

HB 2702
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

E N R O L L E D

FILED

COMMITTEE SUBSTITUTE

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FOR

OFFICE WEST VIRGINIA
SECRETARY OF STATE

H. B. 2702

(BY DELEGATE 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~~^{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 retirant 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.

✓
B. M. S.
Spencer

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.

1 As used in this article, unless a federal law or regulation
2 or the context clearly requires a different meaning:

3 (a) "Accrued benefit" means on behalf of any member
4 two and one-quarter percent of the member's final average
5 salary multiplied by the member's years of credited service.
6 A member's accrued benefit may not exceed the limits of
7 Section 415 of the Internal Revenue Code and is subject to
8 the provisions of section nine-a of this article.

9 (b) "Accumulated contributions" means the sum of all
10 amounts deducted from the compensation of a member, or
11 paid on his or her behalf pursuant to article ten-c, chapter five
12 of this code, either pursuant to section seven of this article or
13 section twenty-nine, article ten, chapter five of this code as a
14 result of covered employment together with regular interest
15 on the deducted amounts.

16 (c) "Active member" means a member who is active and
17 contributing to the plan.

18 (d) "Active military duty" means full-time active duty
19 with any branch of the Armed Forces of the United States,
20 including service with the National Guard or reserve military

21 forces when the member has been called to active full-time
22 duty and has received no compensation during the period of
23 that duty from any board or employer other than the Armed
24 Forces.

25 (e) "Actuarial equivalent" means a benefit of equal value
26 computed upon the basis of the mortality table and interest
27 rates as set and adopted by the retirement board in
28 accordance with the provisions of this article.

29 (f) "Annual compensation" means the wages paid to the
30 member during covered employment within the meaning of
31 Section 3401(a) of the Internal Revenue Code, but
32 determined without regard to any rules that limit the
33 remuneration included in wages based upon the nature or
34 location of employment or services performed during the
35 plan year plus amounts excluded under Section 414(h)(2) of
36 the Internal Revenue Code and less reimbursements or other
37 expense allowances, cash or noncash fringe benefits or both,
38 deferred compensation and welfare benefits. Annual
39 compensation for determining benefits during any
40 determination period may not exceed \$150,000 as adjusted
41 for cost of living in accordance with Section 401(a)(17)(B) of
42 the Internal Revenue Code.

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

44 (h) "Annuity starting date" means the first day of the first
45 calendar month following receipt of the retirement
46 application by the board: *Provided*, That the member has
47 ceased covered employment and reached early or normal
48 retirement age.

49 (i) "Base salary" means a member's cash compensation
50 exclusive of overtime from covered employment during the
51 last twelve months of employment. Until a member has

52 worked twelve months, annualized base salary is used as base
53 salary.

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

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

59 (l) "Covered employment" means either: (1)
60 Employment as a deputy sheriff and the active performance
61 of the duties required of a deputy sheriff; or (2) the period of
62 time which active duties are not performed but disability
63 benefits are received under section fourteen or fifteen of this
64 article; or (3) concurrent employment by a deputy sheriff in
65 a job or jobs in addition to his or her employment as a deputy
66 sheriff where the secondary employment requires the deputy
67 sheriff to be a member of another retirement system which is
68 administered by the Consolidated Public Retirement Board
69 pursuant to article ten-d, chapter five of this code: *Provided,*
70 That the deputy sheriff contributes to the fund created in
71 section six of this article the amount specified as the deputy
72 sheriff's contribution in section seven of this article.

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

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

79 (o) "Dependent child" means either:

80 (1) An unmarried person under age eighteen who is:

81 (A) A natural child of the member;

82 (B) A legally adopted child of the member;

83 (C) A child who at the time of the member's death was
84 living with the member while the member was an adopting
85 parent during any period of probation; or

86 (D) A stepchild of the member residing in the
87 member's household at the time of the member's death;
88 or

89 (2) Any unmarried child under age twenty-three:

90 (A) Who is enrolled as a full-time student in an
91 accredited college or university;

92 (B) Who was claimed as a dependent by the member for
93 federal income tax purposes at the time of the member's
94 death; and

95 (C) Whose relationship with the member is described in
96 subparagraph (A), (B) or (C), paragraph (1) of this
97 subdivision.

