

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 3034

FISCAL  
NOTE

BY DELEGATES LOVEJOY, CANESTRARO, FLUHARTY,

MILLER AND CAMPBELL

[Introduced February 12, 2019; Referred  
to the Committee on Pensions and Retirement then  
Finance.]

1 A BILL to amend and reenact §7-14D-2 of Code of West Virginia, 1931, as amended, relating to  
2 Deputy Sheriff Retirement System; amending definition of “partially disabled”.

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

## **ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.**

### **§7-14D-2. Definitions.**

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

3 (a) “Accrued benefit” means on behalf of any member two and one-quarter percent of the  
4 member’s final average salary multiplied by the member’s years of credited service: *Provided,*  
5 That members who are retired on or retire after July 1, 2018, shall have an accrued benefit of two  
6 and one-half percent of the member’s final average salary multiplied by the member’s years of  
7 credited service. A member’s accrued benefit may not exceed the limits of Section 415 of the  
8 Internal Revenue Code and is subject to the provisions of §7-14D-9(a) of this code.

9 (b) “Accumulated contributions” means the sum of all amounts deducted from the  
10 compensation of a member, or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code,  
11 either pursuant to §7-14D-7 of this code or §5-10-29 of this code as a result of covered  
12 employment together with regular interest on the deducted amounts.

13 (c) “Active member” means a member who is active and contributing to the plan.

14 (d) “Active military duty” means full-time active duty with any branch of the armed forces  
15 of the United States, including service with the National Guard or Reserve military forces when  
16 the member has been called to active full-time duty and has received no compensation during the  
17 period of that duty from any board or employer other than the armed forces.

18 (e) “Actuarial equivalent” means a benefit of equal value computed upon the basis of the  
19 mortality table and interest rates as set and adopted by the retirement board in accordance with  
20 the provisions of this article: *Provided,* That when used in the context of compliance with the  
21 federal maximum benefit requirements of Section 415 of the Internal Revenue Code, “actuarial

22 equivalent” shall be computed using the mortality tables and interest rates required to comply with  
23 those requirements.

24 (f) “Annual compensation” means the wages paid to the member during covered  
25 employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined  
26 without regard to any rules that limit the remuneration included in wages based upon the nature  
27 or location of employment or services performed during the plan year plus amounts excluded  
28 under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense  
29 allowances, cash, or noncash fringe benefits or both, deferred compensation, and welfare  
30 benefits. Annual compensation for determining benefits during any determination period may not  
31 exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-  
32 10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

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

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

37 (i) “Base salary” means a member’s cash compensation exclusive of overtime from  
38 covered employment during the last 12 months of employment. Until a member has worked 12  
39 months, annualized base salary is used as base salary.

40 (j) “Board” means the Consolidated Public Retirement Board created pursuant to §5-10D-  
41 1 *et seq.* of this code.

42 (k) “County commission” has the meaning ascribed to it in §7-1-1 of this code.

43 (l) “Covered employment” means either: (1) Employment as a deputy sheriff and the active  
44 performance of the duties required of a deputy sheriff; (2) the period of time which active duties  
45 are not performed but disability benefits are received under §7-14D-14 or §7-14D-15 of this code;  
46 or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or her  
47 employment as a deputy sheriff where the secondary employment requires the deputy sheriff to

48 be a member of another retirement system which is administered by the Consolidated Public  
49 Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the deputy sheriff  
50 contributes to the fund created in §7-14D-6 of this code the amount specified as the deputy  
51 sheriff's contribution in §7-14D-7 of this code.

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

54 (n) "Deputy sheriff" means an individual employed as a county law-enforcement deputy  
55 sheriff in this state and as defined by §7-14-2 of this code.

56 (o) "Dependent child" means either:

57 (1) An unmarried person under age 18 who is:

58 (A) A natural child of the member;

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

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

62 (D) A stepchild of the member residing in the member's household at the time of the  
63 member's death; or

64 (2) Any unmarried child under age 23:

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

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

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

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

72 (q) "Disability service" means service credit received by a member, expressed in whole  
73 years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both,

74 during which time a member receives disability benefits under §7-14D-14 or §7-14D-15 of this  
75 code.

76 (r) "Early retirement age" means age 40 or over and completion of 20 years of service.

77 (s) "Employer error" means an omission, misrepresentation, or violation of relevant  
78 provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant  
79 provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the  
80 participating public employer that has resulted in an underpayment or overpayment of  
81 contributions required. A deliberate act contrary to the provisions of this section by a participating  
82 public employer does not constitute employer error.

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

84 (u) "Final average salary" means the average of the highest annual compensation  
85 received for covered employment by the member during any five consecutive plan years within  
86 the member's last 10 years of service. If the member did not have annual compensation for the  
87 five full plan years preceding the member's attainment of normal retirement age and during that  
88 period the member received disability benefits under §7-14D-14 or §7-14D-15 of this code then  
89 "final average salary" means the average of the monthly salary determined paid to the member  
90 during that period as determined under §7-14D-17 of this code multiplied by 12.

91 (v) "Fund" means the West Virginia Deputy Sheriff Retirement Fund created pursuant to  
92 §7-14D-6 of this code.

