WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014

ENROLLED
Senate Bill No. 443
(By Senators Kirkendoll, Cann, Edgell and Carmichael)

[Passed February 20, 2014; in effect from passage.]
AN ACT to amend and reenact §15-2A-2, §15-2A-5 and §15-2A-11a of the Code of West Virginia, 1931, as amended, all relating to the West Virginia State Police Retirement System; providing definitions; removing the requirement to set the employer contribution rate by legislative rule; requiring that a disability retirant’s annuity be terminated when the board determines that the recipient has engaged in substantial gainful activity; requiring that a partially disabled retirant’s annuity be terminated when they become employed as a law-enforcement officer; providing for reapplication of disability retirement within ninety days of effective termination; and clarifying that application for regular retirement benefits may be made by those terminated upon meeting eligibility requirements.

Be it enacted by the Legislature of West Virginia:

That §15-2A-2, §15-2A-5 and §15-2A-11a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

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

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

2. "Active military duty" means full-time active duty with the armed forces of the United States, namely, the United States Air Force, Army, Coast Guard, Marines or Navy; and service with the National Guard or reserve military forces of any of the armed forces when the employee has been called to active full-time duty.

3. "Actuarially equivalent" or "of equal actuarial value" 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, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.


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

6. "Beneficiary" means a surviving spouse or other surviving beneficiary who is entitled to, or will be entitled to, an annuity or other benefit payable by the fund.
(7) "Board" means the Consolidated Public Retirement Board created pursuant to article ten-d, chapter five of this code.

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

(A) Is under the age of eighteen;

(B) After reaching eighteen years of age, continues as a full-time student in an accredited high school, college, university or business or trade school until the child or children reaches the age of twenty-three years; or

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

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

(10) "Employee" means any person regularly employed in the service of the agency as a law-enforcement officer after March 12, 1994, and who is eligible to participate in the fund.

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

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

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

(14) "Law-enforcement officer" means an individual employed or otherwise engaged in either a public or private position which involves the rendition of services relating to enforcement of federal, state or local laws for the protection of public or private safety, including, but not limited to, positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any other law-enforcement position which requires certification, but excluding positions held by elected sheriffs or appointed chiefs of police whose duties are purely administrative in nature.

(15) "Member" means any person who has contributions standing to his or her credit in the fund and who has not yet entered into retirement status.

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

(17) "Partially disabled" means an employee's inability, on a probable permanent basis, to perform the essential duties of a law-enforcement officer by reason of any medically determinable physical or mental impairment which has lasted
or can be expected to last for a continuous period of not less than twelve months, but which impairment does not preclude the employee from engaging in other types of nonlaw-enforcement employment.

(18) “Physical or mental impairment” means an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques.

(19) “Plan year” means the twelve-month period commencing on July 1 of any designated year and ending the following June 30.

(20) “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.

(21) “Required beginning date” means April 1 of the calendar year following the later of: (a) The calendar year in which the member attains age seventy and one-half years; or (b) the calendar year in which he or she retires or otherwise separates from service with the agency after having attained the age of seventy and one-half years.

(22) “Retirant” or “retiree” means any member who commences an annuity payable by the retirement system.

(23) “Salary” means the compensation of an employee, excluding any overtime payments.
(24) "Surviving spouse" means the person to whom the member or retirant was legally married at the time of the member's or retirant's death and who survived the member or retirant.

(25) " Totally disabled" means an employee's probable permanent inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. For purposes of this subdivision, an employee is totally disabled only if his or her physical or mental impairments are so severe that he or she is not only unable to perform his or her previous work as an employee of the agency, but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the employee lives; (B) a specific job vacancy exists; or (C) the employee would be hired if he or she applied for work.

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

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

(a) There shall be deducted from the monthly payroll of
each employee and paid into the fund created pursuant to
section four of this article twelve percent of the amount of his
or her salary: Provided, That after July 1, 2008, if the funding
percentage of the fund determined by the board falls below
the ninety-percent threshold, then the employee rate of
contribution shall be increased to thirteen percent of the
amount of the employee's salary until the ninety-percent or
better funding level is again achieved. Once that funding
level is achieved the employee contribution rate will be
reduced to twelve percent.

