WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2702

(By Delegates Spencer)

Passed April 7, 2009

In Effect Ninety Days from Passage
AN ACT to amend and reenact §7-14D-2, §7-14D-5, §7-14D-7, §7-14D-9c, §7-14D-13, §7-14D-14, §7-14D-15, §7-14D-16, §7-14D-23 and §7-14D-30 of the Code of West Virginia, 1931, as amended, all relating to the Deputy Sheriff Retirement System Act; making technical changes, modifying definitions; clarifying when membership ceases; specifying procedures for the correction of errors; defining employer error; permitting rollovers of any dollar amount; clarifying loan offsets at time of withdrawal; providing onset date for receipt of disability benefits; providing for the termination of disability benefits when a retiree refuses to submit to a medical examination or provide certification from their physician of continued disability; removal of option for members with loans to purchase declining term insurance; permitting subsequent loans to members sixty days after full payment of an outstanding loan; and providing for the collection of fees from employers for untimely payment of contributions.

Be it enacted by the Legislature of West Virginia:

That §7-14D-2, §7-14D-5, §7-14D-7, §7-14D-9c, §7-14D-13, §7-14D-14, §7-14D-15, §7-14D-16, §7-14D-23 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-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 member" means a member who is active and contributing to the plan.

(d) "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.

(e) "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.

(f) "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,
defered compensation and welfare benefits. Annual
compensation for determining benefits during any
determination period may not exceed $150,000 as adjusted
for cost of living in accordance with Section 401(a)(17)(B) of
the Internal Revenue Code.

(g) "Annual leave service" means accrued annual leave.

(h) "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.

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

(k) "County commission" has the meaning ascribed to it in section one, article one, chapter seven of this code.

(l) "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.

(m) "Credited service" means the sum of a member's years of service, active military duty, disability service and annual leave service.

(n) "Deputy sheriff" means an individual employed as a county law-enforcement deputy sheriff in this state and as defined by section two, article fourteenth of this chapter.

(o) "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.

(p) "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.

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

(s) "Employer error" means an omission, misrepresentation, or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error.

(t) "Effective date" means July 1, 1998.

(u) "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.

(v) "Fund" means the West Virginia Deputy Sheriff Retirement Fund created pursuant to section six of this article.

(w) "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.

(x) "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 or until cessation of membership pursuant to section five of this article.
(y) "Monthly salary" means the portion of a member's annual compensation which is paid to him or her per month.

(z) "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.

(aa) "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.

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

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

(ee) "Plan year" means the twelve-month period commencing of July 1, of any designated year and ending the following June 30.

(ff) "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.

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

(hh) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(ii) "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.

(jj) "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.

(kk) "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 Credited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 500</td>
<td>0</td>
</tr>
<tr>
<td>500 to 999</td>
<td>1/3</td>
</tr>
<tr>
<td>1,000 to 1,499</td>
<td>2/3</td>
</tr>
<tr>
<td>1,500 or more</td>
<td>1</td>
</tr>
</tbody>
</table>
During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under section fourteen or fifteen of this article. Except as specifically excluded, years of service include covered employment prior to the effective date. Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to section thirteen of this article or section thirty, article ten, chapter five of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to section 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.

(II) "Required beginning date" means April 1, 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 retires or otherwise separates from covered employment.

§7-14D-5. Members.

(a) Any deputy sheriff first employed by a county in covered employment after the effective date of this article shall be a member of this retirement system and does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment.

The membership of any person in the plan ceases: (1)

Upon the withdrawal of accumulated contributions after the
cessation of service; (2) upon retirement; (3) at death; or (4) upon the date, if any, when after the cessation of service, the outstanding balance of any loan obtained by the member pursuant to section twenty-three of the article, plus accrued interest, equals or exceeds the accumulated contributions of the member.

