board previously made in his or her behalf.

§15-2-33. Awards and benefits to dependents of member when the member dies in performance of duty; to dependents of a duty disability retirant; dependent child scholarship and amount.

(a) The surviving spouse or the dependent child or children or dependent parent or parents of any member who has lost or loses his or her life by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of employees while the member was or is engaged in the performance of his or her duties as an employee of the agency, or if a retirant dies from any cause after having been retired pursuant to the provisions of section twenty-nine of this article, the surviving spouse or other dependent is entitled to receive and shall be paid from the fund benefits as follows: To the surviving spouse annually, in equal monthly installments during his or her lifetime the greater of one or the other of two amounts:
(1) An amount equal to five and one-half percent of the total salary which was or would have been earned by the deceased member or duty disability retirant during twenty-five years of service based on the average earnings of the member or duty disability retirant while employed by the agency; or

(2) The sum of six thousand dollars.

(b) In addition, the surviving spouse is entitled to receive and shall be paid one hundred dollars monthly for each dependent child or children. If the surviving spouse dies or if there is no surviving spouse, there shall be paid monthly to each dependent child or children from the fund a sum equal to twenty-five percent of the surviving spouse's entitlement. If there is no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the fund to the dependent parents of the deceased member or retirant during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is 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.

(c) Any person qualified as a surviving dependent child under this section, 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 seven thousand five hundred dollars 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 those institutions so long as the recipient makes
application to the board on an approved form and under
rules as provided by the board and maintains scholastic
eligibility as defined by the institution or the board. The
board may by appropriate rules define age
requirements, physical and mental requirements,
scholastic eligibility, disbursement methods,
institutional qualifications and other requirements as
necessary and not inconsistent with this section.

(d) A surviving spouse or dependent of an employee
meeting the requirements of this section is entitled to
receive beneficiary payments on the first day following
the date the deceased employee is removed from payroll
by the agency. A surviving spouse or dependent of a
member who is not currently an employee meeting the
requirements of this section is entitled to receive
beneficiary payments on the first day following the date
of the deceased member's death. A surviving spouse or
dependent of a retirant meeting the requirements of this
section is entitled to receive beneficiary payments on
the first day of the month following the date of the
deceased retirant's death. Upon receipt of properly
executed forms from the agency and the surviving
spouse or dependent, the board shall process the
surviving spouse or dependent benefit as soon as
administratively feasible.

(e) For the purposes of this section, the term "salary"
does not include any compensation paid for overtime
service.
§15-2-34. Awards and benefits to dependents of employee when the employee dies from nonservice-connected causes.

(a) If an employee of the agency, before having completed twenty years of service as an employee of the agency, dies from any cause other than those specified in this article and not due to vicious habits, intemperance or willful misconduct on his or her part, there shall be paid annually in equal monthly installments from the fund to the surviving spouse of the employee during his or her lifetime, or until such time as the surviving spouse remarries, a sum equal to two and three-quarters percent of the total salary which would have been earned by the employee during twenty-five years of service with the agency based on his or her average earnings while employed with the agency. If there is no surviving spouse, or the surviving spouse dies or remarries, there shall be paid monthly to each dependent child or children from the fund, a sum equal to twenty-five percent of the surviving spouse's entitlement. If there is no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the fund to the dependent parents of the deceased employee during their joint lifetimes, a sum equal to the amount which a surviving spouse would have been entitled to receive:

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.

(b) A surviving spouse or dependent meeting the requirements of this section is entitled to receive beneficiary payments on the first day following the date
the deceased employee is removed from payroll by the agency. Upon receipt of properly executed forms from the agency and the surviving spouse or dependent, the board shall process the surviving spouse or dependent benefit as soon as administratively feasible.

(c) For the purposes of this section, the term "salary" does not include compensation paid for overtime service.

§15-2-35. Awards and benefits to dependents of retirant or after an employee serves twenty years.

(a) When any employee of the agency has completed twenty years of service or longer as an employee of the agency and has died or dies from any cause or causes other than those specified in this article before having been retired by the board, and when a retirant has died or dies after having been retired by the board under the provisions of this article, there shall be paid annually in equal monthly installments from the fund to the surviving spouse of the employee or retirant during the lifetime or until remarriage of the surviving spouse, an amount equal to three-fourths the retirement benefits the deceased retirant was receiving or would have been entitled to receive while in status of retirement, or would have been entitled to receive to the same effect as if the employee had been retired under the provisions of this article immediately prior to the time of his or her death and in no event to be less than five thousand dollars, unless otherwise required under this article, and in addition the surviving spouse shall be entitled to receive and shall be paid from the fund the sum of one hundred dollars monthly for each dependent child or children. If the surviving spouse dies or remarries or if
there is no surviving spouse, there shall be paid monthly from the fund to each dependent child or children of the deceased employee or retirant a sum equal to twenty-five percent of the surviving spouse's entitlement. If there is no surviving spouse or no surviving spouse eligible to receive benefits and no dependent child or children, there shall be paid annually in equal monthly installments from the fund to the dependent parents of the deceased employee or retirant during their joint lifetimes a sum equal to the amount which a surviving spouse without children would have been entitled to receive: Provided, That when there is only one dependent parent surviving, the parent shall be entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive.

