

Senate Bill No. 443

(By Senators Kirkendoll, Cann, Edgell and Carmichael)

[Introduced January 28, 2014; referred to the Committee on Pensions; and then to the Committee on Finance.]

A BILL 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 retiree's annuity be terminated when the board determines that the recipient has engaged in substantial gainful activity; requiring that a partially disabled retiree'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-11 a 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

10 military forces of any of the armed forces when the employee
11 has been called to active full-time duty.

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

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

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

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

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

29 (8) “Dependent child” means any unmarried child or
30 children born to or adopted by a member or retirant of the
31 fund who:

32 (A) Is under the age of eighteen;

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

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

40 (9) “Dependent parent” means the member’s or retirant’s
41 parent or stepparent claimed as a dependent by the member
42 or retirant for federal income tax purposes at the time of the
43 member’s or retirant’s death.

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

48 (11) “Final average salary” means the average of the
49 highest annual compensation received for employment with
50 the agency, including compensation paid for overtime
51 service, received by the employee during any five calendar
52 years within the employee’s last ten years of service:
53 *Provided*, That annual compensation for determining benefits
54 during any determination period may not exceed the
55 maximum compensation allowed as adjusted for cost of
56 living in accordance with section seven, article ten-d, chapter
57 five of this code and Section 401(a) (17) of the Internal
58 Revenue Code.

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

62 (13) “Internal Revenue Code” means the Internal
63 Revenue Code of 1986, as amended.

64 (14) “Law-enforcement officer” means an individual
65 employed or otherwise engaged in either a public or private
66 position which involves the rendition of services relating to

67 enforcement of federal, state or local laws for the protection
68 of public or private safety, including, but not limited to,
69 positions as deputy sheriffs, police officers, marshals,
70 bailiffs, court security officers or any other law-enforcement
71 position which requires certification, but excluding positions
72 held by elected sheriffs or appointed chiefs of police whose
73 duties are purely administrative in nature.

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

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

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

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

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

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

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

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

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

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

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

119 (25) “Totally disabled” means an employee’s probable
120 permanent inability to engage in substantial gainful activity
121 by reason of any medically determined physical or mental
122 impairment that can be expected to result in death or that has
123 lasted or can be expected to last for a continuous period of

124 not less than twelve months. For purposes of this
125 subdivision, an employee is totally disabled only if his or her
126 physical or mental impairments are so severe that he or she
127 is not only unable to perform his or her previous work as an
128 employee of the agency, but also cannot, considering his or
129 her age, education and work experience, engage in any other
130 kind of substantial gainful employment which exists in the
131 state regardless of whether: (A) The work exists in the
132 immediate area in which the employee lives; (B) a specific
133 job vacancy exists; or (C) the employee would be hired if he
134 or she applied for work.

135 (26) "Years of service" means the months of service
136 acquired by a member while in active employment with the
137 agency divided by twelve. Years of service shall be
138 calculated in years and fraction of a year from the date of
139 active employment of the member with the agency through
140 the date of termination of employment or retirement from the
141 agency. If a member returns to active employment with the
142 agency following a previous termination of employment with

143 the agency and the member has not received a refund of
144 contributions plus interest for the previous employment under
145 section eight of this article, service shall be calculated
146 separately for each period of continuous employment and
147 years of service shall be the total service for all periods of
148 employment. Years of service shall exclude any periods of
149 employment with the agency for which a refund of
150 contributions plus interest has been paid to the member
151 unless the employee repays the previous withdrawal, as
152 provided in section eight of this article, to reinstate the years
153 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
5 ~~unfunded liability~~ funding percentage of the fund determined
6 by the board falls below the ninety-percent threshold, then

7 the employee rate of contribution shall be increased to
8 thirteen percent of the amount of the employee's salary until
9 the ninety-percent or better funding level is again achieved.
10 Once that funding level is achieved the employee
11 contribution rate will be reduced to twelve percent.

12 (b) The State of West Virginia's contributions to the
13 retirement system, as determined by the board, ~~by legislative~~
14 ~~rule promulgated in accordance with the provisions of article~~
15 ~~three, chapter twenty-nine-a of this code,~~ shall be a percent
16 of the employees' total annual base salary related to benefits
17 under this retirement system. In determining the amount, the
18 board shall give consideration to setting the amount at a sum
19 equal to an amount which, if paid annually by the state, will
20 be sufficient to provide for the total normal cost of the
21 benefits expected to become payable to all members and
22 retirants and to amortize any unfunded liability found by
23 application of the actuarial funding method chosen for that
24 purpose by the board over a period of years determined
25 actuarially appropriate. ~~When proposing a rule for~~

26 ~~promulgation which relates to the amount of employer~~
27 ~~contribution, the board may promulgate emergency rules~~
28 ~~pursuant to the provisions of article three, chapter twenty-~~
29 ~~nine-a of this code if the inability of the board to increase~~
30 ~~state contributions will detrimentally affect the actuarial~~
31 ~~soundness of the retirement system. A signed statement from~~
32 ~~the state actuary shall accompany the statement of facts and~~
33 ~~circumstances constituting an emergency which shall be filed~~
34 ~~in the State Register. For purposes of this section,~~
35 ~~subdivision (2), subsection (b), section fifteen-a, article three,~~
36 ~~chapter twenty-nine-a of this code is not applicable to the~~
37 ~~Secretary of State's determination of whether an emergency~~
38 ~~rule should be approved. The state's contributions shall be~~
39 ~~paid monthly into the fund created pursuant to section four of~~
40 ~~this article out of the annual appropriation for the agency.~~

41 (c) Notwithstanding any other provisions of this article,
42 forfeitures under the system shall not be applied to increase
43 the benefits any member or retirant would otherwise receive
44 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
9 an 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 the
40 decision of the board and intends to pursue judicial review of the
41 board's decision as provided in section four, article five, chapter
42 twenty-nine-a of this code, the party aggrieved shall notify the
43 board within twenty days of the employee's or superintendent's
44 receipt of the board's notice that they intend to pursue judicial
45 review of the board's decision.

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

55 suspended until the statement and information are filed.

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

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

72 (h) Any person who wishes to reapply for disability
73 retirement and whose disability retirement has been

74 terminated by the board pursuant to this section may do so
75 within ninety days of the effective date of termination:
76 *Provided, That any person reapplying for disability benefits*
77 shall undergo an examination at the applicant's expense by
78 an appropriate medical professional selected by the board as
79 part of the reapplication process.

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

(NOTE: The purpose of this bill is to remove the requirement for the Consolidated Public Retirement Board to set the employer contribution rate by legislative rule; to require termination of a disability annuity when CPRB determines that the retirant has engaged in substantial gainful activity; to require termination of a disability annuity when a partially disabled retirant becomes employed as a law-enforcement officer; to provide for reapplication of disability retirement within 90 days of effective termination; to clarify that those who are terminated may apply for regular retirement benefits upon eligibility; and to make technical corrections in sections two and five of this article.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)