(b) The State of West Virginia's contributions to the
retirement system, as determined by the board, shall be a
percent of the employees' total annual base salary related to
benefits under this retirement system. In determining the
amount, the board shall give consideration to setting the
amount at a sum equal to an amount which, if paid annually
by the state, will be sufficient to provide for the total normal
cost of the benefits expected to become payable to all
members and retirants and to amortize any unfunded liability
found by application of the actuarial funding method chosen
for that purpose by the board over a period of years
determined actuarially appropriate. The state's contributions
shall be paid monthly into the fund created pursuant to
section four of this article out of the annual appropriation for
the agency.
(c) Notwithstanding any other provisions of this article, forfeitures under the system shall not be applied to increase the benefits any member or retirant would otherwise receive under the system.

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

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

(b) Application for a disability benefit may be made by an employee or, if the employee is under an incapacity, by a person acting with legal authority on the employee's behalf. After receiving an application for a disability benefit, the board shall notify the superintendent of the agency that an application has been filed: Provided, That when, in the judgment of the superintendent, an employee is no longer physically or mentally fit for continued duty as an employee of the agency and the employee has failed or refused to make application for disability benefits under this article, the superintendent may petition the board to retire the employee on the basis of disability pursuant to legislative rules proposed in accordance with article three, chapter twenty-nine-a of this code. Within thirty days of the superintendent's receipt of the notice from the board or the filing of the superintendent's petition with the board, the superintendent shall forward to the board a statement certifying the duties of the employee's job description, information relating to the superintendent's position on the
work relatedness of the employee's alleged disability, complete copies of the employee's medical file and any other information requested by the board in its processing of the application.

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

(d) The board shall notify an employee and the superintendent of its final action on the disability application or petition within ten days of the board's final action. The notice shall be sent by certified mail, return receipt requested. If either the employee or the superintendent is aggrieved by the decision of the board and intends to pursue judicial review of the board's decision as provided in section four, article five, chapter twenty-nine-a of this code, the party aggrieved shall notify the board within twenty days of the employee's or superintendent's receipt of the board's notice that they intend to pursue judicial review of the board's decision.

(e) The board may require a disabled retirant to file an annual statement of earnings and any other information required in rules which may be adopted by the board. The board may waive the requirement that a disabled retirant file the annual statement of earnings if the board's physician certifies that the recipient's disability is ongoing. The board shall annually examine the information submitted by the disabled retirant. If a disabled retirant refuses to file the statement or information, the disability benefit shall be suspended until the statement and information are filed.

(f) If after review of a disability retirant's annual statement of earnings, tax records or other financial
59 information, as required or otherwise obtained by the board,  
60 the board determines that earnings of the recipient of total  
61 disability benefits in the preceding year are sufficient to show  
62 that the recipient engaged in substantial gainful activity, the  
63 disability retirant’s disability annuity shall be terminated by  
64 the board, upon recommendation of the board’s disability  
65 review committee, on the first day of the month following the  
66 board’s action.

67 (g) If the board obtains information that a partially  
68 disabled disability retirant is employed as a law-enforcement  
69 officer, the disability retirant’s disability annuity shall be  
70 terminated by the board, upon recommendation of the board’s  
71 disability review committee, the first day of the month  
72 following the board’s action.

73 (h) Any person who wishes to reapply for disability  
74 retirement and whose disability retirement has been  
75 terminated by the board pursuant to this section may do so  
76 within ninety days of the effective date of termination:  
77 Provided, That any person reapplying for disability benefits  
78 shall undergo an examination at the applicant’s expense by an  
79 appropriate medical professional selected by the board as part  
80 of the reapplication process.

81 (I) Notwithstanding other provisions in this section, any  
82 person whose disability retirement has been terminated by the  
83 board pursuant to this section may apply for regular  
84 retirement benefits upon meeting eligibility requirements of  
85 age and years of service.
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 from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the ___
Day of March, 2014.

Governor
PRESENTED TO THE GOVERNOR

Mar. 6, 3 2014

Time 12:01 pm