98 (p) "Dependent parent" means the father or mother of the
99 member who was claimed as a dependent by the member for
100 federal income tax purposes at the time of the member's
101 death.

102 (q) "Disability service" means service received by a
103 member, expressed in whole years, fractions thereof or both,
104 equal to one half of the whole years, fractions thereof or both,
105 during which time a member receives disability benefits
106 under section fourteen or fifteen of this article.

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

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

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

120 (u) "Final average salary" means the average of the highest
121 annual compensation received for covered employment by the
122 member during any five consecutive plan years within the
123 member's last ten years of service. If the member did not have
124 annual compensation for the five full plan years preceding the
125 member's attainment of normal retirement age and during that
126 period the member received disability benefits under section
127 fourteen or fifteen of this article then "final average salary" means
128 the average of the monthly salary determined paid to the member
129 during that period as determined under section seventeen of this
130 article multiplied by twelve.

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

134 (w) "Hour of service" means:

135 (1) Each hour for which a member is paid or entitled to
136 payment for covered employment during which time active

137 duties are performed. These hours shall be credited to the
138 member for the plan year in which the duties are performed;
139 and

140 (2) Each hour for which a member is paid or entitled to
141 payment for covered employment during a plan year but
142 where no duties are performed due to vacation, holiday,
143 illness, incapacity including disability, layoff, jury duty,
144 military duty, leave of absence or any combination thereof
145 and without regard to whether the employment relationship
146 has terminated. Hours under this paragraph shall be
147 calculated and credited pursuant to West Virginia Division of
148 Labor rules. A member will not be credited with any hours
149 of service for any period of time he or she is receiving
150 benefits under section fourteen or fifteen of this article; and

151 (3) Each hour for which back pay is either awarded or
152 agreed to be paid by the employing county commission,
153 irrespective of mitigation of damages. The same hours of
154 service shall not be credited both under this paragraph and
155 paragraph (1) or (2) of this subdivision. Hours under this
156 paragraph shall be credited to the member for the plan year
157 or years to which the award or agreement pertains rather than
158 the plan year in which the award, agreement or payment is
159 made.

160 (x) "Member" means a person first hired as a deputy
161 sheriff after the effective date of this article, as defined in
162 subsection (r) of this section, or a deputy sheriff first hired
163 prior to the effective date and who elects to become a
164 member pursuant to section five or section seventeen of this
165 article. A member shall remain a member until the benefits
166 to which he or she is entitled under this article are paid or
167 forfeited or until cessation of membership pursuant to section
168 five of this article.

169 (y) "Monthly salary" means the portion of a member's
170 annual compensation which is paid to him or her per month.

171 (z) "Normal form" means a monthly annuity which is one
172 twelfth of the amount of the member's accrued benefit which
173 is payable for the member's life. If the member dies before
174 the sum of the payments he or she receives equals his or her
175 accumulated contributions on the annuity starting date, the
176 named beneficiary shall receive in one lump sum the
177 difference between the accumulated contributions at the
178 annuity starting date and the total of the retirement income
179 payments made to the member.

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

190 (bb) "Partially disabled" means a member's inability to
191 engage in the duties of deputy sheriff by reason of any
192 medically determinable physical or mental impairment that
193 can be expected to result in death or that has lasted or can be
194 expected to last for a continuous period of not less than
195 twelve months. A member may be determined partially
196 disabled for the purposes of this article and maintain the
197 ability to engage in other gainful employment which exists
198 within the state but which ability would not enable him or her
199 to earn an amount at least equal to two-thirds of the average
200 annual compensation earned by all active members of this
201 plan during the plan year ending as of the most recent June

202 30, as of which plan data has been assembled and used for
203 the actuarial valuation of the plan.

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

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

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

213 (ff) "Regular interest" means the rate or rates of interest
214 per annum, compounded annually, as the board adopts in
215 accordance with the provisions of this article.

