

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 406**

(By Senators Jenkins, McCabe and Cann )

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[Originating in the Committee on Finance;  
reported March 22, 2013.]

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A BILL 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; adding a definition for the terms “retire” and “retirement”; requiring Consolidated Public Retirement Board to correct errors; correcting errors resulting from underpayment or overpayment; and clarifying that an estimation of benefits is provided prior to the submission of a retirement application from a member.

*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  
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  
14 a 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: *Provided*, That  
29 when used in the context of compliance with the federal  
30 maximum benefit requirements of Section 415 of the Internal  
31 Revenue Code, “actuarial equivalent” shall be computed

32 using the mortality tables and interest rates required to  
33 comply with those requirements.

34 (f) “Annual compensation” means the wages paid to the  
35 member during covered employment within the meaning of  
36 Section 3401(a) of the Internal Revenue Code, but  
37 determined without regard to any rules that limit the  
38 remuneration included in wages based upon the nature or  
39 location of employment or services performed during the  
40 plan year plus amounts excluded under Section 414(h)(2) of  
41 the Internal Revenue Code and less reimbursements or other  
42 expense allowances, cash or noncash fringe benefits or both,  
43 deferred compensation and welfare benefits. Annual  
44 compensation for determining benefits during any  
45 determination period may not exceed the maximum  
46 compensation allowed as adjusted for cost of living in  
47 accordance with section seven, article ten-d, chapter five of  
48 this code and Section 401(a)(17) of the Internal Revenue  
49 Code.

50 (g) “Annual leave service” means accrued annual leave.

51 (h) “Annuity starting date” means the first day of the first  
52 calendar month following receipt of the retirement  
53 application by the board or the required beginning date, if  
54 earlier: *Provided*, That the member has ceased covered  
55 employment and reached early or normal retirement age.

56 (i) “Base salary” means a member’s cash compensation  
57 exclusive of overtime from covered employment during the  
58 last twelve months of employment. Until a member has  
59 worked twelve months, annualized base salary is used as base  
60 salary.

61 (j) “Board” means the Consolidated Public Retirement  
62 Board created pursuant to article ten-d, chapter five of this  
63 code.

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

66 (l) “Covered employment” means either: (1) Employment  
67 as a deputy sheriff and the active performance of the duties  
68 required of a deputy sheriff; or (2) the period of time which

69 active duties are not performed but disability benefits are  
70 received under section fourteen or fifteen of this article; or  
71 (3) concurrent employment by a deputy sheriff in a job or  
72 jobs in addition to his or her employment as a deputy sheriff  
73 where the secondary employment requires the deputy sheriff  
74 to be a member of another retirement system which is  
75 administered by the Consolidated Public Retirement Board  
76 pursuant to article ten-d, chapter five of this code: *Provided*,  
77 That the deputy sheriff contributes to the fund created in  
78 section six of this article the amount specified as the deputy  
79 sheriff's contribution in section seven of this article.

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

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

86 (o) "Dependent child" means either:

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

88 (A) A natural child of the member;

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

90 (C) A child who at the time of the member's death was

91 living with the member while the member was an adopting

92 parent during any period of probation; or

93 (D) A stepchild of the member residing in the member's

94 household at the time of the member's death; or

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

96 (A) Who is enrolled as a full-time student in an

97 accredited college or university;

98 (B) Who was claimed as a dependent by the member for

99 federal income tax purposes at the time of the member's

100 death; and

101 (C) Whose relationship with the member is described in

102 subparagraph (A), (B) or (C), paragraph (1) of this

103 subdivision.

104 (p) "Dependent parent" means the father or mother of the

105 member who was claimed as a dependent by the member for

106 federal income tax purposes at the time of the member's  
107 death.

108 (q) "Disability service" means service credit received by  
109 a member, expressed in whole years, fractions thereof or  
110 both, equal to one half of the whole years, fractions thereof  
111 or both, during which time a member receives disability  
112 benefits under section fourteen or fifteen of this article.

