WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013

ENROLLED

House Bill No. 2784

(By Delegate(s) Pethtel, Jones, Craig, Canterbury, Kump, Lynch and Stowers)
[By Request of the Consolidated Public Retirement Board]

Passed March 28, 2013

In effect ninety days from passage.
AN ACT to amend and reenact §7-14D-2, §7-14D-7, §7-14D-9, §7-14D-16 and §7-14D-19 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §7-14D-7a, all relating to the Deputy Sheriff Retirement System Act; defining member, retire and retirement; providing for the correction of errors; providing that an estimation of benefits is provided prior to the submission of a retirement application from a member; and providing for recertification of disability.

Be it enacted by the Legislature of West Virginia:

That §7-14D-2, §7-14D-7, §7-14D-9, §7-14D-16 and §7-14D-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted, and that said code be amended by adding thereto a new section, designated §7-14D-7a, all to read as follows:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.

1 As used in this article, unless a federal law or regulation or
2 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: Provided, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(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, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) 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 or the required beginning date, if earlier: 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 worked twelve months, annualized base salary is used as base salary.

(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.

(1) “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 fourteen 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 (I) 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 credit 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
(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.
"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 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.

"Monthly salary" means the portion of a member’s annual compensation which is paid to him or her per month.

"Normal form" means a monthly annuity which is one twelfth of the amount of the member’s accrued benefit which is payable for the member’s life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

"Normal retirement age" means the first to occur of the following: (1) Attainment of age fifty years and the completion of twenty or more years of service; (2) while still in covered employment, attainment of at least age fifty years and when the sum of current age plus years of service equals or exceeds seventy years; (3) while still in covered employment, attainment of at least age sixty years and completion of five years of service; or (4) attainment of age sixty-two years and completion of five or more years of service.

"Partially disabled" means a member’s inability to engage in the duties of deputy sheriff by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. A member
may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent June 30, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(cc) "Public Employees Retirement System" means the West Virginia Public Employees 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 on July 1 of any designated year and ending the following June 30.

(ff) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(gg) "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.

(hh) "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.

(ii) "Retire" or "retirement" means a member's withdrawal from the employ of a participating public employer and the commencement of an annuity by the plan.

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

(kk) "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.

(mm) "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
Enr. H. B. No. 2784] 10

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.

252 (nn) "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>
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<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>

256 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
§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 any year preceding July 1, 2011, the total of the contributions provided in this section, to be paid by the county commission, may not exceed ten and one-half percent of the total payroll for the members in the employ of the county commission; Provided, however, That on or after July 1, 2011, the total of the contributions provided in this section, to be paid by the county commission, may not exceed thirteen 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 any year
preceding July 1, 2011, the total of the contributions provided in
this section, to be paid by the concurrent employer, may not
exceed ten and one-half percent of the monthly salary of the
employee: Provided, however, That on or after July 1, 2011, the
total of the contributions provided in this section, to be paid by
the concurrent employer, may not exceed thirteen 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.

§7-14D-7a. Correction of errors; underpayments; overpayments.

(a) General rule: If any change or employer error in the
records of any participating public employer or the plan results
in any member, retirant or beneficiary receiving from the plan
more or less than he or she would have been entitled to receive
had the records been correct, the board shall correct the error. If
correction of the error occurs after the effective retirement date
of a retirant, and as far as is practicable, the board shall adjust
the payment of the benefit in a manner that the actuarial
equivalent of the benefit to which the retirant was correctly
entitled shall be paid.

(b) Underpayments: Any error resulting in an underpayment
to the retirement system of required contributions may be
corrected by the member or retirant remitting the required
employee contribution and the participating public employer
remitting the required employer contribution. Interest shall
accumulate in accordance with the Legislative Rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and employer error interest factors and any accumulating interest owed on the employee and employer contributions resulting from an 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. If the correction of an error involving an underpayment of required contributions to the retirement system will result in increased payments to a retirant, including increases to payments already made, any adjustments shall be made only after the board receives full payment of all required employee and employer contributions, including interest.

(c) Overpayments: (1) When mistaken or excess employer contributions, including any overpayments, have been made to the retirement system by a participating public employer, due to error or other reason, the board shall credit the participating public employer with an amount equal to the erroneous contributions, to be offset against the participating public employer's future liability for employer contributions to the system. Earnings or interest shall not be credited to the employer.

(2) When mistaken or excess employee contributions, including any overpayments, have been made to the retirement system, due to error or other reason, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the employee of the amounts, and may use any means authorized or permitted under the provisions of Section 401(a), et seq. of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the participating public employer to pay the employee
the amounts as wages, with the board crediting the participating public employer with a corresponding amount to offset against its future contributions to the plan: Provided, That the wages paid to the employee shall not be considered compensation for any purposes under this article. Earnings or interest shall not be returned, offset, or credited under any of the means utilized by the board for returning mistaken or excess employee contributions, including any overpayments, to an employee.

§7-14D-9. Retirement; commencement of benefits.

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

§7-14D-16. Awards and benefits for disability — Physical examinations; termination of disability.

1 (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 Deputy Sheriff 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 retirant's rights in and to the annuity may be revoked by the board.

§7-14D-19. Awards and benefits to surviving spouse — When member dies from nonservice-connected causes.

(a) In any case where a member who has been a member for at least ten years, while in covered employment after the effective date of this article, has died or dies from any cause
other than those specified in section eighteen of this article and not due to vicious habits, intemperance or willful misconduct on his or her part, the fund shall pay annually in equal monthly installments to the surviving spouse during his or her lifetime, a sum equal to the greater of: (i) One half of the annual compensation received in the preceding twelve-month employment period by the deceased member; or (ii) if the member dies after his or her early or normal retirement age, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a one hundred percent joint and survivor annuity with the spouse as the joint annuitant, and then died. Where the member is receiving disability benefits under section fifteen of this article at the time of his or her death, the most recent monthly compensation determined under section seventeen of this article shall be substituted for the annual compensation in (i) of this section.

(b) Benefits for a surviving spouse received under this section, section twenty and section twenty-one of this article are in lieu of receipt of any other benefits under this article for the spouse or any other person or under the provisions of any other state retirement system based upon the member's covered employment.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 10th day of April, 2013.

Governor
PRESENTED TO THE GOVERNOR

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