

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2493

By Delegate Pinson

[Introduced January 11, 2023; Referred to the
Committee on Pensions and Retirement then
Finance]

1 A BILL to amend and reenact §7-14D-2 and §7-14D-14 of the Code of West Virginia, 1931, as
 2 amended; and to amend and reenact §7-14E-2 of said code, all relating to providing
 3 increased benefits for retired sheriff's deputies; adjusting the percentage factor for
 4 members retired after July 1, 2018; increasing the benefit amount for totally disabled
 5 retirees; and authorizing the increase of certain fees, paid by the county, for deposit into
 6 the Deputy Sheriff Retirement Fund.

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~~ three quarters percent of the member's final average salary multiplied by the
 7 member's years of credited service. A member's accrued benefit may not exceed the limits of
 8 Section 415 of the Internal Revenue Code and is subject to the provisions of §7-14D-9a of this
 9 code.

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

14 (c) "Active member" means a member who is active and contributing to the plan.

15 (d) "Active military duty" means full-time active duty with any branch of the armed forces of
 16 the United States, including service with the National Guard or reserve military forces when the
 17 member has been called to active full-time duty and has received no compensation during the

18 period of that duty from any board or employer other than the armed forces.

19 (e) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the
20 mortality table and interest rates as set and adopted by the retirement board in accordance with
21 the provisions of this article: *Provided*, That when used in the context of compliance with the
22 federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial
23 equivalent" shall be computed using the mortality tables and interest rates required to comply with
24 those requirements.

25 (f) "Annual compensation" means the wages paid to the member during covered
26 employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined
27 without regard to any rules that limit the remuneration included in wages based upon the nature or
28 location of employment or services performed during the plan year plus amounts excluded under
29 Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense
30 allowances, cash, or noncash fringe benefits or both, deferred compensation, and welfare
31 benefits. Annual compensation for determining benefits during any determination period may not
32 exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-
33 10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

34 (g) "Annual leave service" means accrued annual leave.

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

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

41 (j) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity
42 or other benefit payable by the plan.

43 (k) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-

44 1 *et seq.* of this code.

45 (l) "County commission" has the meaning ascribed to it in §7-1-1 of this code.

46 (m) "Covered employment" means either: (1) Employment as a deputy sheriff and the
47 active performance of the duties required of a deputy sheriff; (2) the period of time which active
48 duties are not performed but disability benefits are received under §7-14D-14 or §7-14D-15 of this
49 code; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or her
50 employment as a deputy sheriff where the secondary employment requires the deputy sheriff to be
51 a member of another retirement system which is administered by the Consolidated Public
52 Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the deputy sheriff
53 contributes to the fund created in §7-14D-6 of this code the amount specified as the deputy
54 sheriff's contribution in §7-14D-7 of this code.

55 (n) "Credited service" means the sum of a member's years of service, active military duty,
56 disability service, unused annual leave service, and unused sick leave service.

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

59 (p) "Dependent child" means either:

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

61 (A) A natural child of the member;

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

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

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

67 (2) Any unmarried child under age 23:

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

69 (B) Who was claimed as a dependent by the member for federal income tax purposes at

70 the time of the member's death; and

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

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

75 (r) "Disability service" means service credit received by a member, expressed in whole
76 years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both,
77 during which time a member receives disability benefits under §7-14D-14 or §7-14D-15 of this
78 code.

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

80 (t) "Employer error" means an omission, misrepresentation, or deliberate act in violation of
81 relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the
82 relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by
83 the participating public employer that has resulted in an underpayment or overpayment of
84 contributions required.

85 (u) "Effective date" means July 1, 1998.

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

93 (w) "Fund" means the West Virginia Deputy Sheriff Retirement Fund created pursuant to
94 §7-14D-6 of this code.

95 (x) "Hour of service" means:

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

99 (2) Each hour for which a member is paid or entitled to payment for covered employment
100 during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity
101 including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof and
102 without regard to whether the employment relationship has terminated. Hours under this
103 paragraph shall be calculated and credited pursuant to West Virginia Division of Labor rules. A
104 member will not be credited with any hours of service for any period of time he or she is receiving
105 benefits under §7-14D-14 or §7-14D-15 of this code; and

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

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

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

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

122 the accumulated contributions at the annuity starting date and the total of the retirement income
123 payments made to the member.

124 (bb) "Normal retirement age" means the first to occur of the following: (1) Attainment of age
125 50 years and the completion of 20 or more years of service; (2) while still in covered employment,
126 attainment of at least age 50 years, and when the sum of current age plus years of service equals
127 or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years,
128 and completion of five years of service; or (4) attainment of age 62 years and completion of five or
129 more years of service.

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

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

141 (ee) "Plan" means the West Virginia Deputy Sheriff Death, Disability, and Retirement Plan
142 established by this article.

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

145 (gg) "Qualified public safety employee" means any employee of a participating state or
146 political subdivision who provides police protection, fire-fighting services, or emergency medical
147 services for any area within the jurisdiction of the state or political subdivision, or such other

148 meaning given to the term by section 72(t)(10)(B) of the Internal Revenue Code or by Treasury
149 Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

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

152 (ii) "Required beginning date" means April 1 of the calendar year following the later of: (i)
153 The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if
154 born after June 30, 1949); or (ii) the calendar year in which he or she retires or otherwise separates
155 from covered employment.

