WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4471

(By Delegates Spencer, DeLong, Caputo, Perry, Boggs, Stemple and Crosier)

Passed March 8, 2008

In Effect Ninety Days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4471

(BY DELEGATES SPENCER, DELONG, CAPUTO, PERRY, BOGGS, STEMPLE AND CROSIER)

[Passed March 8, 2008; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2-24b; and to amend and reenact §15-2A-2, §15-2A-3, §15-2A-4, §15-2A-5, §15-2A-6, §15-2A-6a, §15-2A-6c, §15-2A-6d, §15-2A-7, §15-2A-8, §15-2A-9, §15-2A-10, §15-2A-11, §15-2A-11a, §15-2A-11b, §15-2A-12, §15-2A-13, §15-2A-14, §15-2A-15, §15-2A-17 and §15-2A-19 of said code, all relating to the West Virginia State Police Retirement Fund; requiring the State Police to collect a fee for certain fingerprinting services and deposit the fees into the retirement system; adding, deleting and modifying definitions; specifying the title of West Virginia State Police Retirement System; clarifying the usage of the terms "employee", "member" and "retirant or retiree" as defined; clarifying the usage of the terms "fund", "plan", "system" or "retirement system" as defined; clarifying the usage of the term "base salary" as defined; clarifying the usage of the term "agency" as defined; authorizing the board to increase or decrease the employee's contribution rate under specified circumstances; reducing the normal retirement age for
members: eliminating minimum required eligible direct rollover distributions paid directly to an eligible retirement plan: allowing distributions totaling less than two hundred dollars within the definition of "eligible rollover distribution"; clarifying the usage of the term "surviving spouse" as defined; clarifying surviving spouse payments when calculating the pro rata share of annuity adjustments; specifying the time frame that a retiree may receive deferred annuity payments; clarifying the age requirement for a retiree receiving a duty disability annuity; requiring the base salary of a member receiving a duty disability annuity to be annualized until the member has worked twelve months; specifying the title of the West Virginia Insurance Commission; clarifying the time frame for which a duty disability retiree receives a retirement benefit; specifying that disability petitions certify the job description of an employee applying for a disability retirement; specifying the time frame for receipt of awards and benefits to dependents of deceased employees; clarifying that death awards and benefits be calculated for the last full twelve-month employment period; requiring that death awards and benefits be paid to a named beneficiary or to the estate of the deceased member if there is no surviving spouse or dependents; eliminating duplicate language referring to a single receipt of state retirement benefits; and adding provisions specifying the time frame for receipt of beneficiary payments.

*Be it enacted by the Legislature of West Virginia:*


**ARTICLE 2. WEST VIRGINIA STATE POLICE.**
§15-2-24b. Fees for certain fingerprinting services; dedication of fees.

In addition to any fees that may be established or collected by the State Police under any other provision of this article or rule promulgated pursuant thereto, the State Police shall collect a fee of twenty dollars for performing adult private employment fingerprinting or fingerprinting for federal firearm permits: Provided, That all state entities are exempt from the fee. Fees collected pursuant to this section shall be deposited into the West Virginia State Police Retirement System and shall be in addition to employer percent-of-payroll contribution.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.


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

(1) “Accumulated contributions” means the sum of all amounts deducted from base salary, together with four percent interest compounded annually.

(2) "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.

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

(4) "Base salary" means compensation paid to an employee without regard to any overtime pay.
(5) "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.

(6) "Board" means the Consolidated Public Retirement Board created pursuant to article ten-d, chapter five of this code.

(7) "Dependent child" means any unmarried child or children born to or adopted by a member or retirant of the fund who:

(A) Is under the age of eighteen;

(B) 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

(C) Is financially dependent on the member or retirant by virtue of a permanent mental or physical disability upon evidence satisfactory to the board.

(8) "Dependent parent" means the member’s or retirant’s parent or stepparent claimed as a dependent by the member or retirant for federal income tax purposes at the time of the member’s or retirant’s death.

