

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2863**

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

6 (Originating in the Committee on Finance)

7 [February 18, 2011]

8
9

10 A BILL 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 cause all costs incident to the~~
9 ~~examination including hospital, laboratory, X-ray, medical and~~
10 ~~physicians' fees to be paid out of funds appropriated to defray the~~
11 ~~current expense of the agency~~ and a report of the findings of the
12 physician or physicians shall be submitted in writing to the board
13 for its consideration. All medical costs associated with the
14 examination shall be paid by the fund. If, from the report or from
15 the report and hearing on the report, the board is of the opinion
16 and finds that the disabled retirant has recovered from the
17 disability to the extent that he or she is able to perform
18 adequately the duties of a law-enforcement officer, ~~the board shall~~
19 ~~order that all payments from the fund to that disabled retirant be~~
20 ~~terminated~~ the board shall within five working days provide
21 written notice of the finding to the Superintendent of State
22 Police, who shall reinstate the retirant to active duty as a member
23 of the department at his or her rank or classification prior to the
24 disability retirement within forty-five days of the finding, unless
25 the retirant declines to be reinstated, is found by a background
26 check to be ineligible for reinstatement, or is found by the

1 Superintendent to be unacceptable due to the retirant's performance
2 history and evaluations during prior work with the department. The
3 Superintendent shall promptly notify the Board when the retirant is
4 reinstated, is found ineligible for reinstatement due to a
5 background check or unacceptable prior performance history or
6 evaluations, or refuses reinstatement. The board shall order
7 disability payments from the fund to be terminated at the earlier
8 of the date of the retirant's reinstatement, regular retirement,
9 failure of a background check, finding of unacceptable prior
10 performance history or evaluation with the department, failure to
11 accept reinstatement or forty-five days from the board's finding.

12 If, from the report or the report and hearing on the report, the
13 board is of the opinion and finds that the disabled retirant has
14 recovered from his or her previously determined probable permanent
15 disability to the extent that he or she is able to engage in
16 gainful employment but remains unable to adequately perform the
17 duties of a law-enforcement officer, the board shall order the
18 payment, in monthly installments of an amount equal to two thirds
19 of the salary, in the case of a retirant retired under the
20 provisions of section twenty-nine of this article or equal to one
21 half of the salary, in the case of a retirant retired under the
22 provisions of section thirty of this article, excluding any
23 compensation paid for overtime service, for the twelve-month
24 employment period immediately preceding the disability award:

25 *Provided*, That if the retirant had not been employed with the fund
26 for twelve months immediately prior to the disability award, the

1 amount of monthly salary shall be annualized for the purpose of
2 determining the benefit.

3 (b) A disability retirant who is returned to active duty as
4 a member of the West Virginia State Police shall again become a
5 member of the retirement system in which he or she was originally
6 enrolled and the retirant's credited service in force at the time
7 of retirement shall be restored.

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

9 **§15-2A-11. Same -- Physical examinations; termination.**

10 (a) The board may require any disabled retirant to submit to
11 a physical or mental examination or both a physical and mental
12 examination by a physician or physicians selected or approved by
13 the board and cause all costs incident to the examination,
14 including hospital, laboratory, X-ray, medical and physicians'
15 fees, to be paid out of funds appropriated to defray the current
16 expenses of the agency, and the physician or physicians shall
17 submit a report of the findings of the physician or physicians in
18 writing to the board for its consideration. All medical costs
19 associated with the examination shall be paid by the fund. If from
20 the report, or from the report and hearing on the report, the board
21 is of the opinion and finds that the disabled retirant has
22 recovered from the disability to the extent that he or she is able
23 to perform adequately the duties of a law-enforcement officer, the
24 board shall order that all payments from the fund to that disabled
25 retirant be terminated the board shall within five working days
26 provide written notice of the finding to the Superintendent of

1 State Police, who shall reinstate the retirant to active duty as a
2 member of the department at his or her rank or classification prior
3 to the disability retirement within forty-five days of the finding,
4 unless the retirant declines to be reinstated, is found by a
5 background check to be ineligible for reinstatement, or is found by
6 the Superintendent to be unacceptable due to the retirant's
7 performance history and evaluations during prior work with the
8 department. The Superintendent shall promptly notify the board
9 when the retirant is reinstated, is found ineligible for
10 reinstatement due to a background check or unacceptable prior
11 performance history or evaluations, or refuses reinstatement. The
12 board shall order disability payments from the fund to be
13 terminated at the earlier of the date of the retirant's
14 reinstatement, regular retirement, failure of a background check,
15 finding of unacceptable prior performance history or evaluation
16 with the department, failure to accept reinstatement or forty-five
17 days from the board's finding. If from the report, or the report
18 and hearing on the report, the board is of the opinion and finds
19 that the disabled retirant has recovered from his or her previously
20 determined probable permanent disability to the extent that he or
21 she is able to engage in any gainful employment, but unable to
22 adequately perform the duties of a law-enforcement officer, the
23 board shall order, in the case of a disabled retirant receiving
24 benefits under the provisions of section nine of this article, that
25 the disabled retirant be paid annually from the fund an amount
26 equal to six tenths of the base salary paid to the retirant in the

1 last full twelve-month employment period. The board shall order, in
2 the case of a disabled retirant receiving benefits under the
3 provisions of section ten of this article, that the disabled
4 retirant be paid from the fund an amount equal to one fourth of the
5 base salary paid to the retirant in the last full twelve-month
6 employment period: *Provided*, That if the retirant had not been
7 employed with the agency for twelve full months prior to the
8 disability, the amount of monthly salary shall be annualized for
9 the purpose of determining the benefit.

10 (b) A disability retirant who is returned to active duty as a
11 member of the West Virginia State Police shall again become a
12 member of the retirement system in which he or she was originally
13 enrolled and the retirant's credited service in force at the time
14 of retirement shall be restored.