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

115 (s) "Employer error" means an omission,  
116 misrepresentation, or violation of relevant provisions of the  
117 ~~West Virginia Code~~ this code or of the West Virginia Code  
118 of State ~~Regulations~~ Rules or the relevant provisions of both  
119 ~~the West Virginia Code and of the West Virginia Code of~~  
120 ~~State Regulations~~ by the participating public employer that  
121 has resulted in an underpayment or overpayment of  
122 contributions required. A deliberate act contrary to the  
123 provisions of this section by a participating public employer  
124 does not constitute employer error.



125 (t) “Effective date” means July 1, 1998.

126 (u) “Final average salary” means the average of the  
127 highest annual compensation received for covered  
128 employment by the member during any five consecutive plan  
129 years within the member’s last ten years of service. If the  
130 member did not have annual compensation for the five full  
131 plan years preceding the member’s attainment of normal  
132 retirement age and during that period the member received  
133 disability benefits under section fourteen or fifteen of this  
134 article, then “final average salary” means the average of the  
135 monthly salary determined paid to the member during that  
136 period as determined under section seventeen of this article  
137 multiplied by twelve.

138 (v) “Fund” means the West Virginia Deputy Sheriff  
139 Retirement Fund created pursuant to section six of this  
140 article.

141 (w) “Hour of service” means:

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

144 duties are performed. These hours shall be credited to the  
145 member for the plan year in which the duties are performed;  
146 and

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

158 (3) Each hour for which back pay is either awarded or  
159 agreed to be paid by the employing county commission,  
160 irrespective of mitigation of damages. The same hours of  
161 service shall not be credited both under this paragraph and  
162 paragraph (1) or (2) of this subdivision. Hours under this

163 paragraph shall be credited to the member for the plan year  
164 or years to which the award or agreement pertains rather than  
165 the plan year in which the award, agreement or payment is  
166 made.

167 (x) "Member" means a person first hired as a deputy  
168 sheriff after the effective date of this article, as defined in  
169 subsection ~~(r)~~ (t) of this section, or a deputy sheriff first hired  
170 prior to the effective date and who elects to become a  
171 member pursuant to section five or seventeen of this article.  
172 A member shall remain a member until the benefits to which  
173 he or she is entitled under this article are paid or forfeited or  
174 until cessation of membership pursuant to section five of this  
175 article.

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

178 (z) "Normal form" means a monthly annuity which is one  
179 twelfth of the amount of the member's accrued benefit which  
180 is payable for the member's life. If the member dies before  
181 the sum of the payments he or she receives equals his or her

182 accumulated contributions on the annuity starting date, the  
183 named beneficiary shall receive in one lump sum the  
184 difference between the accumulated contributions at the  
185 annuity starting date and the total of the retirement income  
186 payments made to the member.

187 (aa) “Normal retirement age” means the first to occur of  
188 the following: (1) Attainment of age fifty years and the  
189 completion of twenty or more years of service; (2) while still  
190 in covered employment, attainment of at least age fifty years  
191 and when the sum of current age plus years of service equals  
192 or exceeds seventy years; (3) while still in covered  
193 employment, attainment of at least age sixty years and  
194 completion of five years of service; or (4) attainment of age  
195 sixty-two years and completion of five or more years of  
196 service.

197 (bb) “Partially disabled” means a member’s inability to  
198 engage in the duties of deputy sheriff by reason of any  
199 medically determinable physical or mental impairment that  
200 can be expected to result in death or that has lasted or can be

201 expected to last for a continuous period of not less than  
202 twelve months. A member may be determined partially  
203 disabled for the purposes of this article and maintain the  
204 ability to engage in other gainful employment which exists  
205 within the state but which ability would not enable him or her  
206 to earn an amount at least equal to two thirds of the average  
207 annual compensation earned by all active members of this  
208 plan during the plan year ending as of the most recent June  
209 30, as of which plan data has been assembled and used for  
210 the actuarial valuation of the plan.

211 (cc) "Public Employees Retirement System" means the  
212 West Virginia Public Employees Retirement System created  
213 by article ten, chapter five of this code.