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

(10) "Final average salary" means the average of the highest annual compensation received for employment with the agency, including compensation paid for overtime
service, received by the employee during any five calendar years within the employee’s last ten years of service.

(11) "Fund", “plan”, “system” or “retirement system” means the West Virginia State Police Retirement Fund created and established by this article.

(12) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(13) "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 purely administrative in nature.

(14) "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.

(15) "Month of service" means each month for which an employee is paid or entitled to payment for at least one hour of service for which contributions were remitted to the fund. These months shall be credited to the member for the calendar year in which the duties are performed.

(16) "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.

(17) "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.

(18) "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.

(19) "Required beginning date" means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy and one-half years; or (b) the calendar year in which he or she retires or otherwise separates from service with the agency after having attained the age of seventy and one-half years.

(20) "Retirant" or "retiree" means any member who commences an annuity payable by the retirement system.

(21) "Salary" means the compensation of an employee, excluding any overtime payments.

(22) "Surviving spouse" means the person to whom the member or retirant was legally married at the time of the member's or retirant's death and who survived the member or retirant.

(23) "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 subdivision, 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: (A) The work exists in the immediate area in which the employee lives; (B) a specific job vacancy exists; or (C) the employee would be hired if he or she applied for work.

(24) "Years of service" means the months of service acquired by a member while in active employment with the agency divided by twelve. Years of service shall be calculated in years and fraction of a year from the date of active employment of the member with the agency through the date of termination of employment or retirement from the agency. If a member returns to active employment with the agency following a previous termination of employment with the agency and the member has not received a refund of contributions plus interest for the previous employment under section eight of this article, service shall be calculated separately for each period of continuous employment and years of service shall be the total service for all periods of employment. Years of service shall exclude any periods of employment with the agency for which a refund of contributions plus interest has been paid to the member unless the employee repays the previous withdrawal, as provided in section eight of this article, to reinstate the years of service.

§15-2A-3. Continuation and administration of West Virginia State Police Retirement System; leased employees; federal qualification requirements.

(a) The West Virginia State Police Retirement System is continued. Any West Virginia state trooper employed by the agency on or after the effective date of this article shall be a
member of this retirement system and may not qualify for membership in any other retirement system administered by the board so long as he or she remains employed by the State Police.

(b) Any individual who is a leased employee shall not be eligible to participate in the system. For purposes of this system, 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.

(c) The board created pursuant to article ten-d, chapter five of this code shall administer the retirement system. The board may sue and be sued, contract and be contracted with and conduct all the business of the system in the name of the West Virginia State Police Retirement System.

(d) This fund is intended to meet the federal qualification requirements of Section 401(a) and related sections of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the retirement system to fulfill this intent for the exclusive benefit of the employees, members, retirants and their beneficiaries. Any provision of this article referencing or relating to these federal qualification requirements shall be effective as of the date required by federal law. The board may promulgate rules and amend or repeal conflicting rules in accordance with the authority granted to the board pursuant to section one, article ten-d, chapter five of this code to assure compliance with this section.

§15-2A-4. Participation in system; continuation of fund.
The West Virginia State Police Retirement Fund is continued for the benefit of the members and retirants of the system created pursuant to this article and the dependents of any deceased or retired member of the system. All moneys paid into and accumulated in the fund, except any amounts designated or set aside by the board for payments of benefits as provided in this article, shall be invested by the West Virginia Investment Management Board as provided by law.

§15-2A-5. Employee contributions; employer contributions; forfeitures.

(a) There shall be deducted from the monthly payroll of each employee and paid into the fund created pursuant to section four of this article twelve percent of the amount of his or her salary: Provided. That after the first day of July, two thousand eight, if the unfunded liability of the Fund falls below the ninety percent threshold, then the employee rate of contribution shall be increased to thirteen percent of the amount of the employee’s salary until the ninety percent or better funding level is again achieved. Once that funding level is achieved the employee contribution rate will be reduced to twelve percent.