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

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

220 (ii) "Surviving spouse" means the person to whom the
221 member was legally married at the time of the member's
222 death and who survived the member.

223 (jj) "Totally disabled" means a member's inability to
224 engage in substantial gainful activity by reason of any
225 medically determined physical or mental impairment that can
226 be expected to result in death or that has lasted or can be
227 expected to last for a continuous period of not less than
228 twelve months. For purposes of this subdivision: (1) A
229 member is totally disabled only if his or her physical or

230 mental impairment or impairments are so severe that he or
231 she is not only unable to perform his or her previous work as
232 a deputy sheriff but also cannot, considering his or her age,
233 education and work experience, engage in any other kind of
234 substantial gainful employment which exists in the state
235 regardless of whether: (A) The work exists in the immediate
236 area in which the member lives; (B) a specific job vacancy
237 exists; or (C) the member would be hired if he or she applied
238 for work.

239 (2) "Physical or mental impairment" is an impairment
240 that results from an anatomical, physiological or
241 psychological abnormality that is demonstrated by medically
242 accepted clinical and laboratory diagnostic techniques. A
243 member's receipt of social security disability benefits creates
244 a rebuttable presumption that the member is totally disabled
245 for purposes of this plan. Substantial gainful employment
246 rebuts the presumption of total disability.

247 (kk) "Year of service". -- A member shall, except in his
248 or her first and last years of covered employment, be credited
249 with year of service credit based upon the hours of service
250 performed as covered employment and credited to the
251 member during the plan year based upon the following
252 schedule:

253 Hours of Service Years of Service Credited

254 Less than 500 0

255 500 to 999 1/3

256 1,000 to 1,499 2/3

257 1,500 or more 1

258 During a member's first and last years of covered
259 employment, the member shall be credited with one twelfth
260 of a year of service for each month during the plan year in
261 which the member is credited with an hour of service. A
262 member is not entitled to credit for years of service for any
263 time period during which he or she received disability
264 payments under section fourteen or fifteen of this article.
265 Except as specifically excluded, years of service include
266 covered employment prior to the effective date. Years of
267 service which are credited to a member prior to his or her
268 receipt of accumulated contributions upon termination of
269 employment pursuant to section thirteen of this article or
270 section thirty, article ten, chapter five of this code, shall be
271 disregarded for all purposes under this plan unless the
272 member repays the accumulated contributions with interest
273 pursuant to section thirteen of this article or had prior to the
274 effective date made the repayment pursuant to section
275 eighteen, article ten, chapter five of this code.

276 (II) "Required beginning date" means April 1, of the
277 calendar year following the later of: (i) The calendar year in
278 which the member attains age seventy and one-half; or (ii)
279 the calendar year in which he or she retires or otherwise
280 separates from covered employment.

§7-14D-5. Members.

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

7 The membership of any person in the plan ceases: (1)
8 Upon the withdrawal of accumulated contributions after the

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

15 (b) Any deputy sheriff employed in covered employment
16 on the effective date of this article shall within six months of
17 that effective date notify in writing both the county
18 commission in the county in which he or she is employed and
19 the board, of his or her desire to become a member of the
20 plan: *Provided*, That this time period is extended to January
21 30, 1999, in accordance with the decision of the Supreme
22 Court of Appeals in *West Virginia Deputy Sheriffs'*
23 *Association, et al v. James L. Sims, et al*, No. 25212:
24 *Provided, however*, That any deputy sheriff employed in
25 covered employment on the effective date of this article has
26 an additional time period consisting of the ten-day period
27 following the day after which the amended provisions of this
28 section become law to notify in writing both the county
29 commission in the county in which he or she is employed and
30 the board of his or her desire to become a member of the
31 plan. Any deputy sheriff who elects to become a member of
32 the plan ceases to be a member or have any credit for covered
33 employment in any other retirement system administered by
34 the board and shall continue to be ineligible for membership
35 in any other retirement system administered by the board so
36 long as the deputy sheriff remains employed in covered
37 employment in this plan: *Provided further*, That any deputy
38 sheriff who elects during the time period from July 1, 1998
39 to January 30, 1999 or who so elects during the ten-day time
40 period occurring immediately following the day after the day
41 the amendments made during the 1999 legislative session
42 become law, to transfer from the Public Employees
43 Retirement System to the plan created in this article shall

