

H. B. 2480

(By Delegates Ennis, Williams, Swartzmiller,
Cann, Michael and Kominar)

[Introduced January 14, 2011; referred to the
Committee on Pensions and Retirement then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §7-14D-2 of the Code of West Virginia,
1931, as amended, relating to changing the definition of final
average salary to thirty-six consecutive months rather than
five consecutive years for calculating retirement.

Be it enacted by the Legislature of West Virginia:

That §7-14D-2 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.

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

(a) "Accrued benefit" means on behalf of any member two and
one-quarter percent of the member's final average salary multiplied
by the member's years of credited service. A member's accrued
benefit may not exceed the limits of Section 415 of the Internal
Revenue Code and is subject to the provisions of section nine-a of

1 this article.

2 (b) "Accumulated contributions" means the sum of all amounts
3 deducted from the compensation of a member, or paid on his or her
4 behalf pursuant to article ten-c, chapter five of this code, either
5 pursuant to section seven of this article or section twenty-nine,
6 article ten, chapter five of this code as a result of covered
7 employment together with regular interest on the deducted amounts.

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

10 (d) "Active military duty" means full-time active duty with
11 any branch of the Armed Forces of the United States, including
12 service with the National Guard or reserve military forces when the
13 member has been called to active full-time duty and has received no
14 compensation during the period of that duty from any board or
15 employer other than the Armed Forces.

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

24 (f) "Annual compensation" means the wages paid to the member

1 during covered employment within the meaning of Section 3401(a) of
2 the Internal Revenue Code, but determined without regard to any
3 rules that limit the remuneration included in wages based upon the
4 nature or location of employment or services performed during the
5 plan year plus amounts excluded under Section 414(h)(2) of the
6 Internal Revenue Code and less reimbursements or other expense
7 allowances, cash or noncash fringe benefits or both, deferred
8 compensation and welfare benefits. Annual compensation for
9 determining benefits during any determination period may not exceed
10 the maximum compensation allowed as adjusted for cost of living in
11 accordance with section seven, article ten-d, chapter five of this
12 code and Section 401(a)(17) of the Internal Revenue Code.

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

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

19 (i) "Base salary" means a member's cash compensation exclusive
20 of overtime from covered employment during the last twelve months
21 of employment. Until a member has worked twelve months, annualized
22 base salary is used as base salary.

23 (j) "Board" means the Consolidated Public Retirement Board
24 created pursuant to article ten-d, chapter five of this code.

1 (k) "County commission" has the meaning ascribed to it in
2 section one, article one, chapter seven of this code.

3 (l) "Covered employment" means either: (1) Employment as a
4 deputy sheriff and the active performance of the duties required of
5 a deputy sheriff; or (2) the period of time which active duties are
6 not performed but disability benefits are received under section
7 fourteen or fifteen of this article; or (3) concurrent employment
8 by a deputy sheriff in a job or jobs in addition to his or her
9 employment as a deputy sheriff where the secondary employment
10 requires the deputy sheriff to be a member of another retirement
11 system which is administered by the Consolidated Public Retirement
12 Board pursuant to article ten-d, chapter five of this code:
13 *Provided*, That the deputy sheriff contributes to the fund created
14 in section six of this article the amount specified as the deputy
15 sheriff's contribution in section seven of this article.

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

19 (n) "Deputy sheriff" means an individual employed as a county
20 law-enforcement deputy sheriff in this state and as defined by
21 section two, article fourteen of this chapter.

22 (o) "Dependent child" means either:

23 (1) An unmarried person under age eighteen who is:

24 (A) A natural child of the member;

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

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

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

7 (2) Any unmarried child under age twenty-three:

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

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

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

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

17 (q) "Disability service" means service credit received by a
18 member, expressed in whole years, fractions thereof or both, equal
19 to one half of the whole years, fractions thereof or both, during
20 which time a member receives disability benefits under section
21 fourteen or fifteen of this article.

22 (r) "Early retirement age" means age forty or over and
23 completion of twenty years of service.

24 (s) "Employer error" means an omission, misrepresentation, or

1 violation of relevant provisions of the West Virginia Code or of
2 the West Virginia Code of State Regulations or the relevant
3 provisions of both the West Virginia Code and of the West Virginia
4 Code of State Regulations by the participating public employer that
5 has resulted in an underpayment or overpayment of contributions
6 required. A deliberate act contrary to the provisions of this
7 section by a participating public employer does not constitute
8 employer error.