(b) The State of West Virginia's contributions to the retirement system, as determined by the board by legislative rule promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code, shall be a percent of the employees’ total annual base salary related to benefits under this retirement system. In determining the amount, the board shall give consideration to setting the amount at a sum equal to an amount which, if paid annually by the state, will be sufficient to provide for the total normal cost of the benefits expected to become payable to all members and retirants and to amortize any unfunded liability found by application of the actuarial funding method chosen for that purpose by the board over a period of years determined
actuarially appropriate. When proposing a rule for promulgation which relates to the amount of employer contribution, the board may promulgate emergency rules pursuant to the provisions of article three, chapter twenty-nine-a of this code if the inability of the board to increase state contributions will detrimentally affect the actuarial soundness of the retirement system. A signed statement from the state actuary shall accompany the statement of facts and circumstances constituting an emergency which shall be filed in the State Register. For purposes of this section, subdivision (2), subsection (b), section fifteen-a, article three, chapter twenty-nine-a of this code is not applicable to the Secretary of State's determination of whether an emergency rule should be approved. The state's contributions shall be paid monthly into the fund created pursuant to section four of this article out of the annual appropriation for the agency.

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


(a) A member may retire with full benefits upon attaining the age of fifty and completing twenty-five or more years of service or attaining the age of fifty-two and completing twenty years or more of service by filing with the board his or her voluntary application in writing for retirement. A member who is less than age fifty-two may retire upon completing twenty years or more of service: Provided, That he or she will receive a reduced benefit that is of equal actuarial value to the benefit the member would have received if the member deferred commencement of his or her accrued retirement benefit to the age of fifty-two.
(b) When the board retires a member with full benefits under the provisions of this section, the board, by order in writing, shall make a determination that the member is entitled to receive an annuity equal to two and three-fourths percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her service at the time of retirement. The retirant's annuity shall begin the first day of the calendar month following the month in which the member's application for the annuity is filed with the board on or after his or her attaining age and service requirements and termination of employment.

(c) 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 a deferred or immediate commencement of benefit.


Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and Treasury regulations under that section to the extent applicable to governmental plans so that no annuity or other benefit provided under this system shall exceed those limitations. The extent to which any annuity or other benefit payable under this retirement system 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 retirement system, the board shall advise affected members or retirants of any additional limitation on the annuities required by this section.
§15-2A-6c. Direct rollovers.

1 (a) This section applies to distributions made on or after
2 the first day of January, one thousand nine hundred ninety-
3 three. Notwithstanding any provision of this article to the
4 contrary that would otherwise limit a distributee's election
5 under this system, a distributee may elect, at the time and in
6 the manner prescribed by the board, to have any portion of an
7 eligible rollover distribution paid directly to an eligible
8 retirement plan specified by the distributee in a direct
9 rollover. For purposes of this section, the following
10 definitions apply:

11 (1) "Eligible rollover distribution" means any distribution
12 of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution does
14 not include any of the following: (i) Any distribution that is
15 one of a series of substantially equal periodic payments not
16 less frequently than annually made for the life or life
17 expectancy of the distributee or the joint lives or the joint life
18 expectancies of the distributee and the distributee's
19 designated beneficiary or for a specified period of ten years
20 or more; (ii) any distribution to the extent the distribution is
21 required under Section 401(a)(9) of the Internal Revenue
22 Code; (iii) the portion of any distribution that is not
23 includable in gross income determined without regard to the
24 exclusion for net unrealized appreciation with respect to
25 employer securities; and (iv) any hardship distribution
26 described in Section 401(k)(2)(B)(i)(iv) of the Internal
27 Revenue Code. For distributions after the thirty-first day of
28 December, two thousand one, a portion of a distribution shall
29 not fail to be an eligible rollover distribution merely because
30 the portion consists of after-tax employee contributions
31 which are not includable in gross income. However, this
32 portion may be paid only to an individual retirement account
33 or annuity described in Section 408(a) or (b) of the Internal
34 Revenue Code or to a qualified defined contribution plan
described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts transferred, including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not includable.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: *Provided,* That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. For distributions after the thirty-first day of December, two thousand one, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