44 contribute to the plan created in this article at the rate set
45 forth in section seven of this article retroactive to July 1,
46 1998. Any deputy sheriff who does not affirmatively elect to
47 become a member of the plan continues to be eligible for any
48 other retirement system as is from time to time offered to
49 other county employees but is ineligible for this plan
50 regardless of any subsequent termination of employment and
51 rehire.

52 (c) Any deputy sheriff employed in covered employment
53 on the effective date of this article who has timely elected to
54 transfer into this plan as provided in subsection (b) of this
55 section shall be given credited service at the time of transfer
56 for all credited service then standing to the deputy sheriff's
57 service credit in the Public Employees Retirement System
58 regardless of whether the credited service (as that term is
59 defined in section two, article ten, chapter five of this code)
60 was earned as a deputy sheriff. All the credited service
61 standing to the transferring deputy sheriff's credit in the
62 Public Employees Retirement Fund System at the time of
63 transfer into this plan shall be transferred into the plan
64 created by this article, and the transferring deputy sheriff
65 shall be given the same credit for the purposes of this article
66 for all service transferred from the Public Employees
67 Retirement System as that transferring deputy sheriff would
68 have received from the Public Employees Retirement System
69 as if the transfer had not occurred. In connection with each
70 transferring deputy sheriff receiving credit for prior
71 employment as provided in this subsection, a transfer from
72 the Public Employees Retirement System to this plan shall be
73 made pursuant to the procedures described in section eight of
74 this article: *Provided*, That a member of this plan who has
75 elected to transfer from the Public Employees Retirement
76 System into this plan pursuant to subsection (b) of this
77 section may not, after having transferred into and become an
78 active member of this plan, reinstate to his or her credit in

79 this plan any service credit relating to periods of nondeputy
80 sheriff service which were withdrawn from the Public
81 Employees Retirement System prior to his or her elective
82 transfer into this plan.

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

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

107 (f) Notwithstanding any other provisions of this article,
108 any individual who is a leased employee is not eligible to
109 participate in the plan. For purposes of this plan, a "leased
110 employec" means any individual who performs services as an
111 independent contractor or pursuant to an agreement with an

112 employee leasing organization or similar organization. If a
113 question arises regarding the status of an individual as a
114 leased employee, the board has final power to decide the
115 question.

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

1 (a) There shall be deducted from the monthly salary of
2 each member and paid into the fund an amount equal to eight
3 and one-half percent of his or her monthly salary. An
4 additional amount shall be paid to the fund by the county
5 commission of the county in which the member is employed
6 in covered employment in an amount determined by the
7 board: *Provided*, That in no year may the total of the
8 contributions provided in this section, to be paid by the
9 county commission, exceed ten and one-half percent of the
10 total payroll for the members in the employ of the county
11 commission. If the board finds that the benefits provided by
12 this article can be actually funded with a lesser contribution,
13 then the board shall reduce the required member or employer
14 contributions or both. The sums withheld each calendar
15 month shall be paid to the fund no later than fifteen days
16 following the end of the calendar month.

17 (b) Any active member who has concurrent employment
18 in an additional job or jobs and the additional employment
19 requires the deputy sheriff to be a member of another
20 retirement system which is administered by the Consolidated
21 Public Retirement Board pursuant to article ten-d, chapter
22 five of this code shall make an additional contribution to the
23 fund of eight and one-half percent of his or her monthly
24 salary earned from any additional employment which
25 requires the deputy sheriff to be a member of another
26 retirement which is administered by the Consolidated Public
27 Retirement Board pursuant to article ten-d, chapter five of
28 this code. An additional amount shall be paid to the fund by

29 the concurrent employer for which the member is employed
30 in an amount determined by the board: *Provided*, That in no
31 year may the total of the contributions provided in this
32 section, to be paid by the concurrent employer, exceed ten
33 and one-half percent of the monthly salary of the employee.
34 If the board finds that the benefits provided by this article can
35 be funded with a lesser contribution, then the board shall
36 reduce the required member or employer contributions or
37 both. The sums withheld each calendar month shall be paid
38 to the fund no later than fifteen days following the end of the
39 calendar month.

