WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

COMMITTEE SUBSTITUTE
FOR
ENROLLED
Senate Bill No. 207

(Senators Foster and Plymale, original sponsors)

[Passed March 8, 2008; in effect ninety days from passage.]
AN ACT to amend and reenact §7-14D-7, §7-14D-9c, §7-14D-14, §7-14D-15, §7-14D-16, §7-14D-23, §7-14D-24 and §7-14D-30 of the Code of West Virginia, 1931, as amended, all relating to the Deputy Sheriff Retirement System Act; correcting errors; permitting rollovers of any dollar amount; providing for an onset date for disability retirement benefits; providing for termination of disability retirement benefits of a retirant who refuses to submit to a medical examination or provide a certification statement
by his or her physician of continued disability; removing
option for term insurance to repay loan; providing for
subsequent loan on repayment of prior loan; clarifying
eligibility requirements of certain sheriffs; and permitting
collection of fees for late payment from employers.

Be it enacted by the Legislature of West Virginia:

That §7-14D-7, §7-14D-9c, §7-14D-14, §7-14D-15, §7-14D-
16, §7-14D-23, §7-14D-24 and §7-14D-30 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-7. Members' contributions; employer contributions;
correction of errors.

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

(c) If any change or employer error in the records of any participating public employer or the retirement system results in any person receiving from the system more or less than he or she is entitled to receive had the records been correct, the board shall correct the error and, as far as is practicable, shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the person was correctly entitled shall be paid. Any employer error resulting in an
underpayment to the retirement system may be corrected by the employee remitting the required employee contribution and the participating public employer remitting the required employer contribution. Any accumulating interest owed on the employee and employer contributions resulting from the employer error shall be the responsibility of the participating public employer. Reinstatement interest shall accumulate in accordance with legislative rule 162 CSR 7. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred.

§7-14D-9c. Direct rollovers.

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

(1) “Eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life
expectancies of the distributee and the distributee's designated beneficiary or for a specified period of ten years or more; (ii) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; and (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. For distributions after the thirty-first day of December, two thousand one, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal 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
(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 plan to the eligible retirement plan.

(b) Nothing in this section shall be construed as permitting rollovers to this plan or any other retirement system administered by the board.


(a) Any member who after the effective date of this article and during covered employment: (1) Has been or becomes either totally or partially disabled by injury,
illness or disease; and (2) the disability is a result of an occupational risk or hazard inherent in or peculiar to the services required of members; or (3) the disability was incurred while performing law-enforcement functions during either scheduled work hours or at any other time; and (4) in the opinion of the board, the member is by reason of the disability unable to perform adequately the duties required of a deputy sheriff, is entitled to receive and shall be paid from the fund in monthly installments the compensation under either subsection (b) or (c) of this section.

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

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

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

(e) If the member remains partially disabled until attaining sixty years of age, the member shall then receive the retirement benefit provided for in sections eleven and twelve of this article.
(f) The disability benefit payments will begin the first day of the month following termination of employment and receipt of the disability retirement application by the Consolidated Public Retirement Board.

§7-14D-15. Same — Due to other causes.

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

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

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

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

(e) The board shall propose legislative rules for
promulgation in accordance with the provisions of
article three, chapter twenty-nine-a of this code
concerning member disability payments to ensure that
the payments do not exceed one hundred percent of the
average current salary in any given county for the
position last held by the member.

(f) The disability benefit payments will begin the first
day of the month following termination of employment
and receipt of the disability retirement application by
the Consolidated Public Retirement Board.

§7-14D-16. Same — Physical examinations; termination of
disability.

(a) The board may require any member who has
applied for or is receiving disability benefits under this
article to submit to a physical examination, mental
examination or both by a physician or physicians
selected or approved by the board and may cause all
costs incident to the examination and approved by the
board to be paid from the fund. The costs may include
hospital, laboratory, X-ray, medical and physicians'
fees. A report of the findings of any physician shall be
submitted in writing to the board for its consideration.
If, from the report, independent information or from the
report and any hearing on the report, the board is of the
opinion and finds that: (1) The member has become
reemployed as a law-enforcement officer; (2) two
physicians who have examined the member have found
that considering the opportunities for law enforcement in West Virginia, the member could be employed as a deputy sheriff; or (3) other facts exist to demonstrate that the member is no longer totally disabled or partially disabled as the case may be, then the disability benefits shall cease. If the member was totally disabled and is found to have recovered, the board shall determine whether the member continues to be partially disabled. If the board finds that the member is no longer totally disabled but is partially disabled, then the member shall continue to receive partial disability benefits in accordance with this article. Benefits shall cease once the member has been found to be no longer either totally or partially disabled: Provided, That the board shall require recertification for each partial or total disability at regular intervals as specified by the guidelines adopted by the Public Employees Retirement System.

(b) If a retirant refuses to submit to a medical examination or submit a statement by his or her physician certifying continued disability in any period, the board may discontinue his or her disability annuity until the retirant complies. If the refusal continues for one year, the board may revoke all the retirant's rights in and to the annuity.

§7-14D-23. Loans to members.