(4) "Direct rollover" means a payment by the system to the eligible retirement plan.
§15-2A-6d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

(a) This section applies to rollovers and transfers as specified in this section made on or after the first day of January, two thousand two. Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the retirement system shall accept the following rollovers and plan transfers on behalf of an employee solely for the purpose of purchasing permissive service credit, in whole and in part, as otherwise provided in this article or for the repayment of withdrawn or refunded contributions, in whole and in part, with respect to a previous forfeiture of service credit as otherwise provided in this article: (i) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (ii) one or more rollovers described in Section 402 (c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401 (a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: Provided, That any rollovers or transfers pursuant to this section shall be
accepted by the system only if made in cash or other asset permitted by the board and only in accordance with the policies, practices and procedures established by the board from time to time. For purposes of this section, the following definitions apply:

(1) "Permissive service credit" means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code.

(2) "Repayment of withdrawn or refunded contributions" means the payment into the retirement system of the funds required pursuant to this article for the reinstatement of service credit previously forfeited on account of any refund or withdrawal of contributions permitted in this article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

(b) Nothing in this section shall be construed as permitting rollovers or transfers into this system or any other system administered by the board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the purchase of permissive service credit or repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the purchase of service credit or repayment of withdrawn or refunded contributions except as otherwise permitted in this article.

(a) Every retirant of the fund who is sixty-three years of age or older and who is retired by the board under the provisions of section six of this article; every retirant who is retired under the provisions of section nine or ten of this article; and every surviving spouse receiving a benefit pursuant to section twelve, thirteen or fourteen of this article is eligible to receive an annual retirement annuity adjustment equal to one percent of his or her retirement award or surviving spouse 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 retirant or surviving spouse from the fund in equal monthly installments while the retirant or surviving spouse are receiving annuity payments. The annuity adjustments shall supplement the retirement awards and benefits provided in this article.

(b) Any retirant or surviving spouse who receives a benefit pursuant to the provisions of section nine, ten, twelve, thirteen or fourteen 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 surviving spouse has been in receipt of surviving spouse payments for less than one year when the first annuity adjustment is given on that July first, that first annuity adjustment will be a pro rata share of the full year's annuity adjustment.

§15-2A-8. Refunds to certain members upon discharge of resignation; deferred retirement.

(a) Any employee who is discharged by order of the superintendent or otherwise terminates employment with the agency is, at the written request of the member to the board, entitled to receive from the fund a sum equal to the aggregate of the principal amount of moneys deducted from his or her
base 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 by this article 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.

(c) Every employee who completes ten years of service with the agency is eligible, upon separation of employment, to either withdraw his or her contributions in accordance with subsection (a) of this section or to choose not to withdraw his or her accumulated contributions. Upon attainment of age sixty-two, a member who chooses not to withdraw his or her contributions is eligible to receive a retirement annuity. The annuity shall be payable during the lifetime of the retirant and shall be in the amount of his or her accrued retirement benefit as determined under section six of this article. The retirant may choose, in lieu of a life annuity, an annuity in a reduced amount payable during the retirant’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 the monthly benefit amount shall be calculated to be of equal actuarial value to the life annuity the retirant could otherwise have chosen. Any retirant choosing to receive the deferred annuity under this subsection is not eligible to receive the annual annuity adjustment provided in section seven of this article. A retiring member under the provisions of this section may receive retirement annuity payments on the first day of the month following his or her attaining age sixty-two and upon receipt of the
application for retirement. 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 agency and member, the board shall process the member’s request for and commence payments as soon as administratively feasible.