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

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

220 (ff) “Qualified public safety employee” means any  
221 employee of a participating state or political subdivision who  
222 provides police protection, fire-fighting services or  
223 emergency medical services for any area within the  
224 jurisdiction of the state or political subdivision, or ~~such~~ any  
225 other meaning given to the term by Section 72(t)(10)(B) of  
226 the Internal Revenue Code or by Treasury Regulation  
227 §1.401(a)-1(b)(2)(v) as they may be amended from time to  
228 time.

229 (gg) “Regular interest” means the rate or rates of interest  
230 per annum, compounded annually, ~~as~~ adopted by the board  
231 ~~adopts~~ in accordance with the provisions of this article.

232 (hh) “Required beginning date” means April 1 of the  
233 calendar year following the later of: (i) The calendar year in  
234 which the member attains age seventy and one-half; or (ii)  
235 the calendar year in which he or she retires or otherwise  
236 separates from covered employment.

237 (ii) “Retire” or “retirement” means a member’s  
238 withdrawal from the employ of a participating public  
239 employer and the commencement of an annuity by the plan.

240       ~~(ii)~~ (jj) “Retirement income payments” means the annual  
241 retirement income payments payable under the plan.

242       ~~(jj)~~ (kk) “Spouse” means the person to whom the member  
243 is legally married on the annuity starting date.

244       ~~(kk)~~ (ll) “Surviving spouse” means the person to whom  
245 the member was legally married at the time of the member’s  
246 death and who survived the member.

247       ~~(ll)~~ (mm) “Totally disabled” means a member’s inability  
248 to engage in substantial gainful activity by reason of any  
249 medically determined physical or mental impairment that can  
250 be expected to result in death or that has lasted or can be  
251 expected to last for a continuous period of not less than  
252 twelve months. For purposes of this subdivision:

253       (1) A member is totally disabled only if his or her  
254 physical or mental impairment or impairments are so severe  
255 that he or she is not only unable to perform his or her  
256 previous work as a deputy sheriff but also cannot,  
257 considering his or her age, education and work experience,

258 engage in any other kind of substantial gainful employment  
259 which exists in the state regardless of whether: (A) The work  
260 exists in the immediate area in which the member lives; (B)  
261 a specific job vacancy exists; or (C) the member would be  
262 hired if he or she applied for work.

263 (2) “Physical or mental impairment” is an impairment  
264 that results from an anatomical, physiological or  
265 psychological abnormality that is demonstrated by medically  
266 accepted clinical and laboratory diagnostic techniques. A  
267 member’s receipt of Social Security disability benefits  
268 creates a rebuttable presumption that the member is totally  
269 disabled for purposes of this plan. Substantial gainful  
270 employment rebuts the presumption of total disability.

271 ~~(mm)~~ (nn) “Year of service”. – A member shall, except  
272 in his or her first and last years of covered employment, be  
273 credited with year of service credit based upon the hours of  
274 service performed as covered employment and credited to the  
275 member during the plan year based upon the following  
276 schedule:



277 Hours of Service	Years of Service Credited
278 Less than 500 .....	0
279 500 to 999 .....	1/3
280 1,000 to 1,499 .....	2/3
281 1,500 or more .....	1

282 During a member's first and last years of covered  
 283 employment, the member shall be credited with one twelfth  
 284 of a year of service for each month during the plan year in  
 285 which the member is credited with an hour of service. A  
 286 member is not entitled to credit for years of service for any  
 287 time period during which he or she received disability  
 288 payments under section fourteen or fifteen of this article.  
 289 Except as specifically excluded, years of service include  
 290 covered employment prior to the effective date. Years of  
 291 service which are credited to a member prior to his or her  
 292 receipt of accumulated contributions upon termination of  
 293 employment pursuant to section thirteen of this article or  
 294 section thirty, article ten, chapter five of this code, shall be  
 295 disregarded for all purposes under this plan unless the

296 member repays the accumulated contributions with interest  
297 pursuant to section thirteen of this article or had prior to the  
298 effective date made the repayment pursuant to section  
299 eighteen, article ten, chapter five of this code.

