WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

COMMITTEE SUBSTITUTE
FOR
ENROLLED
Senate Bill No. 539

(Senators Foster, McKenzie, Plymale and Kessler, original sponsors)

[Passed March 7, 2007; in effect ninety days from passage.]
AN ACT to amend and reenact §7-14D-2, §7-14D-9 and §7-14D-11 of the Code of West Virginia, 1931, as amended, all relating to the Deputy Sheriff Retirement System; amending the definition of "annuity start date"; requiring a member's application for retirement; and providing the basis for determining a member's retirement benefit.

Be it enacted by the Legislature of West Virginia:
That §7-14D-2, §7-14D-9 and §7-14D-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, 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 calendar month following receipt of the retirement application by the board: Provided, That the member has ceased covered employment and reached early or 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, chapter five of this code: Provided, That the deputy sheriff contributes 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 of this chapter.
(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

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

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

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

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

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

(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.

(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.

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

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

(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 this
paragraph and paragraph (1) or (2) of this subdivision.
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.
"Monthly salary" means the portion of a member's annual compensation which is paid to him or her per month.

"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.

"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.

(aa) "Public Employees Retirement System" means
the West Virginia Public Employee's Retirement System
created by article ten, chapter five of this code.

(bb) "Plan" means the West Virginia Deputy Sheriff
Death, Disability and Retirement Plan established by
this article.

(cc) "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.

(dd) "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.

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

(ff) "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>Years of Service</th>
</tr>
</thead>
</table>
Credited

262 Less than 500 .............................. 0

263 500 to 999 ............................... 1/3

264 1,000 to 1,499 ........................ 2/3

265 1,500 or more ............................ 1

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 thirteen 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) the calendar year in which he or she
§7-14D-9. Retirement; commencement of benefits.

A member may retire and commence to receive retirement income payments on the first day of the calendar month following the board’s receipt of the member’s voluntary written application for retirement. Before receiving retirement income payments, the member shall have ceased covered employment and reached early or normal retirement age. The retirement income payments shall be in an amount as provided under section eleven of this article: Provided, That retirement income payments under this plan shall be subject to the provisions of section nine-b of this article. Upon receipt of the application, the board shall promptly provide the member with an explanation of his or her optional forms of retirement benefits and upon receipt of properly executed forms from the member, the board shall process the member’s request and commence payments as soon as administratively feasible.


This section provides for a member’s accrued benefit payable starting at the member’s annuity starting date which follows the completion of a written application for the commencement of benefits. The member shall receive the accrued retirement benefit in the normal form or in an actuarial equivalent amount in an optional form as provided under section twelve of this chapter. The first day of the calendar month following the calendar month of birth shall be used in lieu of any
birth date that does not fall on the first day of a
calendar month.

(a) Normal retirement. — A member whose annuity
starting date is the date the member attains normal
retirement age or later is entitled to his or her accrued
retirement benefit based on years of service and final
average salary at termination of employment.

(b) Early retirement. — A member who ceases covered
employment and has attained early retirement age while
in covered employment may elect to receive retirement
income payments commencing on the first day of the
month coincident with or following the date the
member ceases covered employment. "Normal
retirement age" for such a member is the first day of the
calendar month coincident with or next following the
month in which the member attains the age of fifty
years. If the member's annuity starting date is prior to
the date the member attains normal retirement age, his
or her accrued benefit is reduced to the actuarial
equivalent benefit amount based on the years and
months by which his or her annuity starting date
precedes the date he or she attains normal retirement
age.

(c) Retirement benefits shall be paid monthly in an
amount equal to one twelfth of the retirement income
payments elected and at those times established by the
board. Notwithstanding any other provision of the
plan, a member who is married on the annuity starting
date will receive his or her retirement income payments
in the form of a sixty-six and two-thirds percent joint
and survivor annuity with his or her spouse unless prior
to the annuity starting date the spouse waives the form
of benefit.
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 is approved this
the 3rd Day of April, 2007.

Governor
PRESENTED TO THE
GOVERNOR
MAR 20 2007
Time 4:00 pm