

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 259**

4 (By Senator Foster)

5 \_\_\_\_\_  
6 [Originating in the Committee on Pensions;  
7 reported February 8, 2011.]  
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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 within forty-five days of the finding, unless the  
24 retirant declines to be reinstated, is found by a background check  
25 to be ineligible for reinstatement, or is found by the

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

1 for the purpose of determining the benefit.

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

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

8 **§15-2A-11. Same -- Physical examinations; termination.**

9 (a) The board may require any disabled retirant to submit to  
10 a physical or mental examination or both a physical and mental  
11 examination by a physician or physicians selected or approved by  
12 the board and cause all costs incident to the examination,  
13 including hospital, laboratory, X-ray, medical and physicians'  
14 fees, to be paid out of funds appropriated to defray the current  
15 expenses of the agency, and the physician or physicians shall  
16 submit a report of the findings of the physician or physicians in  
17 writing to the board for its consideration. All medical costs  
18 associated with the examination shall be paid by the fund. If from  
19 the report, or from the report and hearing on the report, the board  
20 is of the opinion and finds that the disabled retirant has  
21 recovered from the disability to the extent that he or she is able  
22 to perform adequately the duties of a law-enforcement officer, the  
23 board shall order that all payments from the fund to that disabled  
24 retirant be terminated the board shall within five working days  
25 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 within forty-five days of the finding,  
3 unless the retirant declines to be reinstated, is found by a  
4 background check to be ineligible for reinstatement, or is found by  
5 the Superintendent to be unacceptable due to the retirant's  
6 performance evaluations during prior work with the department. The  
7 Superintendent shall promptly notify the board when the retirant is  
8 reinstated, is found ineligible for reinstatement due to a  
9 background check or unacceptable prior performance evaluations, or  
10 refuses reinstatement. The board shall order disability payments  
11 from the fund to be terminated at the earlier of the date of the  
12 retirant's reinstatement, regular retirement, failure of a  
13 background check, finding of unacceptable prior performance  
14 evaluation with the department, failure to accept reinstatement or  
15 forty-five days from the board's finding. If from the report, or  
16 the report and hearing on the report, the board is of the opinion  
17 and finds that the disabled retirant has recovered from his or her  
18 previously determined probable permanent disability to the extent  
19 that he or she is able to engage in any gainful employment, but  
20 unable to adequately perform the duties of a law-enforcement  
21 officer, the board shall order, in the case of a disabled retirant  
22 receiving benefits under the provisions of section nine of this  
23 article, that the disabled retirant be paid annually from the fund  
24 an amount equal to six tenths of the base salary paid to the  
25 retirant in the last full twelve-month employment period. The board  
26 shall order, in the case of a disabled retirant receiving benefits

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

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