40 (c) If any change or employer error in the records of any
41 participating public employer or the retirement system results
42 in any member receiving from the system more or less than
43 he or she would have been entitled to receive had the records
44 been correct, the board shall correct the error, and as far as is
45 practicable shall adjust the payment of the benefit in a
46 manner that the actuarial equivalent of the benefit to which
47 the member was correctly entitled shall be paid. Any
48 employer error resulting in an underpayment to the retirement
49 system may be corrected by the member remitting the
50 required employee contribution and the participating public
51 employer remitting the required employer contribution.
52 Interest shall accumulate in accordance with the retirement
53 board reinstatement interest as established in Legislative Rule
54 162 CSR 7, and any accumulating interest owed on the
55 employee and employer contributions resulting from the
56 employer error shall be the responsibility of the participating
57 public employer. The participating public employer may
58 remit total payment and the employee reimburse the
59 participating public employer through payroll deduction over
60 a period equivalent to the time period during which the
61 employer error occurred.

§7-14D-9c. Direct rollovers.

1 This section applies to distributions made on or after
2 January 1, 1993. Notwithstanding any provision of this
3 article to the contrary that would otherwise limit a
4 distributee's election under this plan, a distributee may elect,
5 at the time and in the manner prescribed by the board, to have
6 any portion of an eligible rollover distribution paid directly
7 to an eligible retirement plan specified by the distributee in
8 a direct rollover. For purposes of this section, the following
9 definitions apply:

...

10 (1) "Eligible rollover distribution" means any distribution
11 of all or any portion of the balance to the credit of the
12 distributee, except that an eligible rollover distribution does
13 not include any of the following: (A) Any distribution that is
14 one of a series of substantially equal periodic payments not
15 less frequently than annually made for the life or life
16 expectancy of the distributee or the joint lives or the joint life
17 expectancies of the distributee and the distributee's
18 designated beneficiary, or for a specified period of ten years
19 or more; (B) any distribution to the extent the distribution is
20 required under Section 401(a)(9) of the Internal Revenue
21 Code; (C) the portion of any distribution that is not
22 includable in gross income determined without regard to the
23 exclusion for net unrealized appreciation with respect to
24 employer securities; and (D) any hardship distribution
25 described in Section 401(k)(2)(B)(i)(iv) of the Internal
26 Revenue Code. For distributions after December 31, 2001,
27 a portion of a distribution shall not fail to be an eligible
28 rollover distribution merely because the portion consists of
29 after-tax employee contributions which are not includable in
30 gross income. However, this portion may be paid only to an
31 individual retirement account or annuity described in Section
32 408(a) or (b) of the Internal Revenue Code, or to a qualified
33 defined contribution plan described in Section 401(a) or
34 403(a) of the Internal Revenue Code that agrees to separately
35 account for amounts transferred, including separately

36 accounting for the portion of the distribution which is
37 includable in gross income and the portion of the distribution
38 which is not includable.

39 (2) "Eligible retirement plan" means an individual
40 retirement account described in Section 408(a) of the Internal
41 Revenue Code, an individual retirement annuity described in
42 Section 408(b) of the Internal Revenue Code, an annuity plan
43 described in Section 403(a) of the Internal Revenue Code or
44 a qualified plan described in Section 401(a) of the Internal
45 Revenue Code that accepts the distributee's eligible rollover
46 distribution: *Provided*, That in the case of an eligible
47 rollover distribution to the surviving spouse, an eligible
48 retirement plan is an individual retirement account or
49 individual retirement annuity. For distributions after
50 December 31, 2001, an eligible retirement plan also means an
51 annuity contract described in Section 403(b) of the Internal
52 Revenue Code and an eligible plan under Section 457(b) of
53 the Internal Revenue Code which is maintained by a state,
54 political subdivision of a state, or any agency or
55 instrumentality of a state or political subdivision of a state
56 and which agrees to separately account for amounts
57 transferred into the plan from this system.