**§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 any year preceding July 1, 2011, the  
8 total of the contributions provided in this section, to be paid  
9 by the county commission, may not exceed ten and one- half  
10 percent of the total payroll for the members in the employ of  
11 the county commission; *Provided, however*, That on or after  
12 July 1, 2011, the total of the contributions provided in this  
13 section, to be paid by the county commission, may not  
14 exceed thirteen percent of the total payroll for the members

15 in the employ of the county commission. If the board finds  
16 that the benefits provided by this article can be actually  
17 funded with a lesser contribution, then the board shall reduce  
18 the required member or employer contributions or both. The  
19 sums withheld each calendar month shall be paid to the fund  
20 no later than fifteen days following the end of the calendar  
21 month.

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

34 the concurrent employer for which the member is employed  
35 in an amount determined by the board: *Provided*, That in any  
36 year preceding July 1, 2011, the total of the contributions  
37 provided in this section, to be paid by the concurrent  
38 employer, may not exceed ten and one- half percent of the  
39 monthly salary of the employee: *Provided, however*, That on  
40 or after July 1, 2011, the total of the contributions provided  
41 in this section, to be paid by the concurrent employer, may  
42 not exceed thirteen percent of the monthly salary of the  
43 employee. If the board finds that the benefits provided by this  
44 article can be funded with a lesser contribution, then the  
45 board shall reduce the required member or employer  
46 contributions or both. The sums withheld each calendar  
47 month shall be paid to the fund no later than fifteen days  
48 following the end of the calendar month.

49 ~~(c) If any change or employer error in the records of any~~  
50 ~~participating public employer or the retirement system results~~  
51 ~~in any member receiving from the system more or less than~~  
52 ~~he or she would have been entitled to receive had the records~~

53 ~~been correct, the board shall correct the error, and as far as is~~  
54 ~~practicable shall adjust the payment of the benefit in a~~  
55 ~~manner that the actuarial equivalent of the benefit to which~~  
56 ~~the member was correctly entitled shall be paid. Any~~  
57 ~~employer error resulting in an underpayment to the retirement~~  
58 ~~system may be corrected by the member remitting the~~  
59 ~~required employee contribution and the participating public~~  
60 ~~employer remitting the required employer contribution.~~  
61 ~~Interest shall accumulate in accordance with the retirement~~  
62 ~~board reinstatement interest as established in Legislative Rule~~  
63 ~~162 CSR 7 and any accumulating interest owed on the~~  
64 ~~employee and employer contributions resulting from the~~  
65 ~~employer error shall be the responsibility of the participating~~  
66 ~~public employer. The participating public employer may~~  
67 ~~remit total payment and the employee reimburse the~~  
68 ~~participating public employer through payroll deduction over~~  
69 ~~a period equivalent to the time period during which the~~  
70 ~~employer error occurred.~~

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

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

11 (b) Underpayments: Any error resulting in an  
12 underpayment to the retirement system of required  
13 contributions may be corrected by the member or retirant  
14 remitting the required employee contribution and the  
15 participating public employer remitting the required  
16 employer contribution. Interest shall accumulate in  
17 accordance with the ~~Legislative~~ board's rule, Refund,

18 Reinstatement, Retroactive Service, Loan And Employer  
19 Error Interest Factors, 162 CSR 7, concerning retirement  
20 board refund, reinstatement, retroactive service, loan and  
21 employer error interest factors and any accumulating interest  
22 owed on the employee and employer contributions resulting  
23 from an employer error is the responsibility of the  
24 participating public employer. The participating public  
25 employer may remit total payment and the employee may  
26 reimburse the participating public employer through payroll  
27 deduction over a period equivalent to the time period during  
28 which the employer error occurred. If the correction of an  
29 error involving an underpayment of required contributions to  
30 the retirement system will result in increased payments to a  
31 retiree, including increases to payments already made, any  
32 adjustments shall be made only after the board receives full  
33 payment of all required employee and employer  
34 contributions, including interest.