(b) Any deputy sheriff employed in covered employment on the effective date of this article shall within six months of that effective date notify in writing both the county commission in the county in which he or she is employed and the board, of his or her desire to become a member of the plan: Provided, That this time period is extended to January 30, 1999, in accordance with the decision of the Supreme Court of Appeals in West Virginia Deputy Sheriffs' Association, et al v. James L. Sims, et al, No. 25212: Provided, however, That any deputy sheriff employed in covered employment on the effective date of this article has an additional time period consisting of the ten-day period following the day after which the amended provisions of this section become law to notify in writing both the county commission in the county in which he or she is employed and the board of his or her desire to become a member of the plan. Any deputy sheriff who elects to become a member of the plan ceases to be a member or have any credit for covered employment in any other retirement system administered by the board and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the deputy sheriff remains employed in covered employment in this plan: Provided further, That any deputy sheriff who elects during the time period from July 1, 1998 to January 30, 1999 or who so elects during the ten-day time period occurring immediately following the day after the day the amendments made during the 1999 legislative session become law, to transfer from the Public Employees Retirement System to the plan created in this article shall
contribute to the plan created in this article at the rate set forth in section seven of this article retroactive to July 1, 1998. Any deputy sheriff who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is from time to time offered to other county employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

(c) Any deputy sheriff employed in covered employment on the effective date of this article who has timely elected to transfer into this plan as provided in subsection (b) of this section shall be given credited service at the time of transfer for all credited service then standing to the deputy sheriff’s service credit in the Public Employees Retirement System regardless of whether the credited service (as that term is defined in section two, article ten, chapter five of this code) was earned as a deputy sheriff. All the credited service standing to the transferring deputy sheriff’s credit in the Public Employees Retirement Fund System at the time of transfer into this plan shall be transferred into the plan created by this article, and the transferring deputy sheriff shall be given the same credit for the purposes of this article for all service transferred from the Public Employees Retirement System as that transferring deputy sheriff would have received from the Public Employees Retirement System as if the transfer had not occurred. In connection with each transferring deputy sheriff receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in section eight of this article: Provided, That a member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (b) of this section may not, after having transferred into and become an active member of this plan, reinstate to his or her credit in
this plan any service credit relating to periods of nondeputy
sheriff service which were withdrawn from the Public
Employees Retirement System prior to his or her elective
transfer into this plan.

(d) Any deputy sheriff who was employed as a deputy
sheriff prior to the effective date of this article, but was not
employed as a deputy sheriff on the effective date of this
article, shall become a member upon rehire as a deputy
sheriff. For purposes of this subsection, the member’s years
of service and credited service in the Public Employees
Retirement System prior to the effective date of this article
shall not be counted for any purposes under this plan unless:
(1) The deputy sheriff has not received the return of his or her
accumulated contributions in the Public Employees
Retirement System pursuant to section thirty, article ten,
chapter five of this code; or (2) the accumulated contributions
returned to the member from the Public Employees
Retirement System have been repaid pursuant to section
thirteen of this article. If the conditions of subdivision (1) or
(2) of this subsection are met, all years of the deputy sheriff’s
covered employment shall be counted as years of service for
the purposes of this article.

(e) Once made, the election provided in this section is
irrevocable. All deputy sheriffs first employed after the
effective date and deputy sheriffs electing to become
members as described in this section shall be members as a
condition of employment and shall make the contributions
required by section seven of this article.

(f) Notwithstanding any other provisions of this article,
any individual who is a leased employee is not eligible to
participate in the plan. For purposes of this plan, a “leased
employee” means any individual who performs services as an
independent contractor or pursuant to an agreement with an
employee leasing organization or similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

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

(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. 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 article ten-d, chapter five of this code. 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 member receiving from the system more or less than he or she would have been 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 member was correctly entitled shall be paid. Any employer error resulting in an underpayment to the retirement system may be corrected by the member remitting the required employee contribution and the participating public employer remitting the required employer contribution. Interest shall accumulate in accordance with the retirement board reinstatement interest as established in Legislative Rule 162 CSR 7, and any accumulating interest owed on the employee and employer contributions resulting from the employer error shall be the responsibility of the participating public employer. 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.
This section applies to distributions made on or after January 1, 1993. 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: (A) 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; (B) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; (C) 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 (D) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. For distributions after December 31, 2001, 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 rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. For distributions after December 31, 2001, 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 plan to the eligible retirement plan.
§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

(a) Any member who terminates covered employment and is not eligible to receive disability or retirement income benefits under this article is, by written request filed with the board, entitled to receive from the fund the member’s accumulated contributions after offset of any outstanding loan balance, plus accrued interest, pursuant to section twenty-three of this article. Except as provided in subsection (b) of this section, upon withdrawal the member shall forfeit his or her accrued benefit and cease to be a member.