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

10 (u) "Final average salary" means the average of the highest
11 annual compensation received for covered employment by the member
12 during any ~~five~~ thirty-six consecutive plan ~~years~~ months within the
13 member's last ten years of service. If the member did not have
14 annual compensation for the five full plan years preceding the
15 member's attainment of normal retirement age and during that period
16 the member received disability benefits under section fourteen or
17 fifteen of this article then "final average salary" means the
18 average of the monthly salary determined paid to the member during
19 that period as determined under section seventeen of this article
20 multiplied by twelve.

21 (v) "Fund" means the West Virginia Deputy Sheriff Retirement
22 Fund created pursuant to section six of this article.

23 (w) "Hour of service" means:

24 (1) Each hour for which a member is paid or entitled to

1 payment for covered employment during which time active duties are
2 performed. These hours shall be credited to the member for the
3 plan year in which the duties are performed; and

4 (2) Each hour for which a member is paid or entitled to
5 payment for covered employment during a plan year but where no
6 duties are performed due to vacation, holiday, illness, incapacity
7 including disability, layoff, jury duty, military duty, leave of
8 absence or any combination thereof and without regard to whether
9 the employment relationship has terminated. Hours under this
10 paragraph shall be calculated and credited pursuant to West
11 Virginia Division of Labor rules. A member will not be credited
12 with any hours of service for any period of time he or she is
13 receiving benefits under section fourteen or fifteen of this
14 article; and

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

23 (x) "Member" means a person first hired as a deputy sheriff
24 after the effective date of this article, as defined in subsection

1 (r) of this section, or a deputy sheriff first hired prior to the
2 effective date and who elects to become a member pursuant to
3 section five or seventeen of this article. A member shall remain
4 a member until the benefits to which he or she is entitled under
5 this article are paid or forfeited or until cessation of membership
6 pursuant to section five of this article.

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

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

17 (aa) "Normal retirement age" means the first to occur of the
18 following: (1) Attainment of age fifty years and the completion of
19 twenty or more years of service; (2) while still in covered
20 employment, attainment of at least age fifty years and when the sum
21 of current age plus years of service equals or exceeds seventy
22 years; (3) while still in covered employment, attainment of at
23 least age sixty years and completion of five years of service; or
24 (4) attainment of age sixty-two years and completion of five or

1 more years of service.

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

15 (cc) "Public Employees Retirement System" means the West
16 Virginia Public Employees Retirement System created by article ten,
17 chapter five of this code.

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

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

22 (ff) "Qualified public safety employee" means any employee of
23 a participating state or political subdivision who provides police
24 protection, firefighting services or emergency medical services for

1 any area within the jurisdiction of the state or political
2 subdivision, or such other meaning given to the term by Section
3 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation
4 §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

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

8 (hh) "Required beginning date" means April 1 of the calendar
9 year following the later of: (i) The calendar year in which the
10 member attains age seventy and one-half; or (ii) the calendar year
11 in which he or she retires or otherwise separates from covered
12 employment.

13 (ii) "Retirement income payments" means the annual retirement
14 income payments payable under the plan.

15 (jj) "Spouse" means the person to whom the member is legally
16 married on the annuity starting date.

17 (kk) "Surviving spouse" means the person to whom the member
18 was legally married at the time of the member's death and who
19 survived the member.

20 (ll) "Totally disabled" means a member's inability to engage
21 in substantial gainful activity by reason of any medically
22 determined physical or mental impairment that can be expected to
23 result in death or that has lasted or can be expected to last for
24 a continuous period of not less than twelve months. For purposes

1 of this subdivision:

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

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

19 (mm) "*Year of service*". -- A member shall, except in his or
20 her first and last years of covered employment, be credited with
21 year of service credit based upon the hours of service performed as
22 covered employment and credited to the member during the plan year
23 based upon the following schedule:

24	Hours of Service	Years of Service Credited
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1	Less than 500	0
2	500 to 999	1/3
3	1,000 to 1,499	2/3
4	1,500 or more	1

5 During a member's first and last years of covered employment,
6 the member shall be credited with one twelfth of a year of service
7 for each month during the plan year in which the member is credited
8 with an hour of service. A member is not entitled to credit for
9 years of service for any time period during which he or she
10 received disability payments under section fourteen or fifteen of
11 this article. Except as specifically excluded, years of service
12 include covered employment prior to the effective date. Years of
13 service which are credited to a member prior to his or her receipt
14 of accumulated contributions upon termination of employment
15 pursuant to section thirteen of this article or section thirty,
16 article ten, chapter five of this code, shall be disregarded for
17 all purposes under this plan unless the member repays the
18 accumulated contributions with interest pursuant to section
19 thirteen of this article or had prior to the effective date made
20 the repayment pursuant to section eighteen, article ten, chapter
21 five of this code.

NOTE: The purpose of this bill is to change the definition of final average salary to thirty-six consecutive months rather than five consecutive years for calculating retirement.

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