58 (3) "Distributee" means an employee or former
59 employee. In addition, the employee's or former employee's
60 surviving spouse and the employee's or former employee's
61 spouse or former spouse who is the alternate payee under a
62 qualified domestic relations order, as defined in Section
63 414(p) of the Internal Revenue Code with respect to
64 governmental plans, are distributees with regard to the
65 interest of the spouse or former spouse.

66 (4) "Direct rollover" means a payment by the plan to the
67 eligible retirement plan.

§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

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

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

29 (c) A member of this plan who has elected to transfer
30 from the Public Employees Retirement System into this plan
31 pursuant to subsection (b) of section five of this article may

32 not, after having transferred into and become an active
33 member of this plan, reinstate to his or her credit in this plan
34 any service credit relating to periods of nondeputy sheriff
35 service which were withdrawn from the Public Employees
36 Retirement System plan prior to his or her elective transfer
37 into this plan.

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

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

§7-14D-14. Awards and benefits for disability -- Duty related.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) The board may require any member who has applied
2 for or is receiving disability benefits under this article to
3 submit to a physical examination, mental examination or
4 both, by a physician or physicians selected or approved by
5 the board and may cause all costs incident to the examination

6 and approved by the board to be paid from the fund. The
7 costs may include hospital, laboratory, X ray, medical and
8 physicians' fees. A report of the findings of any physician
9 shall be submitted in writing to the board for its
10 consideration. If, from the report, independent information,
11 or from the report and any hearing on the report, the board is
12 of the opinion and finds that: (1) The member has become
13 reemployed as a law-enforcement officer; (2) two physicians
14 who have examined the member have found that considering
15 the opportunities for law enforcement in West Virginia, the
16 member could be so employed as a deputy sheriff; or (3)
17 other facts exist to demonstrate that the member is no longer
18 totally disabled or partially disabled as the case may be, then
19 the disability benefits shall cease. If the member was totally
20 disabled and is found to have recovered, the board shall
21 determine whether the member continues to be partially
22 disabled. If the board finds that the member is no longer
23 totally disabled but is partially disabled, then the member
24 shall continue to receive partial disability benefits in
25 accordance with this article. Benefits shall cease once the
26 member has been found to be no longer either totally or
27 partially disabled: *Provided*, That the board shall require
28 recertification for each partial or total disability at regular
29 intervals as specified by the guidelines adopted by the Public
30 Employees Retirement System.

31 (b) If a retirant refuses to submit to a medical
32 examination or submit a statement by his or her physician
33 certifying continued disability in any period, his or her
34 disability annuity may be discontinued by the board until the
35 retirant complies. If the refusal continues for one year, all the
36 retirants rights in and to the annuity may be revoked by the
37 board.

§7-14D-23. Loans to members.

1 (a) A member who is not yet receiving disability or
2 retirement income benefits from the plan may borrow from
3 the plan no more than one time in any year an amount up to
4 one half of his or her accumulated contributions, but not less
5 than \$500 nor more than \$8,000: *Provided*, That the
6 maximum amount of any loan shall not exceed the lesser of
7 the following: (1) \$8,000; or (2) fifty percent of his or her
8 accumulated contributions. No member is eligible for more
9 than one outstanding loan at any time. No loan may be made
10 from the plan if the board determines that the loans constitute
11 more than fifteen percent of the amortized cost value of the
12 assets of the plan as of the last day of the preceding plan year.
13 The board may discontinue the loans any time it determines
14 that cash flow problems might develop as a result of the
15 loans. Each loan shall be repaid through monthly installments
16 over periods of six through sixty months and carry interest on
17 the unpaid balance and an annual effective interest rate that
18 is two hundred basis points higher than the most recent rate
19 of interest used by the board for determining actuarial
20 contributions levels: *Provided, however*, That interest
21 charged shall be commercially reasonable in accordance with
22 the provisions of Section 72(p)(2) of the Internal Revenue
23 Code and federal regulations issued thereunder. Monthly
24 loan payments shall be calculated to be as nearly equal as
25 possible with all but the final payment being an equal
26 amount. An eligible member may make additional loan
27 payments or pay off the entire loan balance at any time
28 without incurring any interest penalty. Upon full payment of
29 the loan, a member may apply for a subsequent loan after
30 sixty days beginning the first day of the month following
31 receipt of final payment.

