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ENROLLED

Senate Bill No. 443

(BY SENATORS KIRKENDOLL, CANN, EDGELL AND CARMICHAEL)



[PASSED FEBRUARY 20, 2014; IN EFFECT FROM PASSAGE.]

E N R O L L E D

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[Passed February 20, 2014; in effect from passage.]

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

Be it enacted by the Legislature of West Virginia:

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

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

§15-2A-2. Definitions.

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

3 (1) “Accumulated contributions” means the sum of all
4 amounts deducted from base salary, together with four
5 percent interest compounded annually.

6 (2) “Active military duty” means full-time active duty
7 with the armed forces of the United States, namely, the
8 United States Air Force, Army, Coast Guard, Marines or
9 Navy; and service with the National Guard or reserve military
10 forces of any of the armed forces when the employee has
11 been called to active full-time duty.

12 (3) “Actuarially equivalent” or “of equal actuarial
13 value” means a benefit of equal value computed upon the
14 basis of the mortality table and interest rates as set and
15 adopted by the retirement board in accordance with the
16 provisions of this article: *Provided*, That when used in the
17 context of compliance with the federal maximum benefit
18 requirements of Section 415 of the Internal Revenue Code,
19 “actuarially equivalent” shall be computed using the
20 mortality tables and interest rates required to comply with
21 those requirements.

22 (4) “Agency” means the West Virginia State Police.

23 (5) “Base salary” means compensation paid to an
24 employee without regard to any overtime pay.

25 (6) “Beneficiary” means a surviving spouse or other
26 surviving beneficiary who is entitled to, or will be entitled to,
27 an annuity or other benefit payable by the fund.

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

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

34 (A) Is under the age of eighteen;

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

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

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

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

49 (11) "Final average salary" means the average of the
50 highest annual compensation received for employment with
51 the agency, including compensation paid for overtime
52 service, received by the employee during any five calendar
53 years within the employee's last ten years of service:
54 *Provided*, That annual compensation for determining benefits
55 during any determination period may not exceed the
56 maximum compensation allowed as adjusted for cost of

57 living in accordance with section seven, article ten-d, chapter
58 five of this code and Section 401(a)(17) of the Internal
59 Revenue Code.

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

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

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

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

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

83 (17) "Partially disabled" means an employee's inability,
84 on a probable permanent basis, to perform the essential duties
85 of a law-enforcement officer by reason of any medically
86 determinable physical or mental impairment which has lasted

87 or can be expected to last for a continuous period of not less
88 than twelve months, but which impairment does not preclude
89 the employee from engaging in other types of nonlaw-
90 enforcement employment.

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

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

98 (20) “Qualified public safety employee” means any
99 employee of a participating state or political subdivision who
100 provides police protection, fire fighting services or
101 emergency medical services for any area within the
102 jurisdiction of the state or political subdivision, or such other
103 meaning given to the term by Section 72(t)(10)(B) of the
104 Internal Revenue Code or by Treasury Regulation §1.401(a)-
105 1(b)(2)(v) as they may be amended from time to time.

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

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

114 (23) “Salary” means the compensation of an employee,
115 excluding any overtime payments.

116 (24) “Surviving spouse” means the person to whom the
117 member or retirant was legally married at the time of the
118 member’s or retirant’s death and who survived the member
119 or retirant.

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

136 (26) “Years of service” means the months of service
137 acquired by a member while in active employment with the
138 agency divided by twelve. Years of service shall be
139 calculated in years and fraction of a year from the date of
140 active employment of the member with the agency through
141 the date of termination of employment or retirement from the
142 agency. If a member returns to active employment with the
143 agency following a previous termination of employment with
144 the agency and the member has not received a refund of
145 contributions plus interest for the previous employment under
146 section eight of this article, service shall be calculated
147 separately for each period of continuous employment and
148 years of service shall be the total service for all periods of
149 employment. Years of service shall exclude any periods of

150 employment with the agency for which a refund of
151 contributions plus interest has been paid to the member
152 unless the employee repays the previous withdrawal, as
153 provided in section eight of this article, to reinstate the years
154 of service.

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

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

12 (b) The State of West Virginia's contributions to the
13 retirement system, as determined by the board, shall be a
14 percent of the employees' total annual base salary related to
15 benefits under this retirement system. In determining the
16 amount, the board shall give consideration to setting the
17 amount at a sum equal to an amount which, if paid annually
18 by the state, will be sufficient to provide for the total normal
19 cost of the benefits expected to become payable to all
20 members and retirants and to amortize any unfunded liability
21 found by application of the actuarial funding method chosen
22 for that purpose by the board over a period of years
23 determined actuarially appropriate. The state's contributions
24 shall be paid monthly into the fund created pursuant to
25 section four of this article out of the annual appropriation for
26 the agency.

27 (c) Notwithstanding any other provisions of this article,
28 forfeitures under the system shall not be applied to increase
29 the benefits any member or retirant would otherwise receive
30 under the system.

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

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

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

27 work relatedness of the employee's alleged disability,
28 complete copies of the employee's medical file and any other
29 information requested by the board in its processing of the
30 application.

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

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

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

57 (f) If after review of a disability retirant's annual
58 statement of earnings, tax records or other financial

59 information, as required or otherwise obtained by the board,
60 the board determines that earnings of the recipient of total
61 disability benefits in the preceding year are sufficient to show
62 that the recipient engaged in substantial gainful activity, the
63 disability retiree's disability annuity shall be terminated by
64 the board, upon recommendation of the board's disability
65 review committee, on the first day of the month following the
66 board's action.

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

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

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

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

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the

Day of, 2014.

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Governor