(a) Any employee of the agency 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, unable to perform adequately the duties required of him or her as an employee of the agency, but is able to engage in other gainful employment in a field other than law enforcement, be retired from active service by the board. The retirant thereafter is entitled to receive annually from the fund in equal monthly installments during his or her lifetime, or until the retirant attains the age of fifty-five or until the disability eligibility sooner terminates, one or the other of two amounts, whichever is greater:

(1) An amount equal to six tenths of the base salary received in the preceding twelve-month employment period: Provided, That if the member had not been employed with the agency for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or

(2) The sum of six thousand dollars. The first day of the month following the date in which the retirant attains age
fifty-five, the retirant shall receive the benefit provided in section six of this article as it would apply to his or her final average salary based on earnings from the agency through the day immediately preceding his or her disability. The recalculation of benefit upon a retirant attaining age fifty-five shall be considered to be a retirement under the provisions of section six of this article for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article: Provided, That 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, however, That a retirant on a 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 as 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.

(b) Any member who has not yet entered retirement status on the basis of age and service and who becomes physically or mentally disabled by injury, illness or disease on a probable permanent basis 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 or is engaged in the performance of his or her duties as an employee of the agency to the extent that the employee is incapacitated ever to engage in any gainful employment, the employee 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 sooner terminates, an amount equal to the base salary received by the employee in the preceding full twelve-month employment period. Until a member has worked twelve months, the amount of monthly base salary shall be annualized for the purpose of determining the benefit.
(c) The superintendent of the agency may expend moneys from 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 retirant who is 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 employee was or shall be engaged in the performance of duties as an employee of the agency. Whenever the superintendent determines that any disabled retirant is ineligible to receive any of the benefits in this section at public expense, the superintendent shall, at the request of the disabled 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. 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.

§15-2A-10. Same — Due to other causes.

(a) If any employee while in active service of the agency becomes partially or totally disabled on a probable permanent basis 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. There shall be paid annually to the retirant from the fund in equal monthly installments, commencing on
the date the retirant is retired and continuing during the
lifetime of the retirant or until the retirant attains the age of
fifty-five; while in status of retirement an amount equal to
one half the base salary received by the retirant in the
preceding full twelve-month period: Provided, That if the
retirant had not been employed with the agency for twelve
full months prior to the disability, the amount of monthly
base salary shall be annualized for the purpose of
determining the benefit.

(b) The first day of the month following the date in which
the retirant attains age fifty-five, the retirant shall receive the
benefit provided in section six of this article as it would apply
to his or her final average salary based on earnings from the
agency through the day immediately preceding his or her
disability. The recalculation of benefit upon a retirant
attaining age fifty-five shall be considered to be a retirement
under the provisions of section six of this article for purposes
of determining the amount of annual annuity adjustment and
for all other purposes of this article.


The board may require any disabled retirant to submit to
a physical or mental examination or both a physical and
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 expenses of the agency, and the physician
or physicians shall submit a report of the findings of the
physician or physicians 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 any gainful employment, but
unable to adequately perform the duties of a law-enforcement
officer, the board shall order, in the case of a disabled retirant
receiving benefits under the provisions of section nine of this
article, that the disabled retirant be paid annually from the
fund an amount equal to six tenths of the base salary paid to
the retirant in the last full twelve-month employment period.
The board shall order, in the case of a disabled retirant
receiving benefits under the provisions of section ten of this
article, that the disabled retirant be paid from the fund an
amount equal to one fourth of the base salary paid to the
retirant in the last full twelve-month employment period:
Provided, That if the retirant had not been employed with the
agency for twelve full months prior to the disability, the
amount of monthly salary shall be annualized for the purpose
of determining the benefit.

§15-2A-11a. Physical examinations of prospective members;
application for disability benefit;
determinations.

(a) Not later than thirty days after an employee becomes
a member of the fund, the employer shall forward to the
board a copy of the physician's report of a physical
examination which incorporates the standards or procedures
described in section seven, article two, chapter fifteen of this
code. A copy of the physicians's report shall be placed in the
employee's retirement system file maintained by the board.