35 (c) Overpayments: (1) When mistaken or excess  
36 employer contributions, including any overpayments, have

37 been made to the retirement system by a participating public  
38 employer, due to error or other reason, the board shall credit  
39 the participating public employer with an amount equal to the  
40 erroneous contributions, to be offset against the participating  
41 public employer's future liability for employer contributions  
42 to the system. Earnings or interest shall not be credited to the  
43 employer.

44 (2) When mistaken or excess employee contributions,  
45 including any overpayments, have been made to the  
46 retirement system, due to error or other reason, the board has  
47 sole authority for determining the means of return, offset or  
48 credit to or for the benefit of the employee of the amounts,  
49 and may use any means authorized or permitted under the  
50 provisions of Section 401(a), et seq. of the Internal Revenue  
51 Code and guidance issued thereunder applicable to  
52 governmental plans. Alternatively, in its full and complete  
53 discretion, the board may require the participating public  
54 employer to pay the employee the amounts as wages, with  
55 the board crediting the participating public employer with a



56 corresponding amount to offset against its future  
57 contributions to the plan: *Provided*, That the wages paid to  
58 the employee shall not be considered compensation for any  
59 purposes under this article. Earnings or interest shall not be  
60 returned, offset, or credited under any of the means used by  
61 the board for returning mistaken or excess employee  
62 contributions, including any overpayments, to an employee.

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

1 A member may retire and commence to receive  
2 retirement income payments on the first day of the calendar  
3 month following the board's receipt of the member's  
4 voluntary written application for retirement or the required  
5 beginning date, if earlier. Before receiving retirement income  
6 payments, the member shall have ceased covered  
7 employment and reached early or normal retirement age. The  
8 retirement income payments shall be in an amount as  
9 provided under section eleven of this article: *Provided*, That  
10 retirement income payments under this plan ~~shall be~~ are  
11 subject to the provisions of this article. Upon receipt of ~~the~~  
12 ~~application~~ a request for estimation of benefits, the board

13 shall promptly provide the member with an explanation of his  
14 or her optional forms of retirement benefits and ~~upon~~ the  
15 estimated gross monthly annuity. Upon receipt of properly  
16 executed retirement application forms from the member, the  
17 board shall process the member's request and commence  
18 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  
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 totally  
23 disabled, but is partially disabled, then the member shall  
24 continue to receive partial disability benefits in accordance  
25 with this article. Benefits shall cease once the member has  
26 been found to be no longer either totally or partially disabled:  
27 *Provided*, That the board shall require recertification for each  
28 partial or total disability at regular intervals as specified by the  
29 guidelines adopted by the ~~Public Employees~~ Deputy Sheriff  
30 Retirement System.

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

1 (a) In any case where a member who has been a member  
2 for at least ten years, while in covered employment after the  
3 effective date of this article, has died or dies from any cause  
4 other than those specified in section eighteen of this article  
5 and not due to vicious habits, intemperance or willful  
6 misconduct on his or her part, the fund shall pay annually in  
7 equal monthly installments to the surviving spouse during his  
8 or her lifetime, a sum equal to the greater of: (i) One half of  
9 the annual compensation received in the preceding  
10 twelve-month employment period by the deceased member;  
11 or (ii) if the member dies after his or her early or normal

12 retirement age, the monthly amount which the spouse would  
13 have received had the member retired the day before his or  
14 her death, elected a one hundred percent joint and survivor  
15 annuity with the spouse as the joint annuitant, and then died.  
16 Where the member is receiving disability benefits under  
17 section ~~fourteen~~ fifteen of this article at the time of his or her  
18 death, the most recent monthly compensation determined  
19 under section seventeen of this article shall be substituted for  
20 the annual compensation in subdivision (i) of this ~~section~~  
21 subsection.

22 (b) Benefits for a surviving spouse received under this  
23 section, section twenty and section twenty-one of this article  
24 are in lieu of receipt of any other benefits under this article  
25 for the spouse or any other person or under the provisions of  
26 any other state retirement system based upon the member's  
27 covered employment.