

1 **ENROLLED**

2 **Senate Bill No. 443**

3 (BY SENATORS KIRKENDOLL, CANN, EDGELL AND CARMICHAEL)

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5 [Passed February 19, 2014; in effect from passage.]  
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10 AN ACT to amend and reenact §15-2A-2, §15-2A-5 and §15-2A-11a of  
11 the Code of West Virginia, 1931, as amended, all relating to  
12 the West Virginia State Police Retirement System; providing  
13 definitions; removing the requirement to set the employer  
14 contribution rate by legislative rule; requiring that a  
15 disability retirant's annuity be terminated when the board  
16 determines that the recipient has engaged in substantial  
17 gainful activity; requiring that a partially disabled  
18 retirant's annuity be terminated when they become employed as  
19 a law-enforcement officer; providing for reapplication of  
20 disability retirement within ninety days of effective  
21 termination; and clarifying that application for regular  
22 retirement benefits may be made by those terminated upon  
23 meeting eligibility requirements.

1 *Be it enacted by the Legislature of West Virginia:*

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

5 **ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.**

6 **§15-2A-2. Definitions.**

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

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

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

17       (3) "Actuarially equivalent" or "of equal actuarial value"  
18 means a benefit of equal value computed upon the basis of the  
19 mortality table and interest rates as set and adopted by the  
20 retirement board in accordance with the provisions of this article:  
21 *Provided*, That when used in the context of compliance with the  
22 federal maximum benefit requirements of Section 415 of the Internal  
23 Revenue Code, "actuarially equivalent" shall be computed using the

1 mortality tables and interest rates required to comply with those  
2 requirements.

3 (4) "Agency" means the West Virginia State Police.

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

6 (6) "Beneficiary" means a surviving spouse or other surviving  
7 beneficiary who is entitled to, or will be entitled to, an annuity  
8 or other benefit payable by the fund.

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

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

13 (A) Is under the age of eighteen;

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

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

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

1 retirant's death.

2 (10) "Employee" means any person regularly employed in the  
3 service of the agency as a law-enforcement officer after March 12,  
4 1994, and who is eligible to participate in the fund.

5 (11) "Final average salary" means the average of the highest  
6 annual compensation received for employment with the agency,  
7 including compensation paid for overtime service, received by the  
8 employee during any five calendar years within the employee's last  
9 ten years of service: *Provided*, That annual compensation for  
10 determining benefits during any determination period may not exceed  
11 the maximum compensation allowed as adjusted for cost of living in  
12 accordance with section seven, article ten-d, chapter five of this  
13 code and Section 401(a)(17) of the Internal Revenue Code.

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

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

19 (14) "Law-enforcement officer" means an individual employed or  
20 otherwise engaged in either a public or private position which  
21 involves the rendition of services relating to enforcement of  
22 federal, state or local laws for the protection of public or  
23 private safety, including, but not limited to, positions as deputy

1 sheriffs, police officers, marshals, bailiffs, court security  
2 officers or any other law-enforcement position which requires  
3 certification, but excluding positions held by elected sheriffs or  
4 appointed chiefs of police whose duties are purely administrative  
5 in nature.

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

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

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

21 (18) "Physical or mental impairment" means an impairment that  
22 results from an anatomical, physiological or psychological  
23 abnormality that is demonstrated by medically accepted clinical and

1 laboratory diagnostic techniques.

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

4 (20) "Qualified public safety employee" means any employee of  
5 a participating state or political subdivision who provides police  
6 protection, fire fighting services or emergency medical services  
7 for any area within the jurisdiction of the state or political  
8 subdivision, or such other meaning given to the term by Section  
9 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation  
10 §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

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

17 (22) "Retirant" or "retiree" means any member who commences an  
18 annuity payable by the retirement system.

19 (23) "Salary" means the compensation of an employee, excluding  
20 any overtime payments.

21 (24) "Surviving spouse" means the person to whom the member or  
22 retirant was legally married at the time of the member's or  
23 retirant's death and who survived the member or retirant.

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

15           (26) "Years of service" means the months of service acquired  
16 by a member while in active employment with the agency divided by  
17 twelve. Years of service shall be calculated in years and fraction  
18 of a year from the date of active employment of the member with the  
19 agency through the date of termination of employment or retirement  
20 from the agency. If a member returns to active employment with the  
21 agency following a previous termination of employment with the  
22 agency and the member has not received a refund of contributions  
23 plus interest for the previous employment under section eight of

1 this article, service shall be calculated separately for each  
2 period of continuous employment and years of service shall be the  
3 total service for all periods of employment. Years of service  
4 shall exclude any periods of employment with the agency for which  
5 a refund of contributions plus interest has been paid to the member  
6 unless the employee repays the previous withdrawal, as provided in  
7 section eight of this article, to reinstate the years of service.

8 **§15-2A-5. Employee contributions; employer contributions;**  
9 **forfeitures.**

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

20 (b) The State of West Virginia's contributions to the  
21 retirement system, as determined by the board, shall be a percent  
22 of the employees' total annual base salary related to benefits  
23 under this retirement system. In determining the amount, the board

1 shall give consideration to setting the amount at a sum equal to an  
2 amount which, if paid annually by the state, will be sufficient to  
3 provide for the total normal cost of the benefits expected to  
4 become payable to all members and retirants and to amortize any  
5 unfunded liability found by application of the actuarial funding  
6 method chosen for that purpose by the board over a period of years  
7 determined actuarially appropriate. The state's contributions  
8 shall be paid monthly into the fund created pursuant to section  
9 four of this article out of the annual appropriation for the  
10 agency.

11 (c) Notwithstanding any other provisions of this article,  
12 forfeitures under the system shall not be applied to increase the  
13 benefits any member or retirant would otherwise receive under the  
14 system.

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

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

1 system file maintained by the board.

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

23 (c) The board shall propose legislative rules in accordance

1 with article three, chapter twenty-nine-a of this code relating to  
2 the processing of applications and petitions for disability  
3 retirement under this article.

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

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

1 information are filed.

2 (f) If after review of a disability retirant's annual  
3 statement of earnings, tax records or other financial information,  
4 as required or otherwise obtained by the board, the board  
5 determines that earnings of the recipient of total disability  
6 benefits in the preceding year are sufficient to show that the  
7 recipient engaged in substantial gainful activity, the disability  
8 retirant's disability annuity shall be terminated by the board,  
9 upon recommendation of the board's disability review committee, on  
10 the first day of the month following the board's action.

11 (g) If the board obtains information that a partially disabled  
12 disability retirant is employed as a law-enforcement officer, the  
13 disability retirant's disability annuity shall be terminated by the  
14 board, upon recommendation of the board's disability review  
15 committee, the first day of the month following the board's action.

16 (h) Any person who wishes to reapply for disability retirement  
17 and whose disability retirement has been terminated by the board  
18 pursuant to this section may do so within ninety days of the  
19 effective date of termination: *Provided*, That any person reapplying  
20 for disability benefits shall undergo an examination at the  
21 applicant's expense by an appropriate medical professional selected  
22 by the board as part of the reapplication process.

23 (I) Notwithstanding other provisions in this section, any

1 person whose disability retirement has been terminated by the board  
2 pursuant to this section may apply for regular retirement benefits  
3 upon meeting eligibility requirements of age and years of service.