(b) Application for a disability benefit may be made by
an employee or, if the employee is under an incapacity, by a
person acting with legal authority on 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 agency 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 legislative rules proposed in accordance with article three, chapter twenty-nine-a of this code. 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 job description, 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.

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

(d) The board shall notify an employee 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 employee 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 aggrieved shall notify the board within twenty days of the employee's or superintendent's receipt of the board's notice that they intend to pursue judicial review of the board's decision.
(e) The board may require a disabled retirant to file an annual statement of earnings and any other information required in rules which may be adopted by the board. The board may waive the requirement that a disabled retirant 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 the disabled retirant. If a disabled retirant refuses to file the statement or information, the disability benefit shall be suspended until the statement and information are filed.


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 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 agency 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.

§15-2A-12. Awards and benefits to dependents of employees or retirants - When employee dies in performance of duty, etc.; dependent child scholarship and amount.

The surviving spouse, the dependent child or children or dependent parent or parents of any employee who has lost or shall lose 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
employee was engaged in the performance of his or her
duties as an employee of the agency, or the survivor of a
retirant who dies from any cause after having been retired
pursuant to the provisions of section nine of this article, 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, one or the other of two
amounts, which shall become payable the first day of the
month following the employee’s or retirant’s death and which
shall be the greater of:

(1) An amount equal to nine tenths of the base salary
received in the preceding full twelve-month employment
period by the deceased employee: Provided, That if the
employee had not been employed with the agency for twelve
full months prior to his or her death, the amount of monthly
salary shall be annualized for the purpose of determining the
benefit; or

(2) The sum of ten thousand dollars.

In addition, the surviving spouse is entitled to receive and
shall be paid one hundred fifty dollars monthly for each
dependent child. 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 one
third 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 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: Provided, however, That if there is

39 no surviving spouse, dependent child, or dependent parent of
40 the deceased member, the accumulated contributions shall be
41 paid to a named beneficiary or beneficiaries: Provided
42 further. That if there is no surviving spouse, dependent child,
43 dependent parent of the deceased member or any named
44 beneficiary or beneficiaries, then the accumulated
45 contributions shall be paid to the estate of the deceased
46 member.

47 Any person qualifying as a surviving dependent child
48 under this section, in addition to any other benefits due under
49 this or other sections of this article, is entitled to receive a
50 scholarship to be applied to the career development education
51 of that person. This sum, up to but not exceeding seven
52 thousand five hundred dollars, shall be paid from the fund to
53 any university or college in this state or to any trade or
54 vocational school or other entity in this state approved by the
55 board to offset the expenses of tuition, room and board,
56 books, fees or other costs incurred in a course of study at any
57 of these institutions as long as the recipient makes application
58 to the board on an approved form and under rules provided
59 by the board and maintains scholastic eligibility as defined by
60 the institution or the board. The board may by appropriate
61 rules define age requirements, physical and mental
62 requirements, scholastic eligibility, disbursement methods,
63 institutional qualifications and other requirements as
64 necessary and not inconsistent with this section.

65 A surviving spouse or dependent of an employee meeting
66 the requirements of this section is entitled to receive
67 beneficiary payments on the first day of the month following
68 the date the deceased member is removed from payroll by the
69 agency. A surviving spouse or dependent of a member who
70 is not currently an employee meeting the requirements of this
71 section is entitled to receive beneficiary payments on the first
72 day of the month following the date of the deceased
73 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 surviving spouse or dependent, the board shall process the surviving spouse or dependent benefit as soon as administratively feasible.

It is the intent of the Legislature that the levels of benefits provided by operation of this section from the effective date of the enactment of this section during the regular session of the Legislature, two thousand five, be the same levels of benefits as provided by this section as amended and reenacted during the fourth extraordinary session of the Legislature, two thousand five. Accordingly, the effective date of the operation of this section as amended and reenacted during the fourth extraordinary session of the Legislature, two thousand five, is expressly made retrospective to the ninth day of April, two thousand five.

