

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2863**

5 (By Delegates Pethtel, Givens, Ennis, Canterbury,  
6 Duke, Guthrie and D. Poling)

7  
8 [Passed March 10, 2011; in effect ninety days from passage.]  
9

10 AN ACT to amend and reenact §15-2-31 of the Code of West Virginia,  
11 1931, as amended; and to amend and reenact §15-2A-11 of said  
12 code, all relating to State Police; providing for payment of  
13 medical costs of physical disability and/or mental disability  
14 examinations approved by the Consolidated Public Retirement  
15 Board under the State Police Death, Disability and Retirement  
16 plan and the West Virginia State Police Retirement System;  
17 providing for reinstatement to active duty under certain  
18 conditions of formerly disabled State Police officers  
19 considered no longer disabled from law enforcement work; and  
20 providing that a former disability retirant reinstated to  
21 active duty with the State Police shall rejoin the retirement  
22 system in which originally enrolled with restoration of  
23 credited service in force at the time of disability  
24 retirement.

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

26 That §15-2-31 of the Code of West Virginia, 1931, as amended,

1 be amended and reenacted; and that §15-2A-11 of said code be  
2 amended and reenacted, all to read as follows:

3 **ARTICLE 2. WEST VIRGINIA STATE POLICE.**

4 **§15-2-31. Disability physical examinations; termination.**

5 (a) The board may require any retirant who has been retired  
6 with compensation on account of disability to submit to a physical  
7 and/or mental examination by a physician or physicians selected or  
8 approved by the board and a report of the findings of the physician  
9 or physicians shall be submitted in writing to the board for its  
10 consideration. All medical costs associated with the examination  
11 shall be paid by the fund. If, from the report or from the report  
12 and hearing on the report, the board is of the opinion and finds  
13 that the disabled retirant has recovered from the disability to the  
14 extent that he or she is able to perform adequately the duties of  
15 a law-enforcement officer, the board shall within five working  
16 days provide written notice of the finding to the Superintendent of  
17 State Police, who shall reinstate the retirant to active duty as a  
18 member of the department at his or her rank or classification prior  
19 to the disability retirement within forty-five days of the finding,  
20 unless the retirant declines to be reinstated, is found by a  
21 background check to be ineligible for reinstatement, or is found by  
22 the Superintendent to be unacceptable due to the retirant's  
23 performance history and evaluations during prior work with the  
24 department. The Superintendent shall promptly notify the Board  
25 when the retirant is reinstated, is found ineligible for  
26 reinstatement due to a background check or unacceptable prior

1 performance history or evaluations, or refuses reinstatement. The  
2 board shall order disability payments from the fund to be  
3 terminated at the earlier of the date of the retirant's  
4 reinstatement, regular retirement, failure of a background check,  
5 finding of unacceptable prior performance history or evaluation  
6 with the department, failure to accept reinstatement or forty-five  
7 days from the board's finding. If, from the report or the report  
8 and hearing on the report, the board is of the opinion and finds  
9 that the disabled retirant has recovered from his or her previously  
10 determined probable permanent disability to the extent that he or  
11 she is able to engage in gainful employment but remains unable to  
12 adequately perform the duties of a law-enforcement officer, the  
13 board shall order the payment, in monthly installments of an amount  
14 equal to two thirds of the salary, in the case of a retirant  
15 retired under the provisions of section twenty-nine of this article  
16 or equal to one half of the salary, in the case of a retirant  
17 retired under the provisions of section thirty of this article,  
18 excluding any compensation paid for overtime service, for the  
19 twelve-month employment period immediately preceding the disability  
20 award: *Provided*, That if the retirant had not been employed with  
21 the fund for twelve months immediately prior to the disability  
22 award, the amount of monthly salary shall be annualized for the  
23 purpose of determining the benefit.

24 (b) A disability retirant who is returned to active duty as  
25 a member of the West Virginia State Police shall again become a  
26 member of the retirement system in which he or she was originally

1 enrolled and the retirant's credited service in force at the time  
2 of retirement shall be restored.

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

4 **§15-2A-11. Same -- Physical examinations; termination.**

5 (a) The board may require any disabled retirant to submit to  
6 a physical or mental examination or both a physical and mental  
7 examination by a physician or physicians selected or approved by  
8 the board and the physician or physicians shall submit a report of  
9 the findings of the physician or physicians in writing to the board  
10 for its consideration. All medical costs associated with the  
11 examination shall be paid by the fund. If from the report, or from  
12 the report and hearing on the report, the board is of the opinion  
13 and finds that the disabled retirant has recovered from the  
14 disability to the extent that he or she is able to perform  
15 adequately the duties of a law-enforcement officer, the board shall  
16 within five working days provide written notice of the finding to  
17 the Superintendent of State Police, who shall reinstate the  
18 retirant to active duty as a member of the department at his or her  
19 rank or classification prior to the disability retirement within  
20 forty-five days of the finding, unless the retirant declines to be  
21 reinstated, is found by a background check to be ineligible for  
22 reinstatement, or is found by the Superintendent to be unacceptable  
23 due to the retirant's performance history and evaluations during  
24 prior work with the department. The Superintendent shall promptly  
25 notify the board when the retirant is reinstated, is found  
26 ineligible for reinstatement due to a background check or

1 unacceptable prior performance history or evaluations, or refuses  
2 reinstatement. The board shall order disability payments from the  
3 fund to be terminated at the earlier of the date of the retirant's  
4 reinstatement, regular retirement, failure of a background check,  
5 finding of unacceptable prior performance history or evaluation  
6 with the department, failure to accept reinstatement or forty-five  
7 days from the board's finding. If from the report, or the report  
8 and hearing on the report, the board is of the opinion and finds  
9 that the disabled retirant has recovered from his or her previously  
10 determined probable permanent disability to the extent that he or  
11 she is able to engage in any gainful employment, but unable to  
12 adequately perform the duties of a law-enforcement officer, the  
13 board shall order, in the case of a disabled retirant receiving  
14 benefits under the provisions of section nine of this article, that  
15 the disabled retirant be paid annually from the fund an amount  
16 equal to six tenths of the base salary paid to the retirant in the  
17 last full twelve-month employment period. The board shall order, in  
18 the case of a disabled retirant receiving benefits under the  
19 provisions of section ten of this article, that the disabled  
20 retirant be paid from the fund an amount equal to one fourth of the  
21 base salary paid to the retirant in the last full twelve-month  
22 employment period: *Provided*, That if the retirant had not been  
23 employed with the agency for twelve full months prior to the  
24 disability, the amount of monthly salary shall be annualized for  
25 the purpose of determining the benefit.

26 (b) A disability retirant who is returned to active duty as a

1 member of the West Virginia State Police shall again become a  
2 member of the retirement system in which he or she was originally  
3 enrolled and the retirant's credited service in force at the time  
4 of retirement shall be restored.