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

158 (kk) "Retirement income payments" means the annual retirement income payments
159 payable under the plan.

160 (ll) "Spouse" means the person to whom the member is legally married on the annuity
161 starting date.

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

164 (nn) "Totally disabled" means a member's inability to engage in substantial gainful activity
165 by reason of any medically determined physical or mental impairment that can be expected to
166 result in death or that has lasted or can be expected to last for a continuous period of not less than
167 12 months. For purposes of this subdivision:

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

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

179 (oo) "Year of service". — A member shall, except in his or her first and last years of covered
 180 employment, be credited with year of service credit based upon the hours of service performed as
 181 covered employment and credited to the member during the plan year based upon the following
 182 schedule:

183 Hours of Service	Years of Service Credited
184 Less than 500	0
185 500 to 999	1/3
186 1,000 to 1,499	2/3
187 1,500 or more	1

188 During a member's first and last years of covered employment, the member shall be
 189 credited with one-twelfth of a year of service for each month during the plan year in which the
 190 member is credited with an hour of service. A member is not entitled to credit for years of service
 191 for any time period during which he or she received disability payments under §7-14D-14 or §7-
 192 14D-15 of this code. Except as specifically excluded, years of service include covered
 193 employment prior to the effective date. Years of service which are credited to a member prior to his
 194 or her receipt of accumulated contributions upon termination of employment pursuant to §7-14D-
 195 13 or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the
 196 member repays the accumulated contributions with interest pursuant to §7-14D-13 of this code or
 197 had prior to the effective date made the repayment pursuant to §5-10-18 of this code.

§7-14D-14. Awards and benefits for disability – duty related.

1 (a) Any member who after the effective date of this article and during covered employment:

2 (1) Has been or becomes either totally or partially disabled by injury, illness, or disease;
3 and

4 (2) The disability is a result of an occupational risk or hazard inherent in or peculiar to the
5 services required of members; or

6 (3) The disability was incurred while performing law-enforcement functions during either
7 scheduled work hours or at any other time; and

8 (4) In the opinion of the board, the member is by reason of the disability unable to perform
9 adequately the duties required of a deputy sheriff, is entitled to receive and shall be paid from the
10 fund in monthly installments the compensation under either subsection (b) or (c) of this section.

11 (b) If the member is totally disabled, the member shall receive 90 percent of his or her
12 average full monthly compensation for the 12-month contributory period preceding the member's
13 disability award, or the shorter period if the member has not worked 12 months. Any member
14 retired under this subsection, or under §7-14D-17 of this code, on or before July 1, 2020, shall
15 have his or her monthly benefit payment increased by ~~\$400~~ \$600.

16 (c) If the member is partially disabled, the member shall receive 45 percent of his or her
17 average full monthly compensation for the 12-month contributory period preceding the member's
18 disability award, or the shorter period if the member has not worked 12 months.

19 (d) If the member remains partially disabled until attaining 60 years of age, the member
20 shall then receive the retirement benefit provided in §7-14D-11 and §7-14D-12 of this code.

21 (e) The disability benefit payments will begin the first day of the month following termination
22 of employment and receipt of the disability retirement application by the Consolidated Public
23 Retirement Board.

**ARTICLE 14E. ESTABLISHMENT OF CERTAIN FEES; DEDICATION OF FEE TO
DEPUTY SHERIFF'S RETIREMENT SYSTEM.**

§7-14E-2. Statewide uniform fees for reports generated by sheriff's offices; dedication of

fees.

1 (a) The county commission of each county in this state shall set a fee for obtaining certain
2 reports. This fee shall be set at a minimum of ~~\$10~~ \$20 for each report, with a maximum of ~~\$20~~ \$30
3 for each report. ~~\$10~~ \$20 of the charge for each report shall be deposited into the Deputy Sheriff
4 Retirement Fund created in §7-14D-6 of this code. The reports for which a charge may be made
5 are traffic accident reports, criminal investigation reports, incident reports and property reports.

6 (b) All sheriff's offices in this state shall collect a fee of ~~\$5~~ \$10 for performing the following
7 services: Adult private employment fingerprinting; fingerprinting for federal firearm permits; motor
8 vehicle number identification; adult identification cards; and photo-identification cards. Upon
9 collection, these fees shall be deposited into the Deputy Sheriff Retirement Fund created in §7-
10 14D-6 of this code.

11 (c) All sheriff's offices in this state shall collect a fee of ~~\$5~~ \$10 for each nongovernmental
12 background investigation report. Upon collection, these fees shall be deposited into the Deputy
13 Sheriff Retirement Fund created in §7-14D-6 of this code.

14 (d) No charge may be made under this section for any report or reports made to
15 governmental agencies.

16 (e) Any county commission which fails to make any payment due the Deputy Sheriff
17 Retirement Fund by the fifteenth day following the end of each calendar month in which a fee or
18 other contribution is received by the county's sheriff may be required to pay the actuarial rate of
19 interest lost on the total amount owed for each day the payment is delinquent. Accrual of the loss
20 of earnings owed by the delinquent county commission commences after the fifteenth day
21 following the end of the calendar month in which the fee or other contribution is due and continues
22 until receipt of the delinquent amount. Interest compounds daily and the minimum surcharge is
23 \$50.

NOTE: The purpose of this bill is to increase certain fees collected by county sheriffs and

add these increased amounts to the Deputy Sheriff Retirement Fund to provide modest increases in benefits for retired deputies.

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