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

(c) A member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (b) of section five of this article may
not, after having transferred into and become an active
member of this plan, reinstate to his or her credit in this plan
any service credit relating to periods of nondeputy sheriff
service which were withdrawn from the Public Employees
Retirement System plan prior to his or her elective transfer
into this plan.

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

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


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

(e) 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 so as to ensure that the payments do not exceed one hundred percent of the average current salary in any given county for the position last held by the member.

(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 so 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, his or her disability annuity may be discontinued by the board until the retirant complies. If the refusal continues for one year, all the retirants rights in and to the annuity may be revoked by the board.

§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 $500 nor more than $8,000: Provided, That the maximum amount of any loan shall not exceed the lesser of the following: (1) $8,000; or (2) fifty percent of his or her accumulated contributions. No member is eligible for more than one outstanding loan at any time. No loan may be made from the plan if the board determines that the loans constitute more than fifteen percent of the amortized cost value of the assets of the plan as of the last day of the preceding plan year. The board may discontinue the loans any time it determines that cash flow problems might develop as a result of the loans. Each loan shall be repaid through monthly installments over periods of six through sixty months and carry interest on the unpaid balance and an annual effective interest rate that is two hundred basis points higher than the most recent rate of interest used by the board for determining actuarial contributions levels: Provided, however, That interest charged shall be commercially reasonable in accordance with the provisions of Section 72(p)(2) of the Internal Revenue Code and federal regulations issued thereunder. Monthly loan payments shall be calculated to be as nearly equal as possible with all but the final payment being an equal amount. An eligible member may make additional loan payments or pay off the entire loan balance at any time without incurring any interest penalty. Upon full payment of the loan, a member may apply for a subsequent loan after sixty days beginning the first day of the month following receipt of final payment.

(b) If a withdrawal of accumulated contributions is payable to the borrower or his or her beneficiary before he or she repays the loan with interest, the loan balance due with interest to date shall be deducted from the withdrawal.
(c) A member with an unpaid loan balance who wishes to retire or who becomes eligible to receive disability benefits under any provisions of this article may have the loan repaid in full by accepting retirement income or disability payments reduced by deducting from the actuarial reserve for the accrued benefit the amount of the unpaid balance plus accrued interest, if any, and then converting the remaining of the reserve to a monthly pension or disability benefit payable in the form of the annuity desired by the member: Provided, That if payment of the member's monthly retirement income or disability income is suspended or terminated for any reason, upon recommencement of the payments, the actuarial reduction in benefit may be recalculated for additional interest accruals, to the extent determined necessary and appropriate by the board.

(d) A member who ceases service with an unpaid loan balance will no longer be a member when the unpaid loan balance, plus accrued interest, equals or exceeds the member's accumulated contributions.

(e) 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
70 any offset of an unpaid loan balance shall be made only
71 at such time as the member is entitled to receive a
distribution under the plan.

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

77 (g) Notwithstanding anything in this section to the
78 contrary, the loan program authorized by this section shall
79 comply with the provisions of Section 72(p)(2) and Section
80 401 of the Internal Revenue Code and the federal regulations
81 issued thereunder. The board may: (1) Apply and construe
82 the provisions of this section and administer the plan loan
83 program in such a manner as to comply with the provisions
84 of Sections 72(p)(2) and Section 401 of the Internal Revenue
85 Code; (2) adopt plan loan policies or procedures consistent
86 with these federal law provisions; and (3) take any actions it
87 considers necessary or appropriate to administer the plan loan
88 program created under this section in accordance with these
89 federal law provisions. The board is further authorized in
90 connection with the plan loan program to take any actions
91 that may at any time be required by the Internal Revenue
92 Service regarding compliance with the requirements of
93 Section 72(p)(2) or Section 401 of the Internal Revenue
94 Code, notwithstanding any provision in this article to the
95 contrary.

96 (h) Notwithstanding anything in this article to the
97 contrary, the loan program authorized by this section shall
98 not be available to any deputy sheriff who becomes a
99 member of the Deputy Sheriff Retirement System on or after
100 July 1, 2005.

§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. No county commission may 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 subsection (f)(2), 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

[Signatures]

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within was approved this the 11th day of April, 2009.

Governor
PRESENTED TO THE GOVERNOR

APR 9 2009

Time 4:30 pm