32 (b) If a withdrawal of accumulated contributions is
33 payable to the borrower or his or her beneficiary before he or
34 she repays the loan with interest, the loan balance due with
35 interest to date shall be deducted from the withdrawal.

36 (c) A member with an unpaid loan balance who wishes to
37 retire or who becomes eligible to receive disability benefits
38 under any provisions of this article may have the loan repaid
39 in full by accepting retirement income or disability payments
40 reduced by deducting from the actuarial reserve for the
41 accrued benefit the amount of the unpaid balance plus
42 accrued interest, if any, and then converting the remaining of
43 the reserve to a monthly pension or disability benefit payable
44 in the form of the annuity desired by the member: *Provided,*
45 That if payment of the member's monthly retirement income
46 or disability income is suspended or terminated for any
47 reason, upon recommencement of the payments, the actuarial
48 reduction in benefit may be recalculated for additional
49 interest accruals, to the extent determined necessary and
50 appropriate by the board.

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

55 (e) The entire unpaid balance of any loan, and
56 interest due thereon, shall at the option of the board
57 become due and payable without further notice or
58 demand upon the occurrence with respect to the
59 borrowing member of any of the following events of
60 default: (1) Any payment of principal and accrued
61 interest on a loan remains unpaid after they become due
62 and payable under the terms of the loan or after the
63 grace period established in the discretion of the
64 retirement board; (2) the borrowing member attempts to
65 make an assignment for the benefit of creditors of his or
66 her benefit under the retirement system; or (3) any other
67 event of default set forth in rules promulgated by the
68 board pursuant to the authority granted in section one,
69 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
72 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
76 determine.

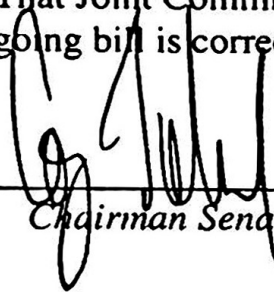
77 (g) Notwithstanding anything in this section to the
78 contrary, the loan program authorized by this section shall
79 comply with the provisions of Section 72(p)(2) and Section
80 401 of the Internal Revenue Code and the federal regulations
81 issued thereunder. The board may: (1) Apply and construe
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.

1 No county which has timely met all of its obligations
2 under this article is liable for any payments or contributions
3 to the deputy sheriff retirement plan which are owed to the
4 plan by another county or counties. No county commission
5 may deposit funds into the deputy sheriff retirement fund in
6 excess of the amount specified in section seven of this article,
7 the fees set forth in article fourteen-e of this chapter, the fees
8 set forth in subsection (f)(2), section one, article ten-d,
9 chapter five of this code, and the fees set forth in section
10 seventeen, article three, chapter seventeen-a of this code.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee



Chairman House Committee

Originating in the House.

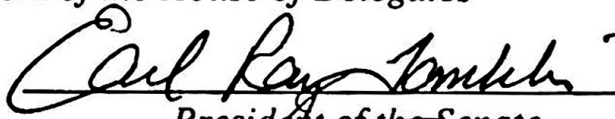
In effect ninety days from passage.



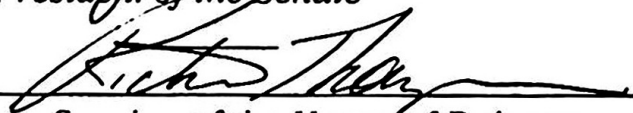
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

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



Governor

PRESENTED TO THE
GOVERNOR

APR 9 2009

Time 4:20 pm