93 (w) "Hour of service" means:

94 (1) Each hour for which a member is paid or entitled to payment for covered employment  
95 during which time active duties are performed. These hours shall be credited to the member for  
96 the plan year in which the duties are performed; and

97 (2) Each hour for which a member is paid or entitled to payment for covered employment  
98 during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity  
99 including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof

100 and without regard to whether the employment relationship has terminated. Hours under this  
101 paragraph shall be calculated and credited pursuant to West Virginia Division of Labor rules. A  
102 member will not be credited with any hours of service for any period of time he or she is receiving  
103 benefits under §7-14D-14 or §7-14D-15 of this code; and

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

109 (x) "Member" means a person first hired as a deputy sheriff after the effective date of this  
110 article, as defined in subdivision (t) of this section, or a deputy sheriff first hired prior to the effective  
111 date and who elects to become a member pursuant to §7-14D-5 or §7-14D-17 of this code. A  
112 member shall remain a member until the benefits to which he or she is entitled under this article  
113 are paid or forfeited or until cessation of membership pursuant to §7-14D-5 of this code.

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

116 (z) "Normal form" means a monthly annuity which is one twelfth of the amount of the  
117 member's accrued benefit which is payable for the member's life. If the member dies before the  
118 sum of the payments he or she receives equals his or her accumulated contributions on the  
119 annuity starting date, the named beneficiary shall receive in one lump sum the difference between  
120 the accumulated contributions at the annuity starting date and the total of the retirement income  
121 payments made to the member.

122 (aa) "Normal retirement age" means the first to occur of the following: (1) Attainment of  
123 age 50 years and the completion of 20 or more years of service; (2) while still in covered  
124 employment, attainment of at least age 50 years, and when the sum of current age plus years of  
125 service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least

126 age 60 years, and completion of five years of service; or (4) attainment of age 62 years and  
127 completion of five or more years of service.

128 (bb) "Partially disabled" means a member's inability to engage in the duties of deputy  
129 sheriff by reason of any medically determinable physical or mental impairment that can be  
130 expected to result in death or that has lasted or can be expected to last for a continuous period  
131 of not less than 12 months. A member may be determined partially disabled for the purposes of  
132 this article and maintain the ability to engage in other gainful employment. ~~which exists within the~~  
133 ~~state but which ability would not enable him or her to earn an amount at least equal to two thirds~~  
134 ~~of the average annual compensation earned by all active members of this plan during the plan~~  
135 ~~year ending as of the most recent June 30, as of which plan data has been assembled and used~~  
136 ~~for the actuarial valuation of the plan~~

137 (cc) "Public Employees Retirement System" means the West Virginia Public Employees  
138 Retirement System created by §5-10-1 *et seq.* of this code.

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

141 (ee) "Plan year" means the 12-month period commencing on July 1 of any designated  
142 year and ending the following June 30.

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

148 (gg) "Regular interest" means the rate or rates of interest per annum, compounded  
149 annually, as the board adopts in accordance with the provisions of this article.

150 (hh) "Required beginning date" means April 1 of the calendar year following the later of:

151 (i) The calendar year in which the member attains age 70 and one half; or (ii) the calendar year

152 in which he or she retires or otherwise separates from covered employment.

153 (ii) "Retire" or "retirement" means a member's withdrawal from the employ of a  
154 participating public employer and the commencement of an annuity by the plan.

155 (jj) "Retirement income payments" means the annual retirement income payments payable  
156 under the plan.

157 (kk) "Spouse" means the person to whom the member is legally married on the annuity  
158 starting date.

159 (ll) "Surviving spouse" means the person to whom the member was legally married at the  
160 time of the member's death and who survived the member.

161 (mm) "Totally disabled" means a member's inability to engage in substantial gainful activity  
162 by reason of any medically determined physical or mental impairment that can be expected to  
163 result in death or that has lasted or can be expected to last for a continuous period of not less  
164 than 12 months. For purposes of this subdivision:

165 (1) A member is totally disabled only if his or her physical or mental impairment or  
166 impairments are so severe that he or she is not only unable to perform his or her previous work  
167 as a deputy sheriff but also cannot, considering his or her age, education and work experience,  
168 engage in any other kind of substantial gainful employment which exists in the state regardless  
169 of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific  
170 job vacancy exists; or (C) the member would be hired if he or she applied for work.

171 (2) "Physical or mental impairment" is an impairment that results from an anatomical,  
172 physiological, or psychological abnormality that is demonstrated by medically accepted clinical  
173 and laboratory diagnostic techniques. A member's receipt of Social Security disability benefits  
174 creates a rebuttable presumption that the member is totally disabled for purposes of this plan.  
175 Substantial gainful employment rebuts the presumption of total disability.

176 (nn) "Year of service". — A member shall, except in his or her first and last years of covered  
177 employment, be credited with year of service credit based upon the hours of service performed



178 as covered employment and credited to the member during the plan year based upon the following  
179 schedule:

180	Hours of Service	Years of Service Credited
181	Less than 500	0
182	500 to 999	1/3
183	1,000 to 1,499	2/3
184	1,500 or more	1

185 During a member's first and last years of covered employment, the member shall be  
186 credited with one twelfth of a year of service for each month during the plan year in which the  
187 member is credited with an hour of service. A member is not entitled to credit for years of service  
188 for any time period during which he or she received disability payments under §7-14D-14 or §7-  
189 14D-15 of this code. Except as specifically excluded, years of service include covered  
190 employment prior to the effective date. Years of service which are credited to a member prior to  
191 his or her receipt of accumulated contributions upon termination of employment pursuant to §7-  
192 14D-13 or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the  
193 member repays the accumulated contributions with interest pursuant to §7-14D-13 of this code  
194 or had prior to the effective date made the repayment pursuant to §5-10-18 of this code.

NOTE: The purpose of this bill is to permit partially disabled deputy sheriffs to engage in other gainful employment without limiting earnings.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.