(b) A surviving spouse or dependent of an employee meeting the requirements of this section is entitled to receive beneficiary payments on the first day following the date the deceased employee is removed from payroll by the agency. A surviving spouse or dependent of a retirant meeting the requirements of this section is entitled to receive beneficiary payments on the first day of the month following the date of the deceased retirant's death. Upon receipt of properly executed forms from the agency and the surviving spouse or dependent, the board shall process the surviving spouse or dependent benefit as soon as administratively feasible.

§15-2-37. Refunds to certain employees upon discharge or resignation; deferred retirement.

(a) Any employee who is discharged by order of the superintendent or otherwise terminates employment
with the agency, at the written request of the member to
the board, is entitled to receive from the fund a sum
equal to the aggregate of the principal amount of
moneys deducted from his or her salary and paid into
the fund plus four percent interest compounded thereon
calculated annually as provided and required by this
article.

(b) Any member withdrawing contributions who may
thereafter be reemployed by the agency shall not receive
any prior service credit in the fund on account of former
service. The employee may redeposit in the fund
established in article two-a of this chapter the amount
of the refund, together with interest thereon at the rate
of seven and one-half percent per annum from the date
of withdrawal to the date of redeposit, in which case he
or she shall receive the same credit on account of his or
her former service as if no refund had been made. He or
she shall become a member of the retirement system
established in article two-a of this chapter.

(c) Every employee who completes ten years of service
with the agency is eligible, upon separation of
employment, either to withdraw his or her contributions
in accordance with subsection (a) of this section or to
choose not to withdraw his or her accumulated
contributions with interest. Upon attainment of age
sixty-two, a member who chooses not to withdraw his
or her contributions is eligible to receive a retirement
annuity. Any member choosing to receive the deferred
annuity under this subsection is not eligible to receive
the annual annuity adjustment provided in section
twenty-seven-a of this article. When the board retires
any member under any of the provisions of this section,
the member is entitled to receive annually and shall be
paid from the fund in equal monthly installments
during the lifetime of the member while in status of retirement one or the other of two amounts, whichever is greater:

(1) An amount equal to five and one-half percent of the aggregate of salary paid to the employee during the whole period of service as an employee of the agency; or

(2) The sum of six thousand dollars.

(d) A member may choose, in lieu of a life annuity available under the provisions of subsection (c) of this section, an annuity in a reduced amount payable during the member’s lifetime, with one half of the reduced monthly amount paid to his or her surviving spouse, for the spouse’s remaining lifetime after the death of the retirant. Reduction of this monthly benefit amount shall be calculated to be of equal actuarial value to the life annuity the member could otherwise have chosen.

(e) A member retiring under the provisions of this section may receive retirement annuity payments on the day following his or her attaining age sixty-two. Upon receipt of properly executed forms from the agency and the member, the board shall process the member’s retirement benefit and commence annuity payments as soon as administratively feasible.

§15-2-38. Refund to dependents upon death of member not eligible for benefits.

If any member dies and the board is of the opinion after hearing that the dependent or dependents of the member are ineligible under the provisions of this article to receive any of the benefits provided herein, the board shall refund to the spouse, if surviving, but if
not surviving, to the children of the member, and if there is no surviving spouse or children, to the dependent parents, a sum equal to the aggregate of the principal amount of all moneys deducted from the salary of the member and paid into the fund. If there is no surviving spouse or children or dependent parent or parents, then a sum equal to the aggregate of the principal amount of all moneys deducted from the salary of the member and paid into the fund will be paid to the member's estate. Whenever a refund is made to the surviving spouse or other dependents of the deceased member, the surviving spouse or other dependents shall not be entitled to any other rights or benefits from the fund.


In any case where under the terms of this article benefits are provided for dependent child or children, the benefits shall be paid for so long as they continue to meet the qualifications provided under the provisions of this article.

§15-2-44. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the fund in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section to the extent applicable to governmental plans so that no annuity or other benefit provided under this fund shall exceed those limitations. The extent to which any annuity or other benefit payable under this fund shall be reduced as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution
plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be determined by the board in a manner that shall maximize the aggregate benefits payable to the member. If the reduction is under this fund, the board shall advise affected members or retirants of any additional limitation on the annuities required by this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within was approved this
the Day of April, 2007.

Governor