§15-2A-13. Same – When member dies from nonservice-connected causes before serving twenty years.

(a) In any case where an employee while in active service 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 member during his or her lifetime, or until the surviving spouse remarries, a sum equal to one half of the base salary received in the preceding full twelve-month employment period by the deceased member: Provided, That if the member had not been employed with the agency for twelve full months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the
benefit. 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 one fourth 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 during their joint lifetimes a sum equal to the amount that a surviving spouse would have been entitled to receive: Provided, however, That when there is one dependent parent surviving, then 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 further, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, the accumulated contributions shall be paid to a named beneficiary or beneficiaries: And provided further, That if there is no surviving spouse, dependent child, dependent parent of the deceased member or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

(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 of the month following the date the deceased member 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 of the month 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 surviving spouse or dependent, the board shall process the
surviving spouse or dependent benefit as soon as administratively feasible.

§15-2A-14. Awards and benefits to dependents of member — When member dies after retirement or after serving twenty years.

(a) When any employee of the agency has completed twenty years of service or longer as an employee of the agency and 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 member or retirant, during the lifetime or until remarriage of the surviving spouse, an amount equal to two thirds of the retirement benefit which the deceased retirant was receiving while in status of retirement or would have been entitled to receive to the same effect as if the member had been retired under the provisions of this article immediately prior to the time of his or her death. In no event shall the annual benefit payable be less than five thousand dollars. In addition, the surviving spouse is entitled to receive and there shall be paid to the surviving spouse from the fund the sum of one hundred dollars monthly for each dependent child. 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 member a sum equal to one fourth 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 member 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 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 or dependent parent of the deceased member, the accumulated contributions shall be paid to a named beneficiary or beneficiaries. *Provided further,* That if there is no surviving spouse, dependent child, dependent parent of the deceased member or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

(b) The retirant may choose a higher percentage of surviving spouse benefits by taking an actuarially determined reduced initial benefit so that the chosen spouse benefit and initial benefit would be actuarially equivalent to the normal spouse benefit and initial benefit. The board shall design these benefit options and provide them as choices for the retirant to select. For the purposes of this subsection, "initial benefit" means the benefit received by the retirant upon retirement.

§15-2A-15. Exemption from taxation, garnishment and other process; exception for certain qualified domestic relations orders.

The moneys in the fund and the right of a member or retirant to a retirement allowance, to the return of contributions or to any benefit under the provisions of this article are hereby exempt from any state or municipal tax; are not subject to execution, garnishment, attachment or any other process whatsoever except that the benefits or contributions under this system 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.
§15-2A-17. Awards and benefits to dependents of member — Termination.

When any surviving spouse of a member or retirant dies or remarries while receiving or being entitled to receive any benefits under any section except section twelve of this article, the surviving spouse may not from the date of his or her remarriage, nor may the estate from the date of death of the deceased member's or retirant’s surviving spouse, be entitled to receive any benefits under this article whatsoever: Provided, That in any case where under the terms of this article benefits are provided for a child or children surviving the death or remarriage of the surviving spouse, payment of benefits to that child or children shall be calculated for payment from the date the surviving spouse dies or remarries.

§15-2A-19. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.

(a) Any member who has previously served on active military duty is entitled to receive additional credited service for the purpose of determining the amount of retirement award 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 receiving no benefits from any other retirement system for his or her active military duty; and
(4) That, except with respect to disability retirement pay awarded under this article, he or she has actually served with the agency for twenty years exclusive of his or her active military duty.

(b) 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 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 agency, or its predecessor agency, for a period equal to the full time that he or she has or, pursuant to that commission, enlistment, induction or call, shall 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 presented himself or herself to the superintendent and offered to resume service as an active member 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.

(c) The total amount of military service credit allowable
under this section may not exceed five years for any member
of the agency.

(d) Notwithstanding 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 shall 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 18th day of April, 2008.

Governor