(a) A member who is not yet receiving disability or retirement income benefits from the plan may borrow from the plan no more than one time in any year an amount up to one half of his or her accumulated contributions, but not less than five hundred dollars nor more than eight thousand dollars: Provided, That the
maximum amount of any loan shall not exceed the lesser of the following: (1) Eight thousand dollars; or (2) fifty percent of his or her accumulated contributions. A member is not eligible for more than one outstanding loan at any time. The board may not make a loan from the plan if it determines that the loans constitute more than fifteen percent of the amortized cost value of the assets of the plan as of the last day of the preceding plan year. The board may discontinue the loans any time it determines that cash flow problems might develop as a result of the loans. Each loan shall be repaid through monthly installments over periods of six through sixty months and carry interest on the unpaid balance and an annual effective interest rate that is two hundred basis points higher than the most recent rate of interest used by the board for determining actuarial contributions levels: Provided, however, That interest charged shall be commercially reasonable in accordance with the provisions of Section 72(p)(2) of the Internal Revenue Code and federal regulations issued thereunder. Monthly loan payments shall be calculated to be as nearly equal as possible with all but the final payment being an equal amount. An eligible member may make additional loan payments or pay off the entire loan balance at any time without incurring any interest penalty. Upon full payment of the loan, a member may apply for a subsequent loan after sixty (60) days, beginning the first day of the month following receipt of final payment.

(b) A member with an unpaid loan balance who wishes to retire may have the loan repaid in full by accepting retirement income payments reduced by deducting from the actuarial reserve for the accrued benefit the amount of the unpaid balance and then converting the
remaining of the reserve to a monthly pension payable in the form of the annuity desired by the member.

(c) The entire unpaid balance of any loan, and interest due thereon, shall at the option of the board become due and payable without further notice or demand upon the occurrence with respect to the borrowing member of any of the following events of default: (1) Any payment of principal and accrued interest on a loan remains unpaid after they become due and payable under the terms of the loan or after the grace period established in the discretion of the retirement board; (2) the borrowing member attempts to make an assignment for the benefit of creditors of his or her benefit under the retirement system; or (3) any other event of default set forth in rules promulgated by the board pursuant to the authority granted in section one, article ten-d, chapter five of this code: Provided, That any offset of an unpaid loan balance shall be made only at the time the member is entitled to receive a distribution under the plan.

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

(e) Notwithstanding anything in this section to the contrary, the loan program authorized by this section shall comply with the provisions of Section 72(p)(2) and Section 401 of the Internal Revenue Code and the federal regulations issued thereunder. The board may: (1) Apply and construe the provisions of this section and administer the plan loan program in a manner that complies with the provisions of Sections 72(p)(2) and Section 401 of the Internal Revenue Code; (2) adopt plan
loan policies or procedures consistent with these federal law provisions; and (3) take any actions it considers necessary or appropriate to administer the plan loan program created under this section in accordance with these federal law provisions. The board may also, in connection with the plan loan program, take any actions that may at any time be required by the Internal Revenue Service regarding compliance with the requirements of Section 72(p)(2) or Section 401 of the Internal Revenue Code, notwithstanding any provision in this article to the contrary.

(f) Notwithstanding anything in this article to the contrary, the loan program authorized by this section is not available to any deputy sheriff who becomes a member of the Deputy Sheriff Retirement System on or after the first day of July, two thousand five.

§7-14D-24. Service as sheriff.

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

(b) Any member retired as a deputy sheriff under this plan who, after the effective date of this article, is elected or appointed sheriff of a county in West Virginia may elect to suspend the payment of his or her annuity from this system and again become a contributing member of this plan by paying the amounts required by
section seven of this article. Upon election to suspend payment of the annuity, service as a sheriff shall be treated as covered employment and the sheriff is not entitled to any credit for that period of elected service under any other retirement system of the state. At the end of his or her term as sheriff, the member making the election shall have his or her annuity recalculated and shall be granted an adjustment to his or her previous annuity to include the period of elected service.

(c) Any person who before the effective date of this article was elected sheriff of a county in West Virginia and who, immediately prior to being elected sheriff, was a deputy sheriff with at least twenty years of credited service under the Public Employees Retirement System, with at least sixteen of those twenty years having been earned as a deputy sheriff, may elect to become a member of this plan by paying the amounts required by section seven of this article. Upon the election to become a member, service shall be transferred from the Public Employees Retirement System pursuant to section eight of this article: Provided, That any service as a sheriff shall be treated as covered employment under this article and the sheriff is not entitled to any credit for that service as a sheriff or the prior service as a deputy sheriff under any other retirement system of the state. Persons making the election provided for in this subsection shall do so within ten days of taking office as sheriff or within ten days of the effective date of this provision.

(d) Any person who before the effective date of this article was elected sheriff of a county of West Virginia and who, prior to being elected sheriff, was a deputy sheriff and also a previously elected sheriff, with
credited service under the Public Employees Retirement System, with at least sixteen of those years having been earned as combined service as a deputy sheriff and a previously elected sheriff, may elect to become a member of this plan by paying the amounts required by section seven of the article. Upon election to become a member, service shall be transferred from the Public Employees Retirement System pursuant to section eight of this article: Provided, That a person’s service as a sheriff shall be treated as covered employment under this article and that person is not entitled to any credit for that service as a sheriff or deputy sheriff under any other retirement system of this state. A person making the election provided in this subsection shall do so within thirty days of taking office as a sheriff or within thirty days of the effective date of this provision.

§7-14D-30. Limitation of county liability.

No county which has timely met all of its obligations under this article is liable for any payments or contributions to the Deputy Sheriff Retirement Plan which are owed to the plan by another county or counties. A county commission may not deposit funds into the Deputy Sheriff Retirement Fund in excess of the amount specified in section seven of this article, the fees set forth in article fourteen-e of this chapter, the fees set forth in subdivision (2), subsection (f), section one, article ten-d, chapter five of this code and the fees set forth in section seventeen, article three, chapter seventeen-a of this code.
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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 ..................... this 28th Day of ....................., 2008.

Governor