

1 **H. B. 4345**

2
3 (By Delegates Pethtel, Jones, Canterbury, Kump,
4 Craig, Lynch and Ellem)

5 [Introduced January 28, 2014; referred to the
6 Committee on Pensions and Retirement then Finance.]

7 **FISCAL**
8 **NOTE**

9
10 A BILL to amend and reenact §15-2A-2, §15-2A-5 and §15-2A-11a of
11 the Code of West Virginia, 1931, as amended, all relating to
12 the West Virginia State Police Retirement System; providing
13 definitions; removing the requirement to set the employer
14 contribution rate by legislative rule; requiring that a
15 disability retirant's annuity be terminated when the board
16 determines that the recipient has engaged in substantial
17 gainful activity; requiring that a partially disabled
18 retirant's annuity be terminated when they become employed as
19 a law-enforcement officer; and providing for reapplication of
20 disability retirement within ninety days of effective
21 termination; clarifying that application for regular
22 retirement benefits may be made by those terminated upon
23 meeting eligibility requirements.

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

2 That §15-2A-2, §15-2A-5 and §15-2A-11a of the Code of West
3 Virginia, 1931, as amended, be amended and reenacted, all to read
4 as follows:

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

6 **§15-2A-2. Definitions.**

7 As used in this article, unless the context clearly requires
8 a different meaning:

9 (1) "Accumulated contributions" means the sum of all amounts
10 deducted from base salary, together with four percent interest
11 compounded annually.

12 (2) "Active military duty" means full-time active duty with
13 the Armed Forces of the United States, namely, the United States
14 Air Force, Army, Coast Guard, Marines or Navy; and service with the
15 National Guard or reserve military forces of any of the Armed
16 Forces when the employee has been called to active full-time duty.

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

1 mortality tables and interest rates required to comply with those
2 requirements.

3 (4) "Agency" means the West Virginia State Police.

4 (5) "Base salary" means compensation paid to an employee
5 without regard to any overtime pay.

6 (6) "Beneficiary" means a surviving spouse or other surviving
7 beneficiary who is entitled to, or will be entitled to, an annuity
8 or other benefit payable by the fund.

9 (7) "Board" means the Consolidated Public Retirement Board
10 created pursuant to article ten-d, chapter five of this code.

11 (8) "Dependent child" means any unmarried child or children
12 born to or adopted by a member or retirant of the fund who:

13 (A) Is under the age of eighteen;

14 (B) After reaching eighteen years of age, continues as a full-
15 time student in an accredited high school, college, university,
16 business or trade school until the child or children reaches the
17 age of twenty-three years; or

18 (C) Is financially dependent on the member or retirant by
19 virtue of a permanent mental or physical disability upon evidence
20 satisfactory to the board.

21 (9) "Dependent parent" means the member's or retirant's parent
22 or stepparent claimed as a dependent by the member or retirant for
23 federal income tax purposes at the time of the member's or

1 retirant's death.

2 (10) "Employee" means any person regularly employed in the
3 service of the agency as a law-enforcement officer after ~~May~~ March
4 12, 1994, and who is eligible to participate in the fund.

5 (11) "Final average salary" means the average of the highest
6 annual compensation received for employment with the agency,
7 including compensation paid for overtime service, received by the
8 employee during any five calendar years within the employee's last
9 ten years of service: *Provided*, That annual compensation for
10 determining benefits during any determination period may not exceed
11 the maximum compensation allowed as adjusted for cost of living in
12 accordance with section seven, article ten-d, chapter five of this
13 code and Section 401(a)(17) of the Internal Revenue Code.

14 (12) "Fund", "plan", "system" or "retirement system" means the
15 West Virginia State Police Retirement Fund created and established
16 by this article.

17 (13) "Internal Revenue Code" means the Internal Revenue Code
18 of 1986, as amended.

19 (14) "Law-enforcement officer" means an individual employed or
20 otherwise engaged in either a public or private position which
21 involves the rendition of services relating to enforcement of
22 federal, state or local laws for the protection of public or
23 private safety, including, but not limited to, positions as deputy

1 sheriffs, police officers, marshals, bailiffs, court security
2 officers or any other law-enforcement position which requires
3 certification, but excluding positions held by elected sheriffs or
4 appointed chiefs of police whose duties are purely administrative
5 in nature.

6 (15) "Member" means any person who has contributions standing
7 to his or her credit in the fund and who has not yet entered into
8 retirement status.

9 (16) "Month of service" means each month for which an employee
10 is paid or entitled to payment for at least one hour of service for
11 which contributions were remitted to the fund. These months shall
12 be credited to the member for the calendar year in which the duties
13 are performed.

14 (17) "Partially disabled" means an employee's inability, on a
15 probable permanent basis, to perform the essential duties of a law-
16 enforcement officer by reason of any medically determinable
17 physical or mental impairment which has lasted or can be expected
18 to last for a continuous period of not less than twelve months, but
19 which impairment does not preclude the employee from engaging in
20 other types of nonlaw-enforcement employment.

21 (18) "Physical or mental impairment" means an impairment that
22 results from an anatomical, physiological or psychological
23 abnormality that is demonstrated by medically accepted clinical and

1 laboratory diagnostic techniques.

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

4 (20) "Qualified public safety employee" means any employee of
5 a participating state or political subdivision who provides police
6 protection, fire fighting services or emergency medical services
7 for any area within the jurisdiction of the state or political
8 subdivision, or such other meaning given to the term by Section
9 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation
10 §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

11 (21) "Required beginning date" means April 1 of the calendar
12 year following the later of: (a) The calendar year in which the
13 member attains age seventy and one-half years; or (b) the calendar
14 year in which he or she retires or otherwise separates from service
15 with the agency after having attained the age of seventy and one-
16 half years.

17 (22) "Retirant" or "retiree" means any member who commences an
18 annuity payable by the retirement system.

19 (23) "Salary" means the compensation of an employee, excluding
20 any overtime payments.

21 (24) "Surviving spouse" means the person to whom the member or
22 retirant was legally married at the time of the member's or
23 retirant's death and who survived the member or retirant.

1 (25) "Totally disabled" means an employee's probable permanent
2 inability to engage in substantial gainful activity by reason of
3 any medically determined physical or mental impairment that can be
4 expected to result in death or that has lasted or can be expected
5 to last for a continuous period of not less than twelve months.
6 For purposes of this subdivision, an employee is totally disabled
7 only if his or her physical or mental impairments are so severe
8 that he or she is not only unable to perform his or her previous
9 work as an employee of the agency, but also cannot, considering his
10 or her age, education and work experience, engage in any other kind
11 of substantial gainful employment which exists in the state
12 regardless of whether: (A) The work exists in the immediate area
13 in which the employee lives; (B) a specific job vacancy exists; or
14 (C) the employee would be hired if he or she applied for work.

15 (26) "Years of service" means the months of service acquired
16 by a member while in active employment with the agency divided by
17 twelve. Years of service shall be calculated in years and fraction
18 of a year from the date of active employment of the member with the
19 agency through the date of termination of employment or retirement
20 from the agency. If a member returns to active employment with the
21 agency following a previous termination of employment with the
22 agency and the member has not received a refund of contributions
23 plus interest for the previous employment under section eight of

1 this article, service shall be calculated separately for each
2 period of continuous employment and years of service shall be the
3 total service for all periods of employment. Years of service
4 shall exclude any periods of employment with the agency for which
5 a refund of contributions plus interest has been paid to the member
6 unless the employee repays the previous withdrawal, as provided in
7 section eight of this article, to reinstate the years of service.

8 **§15-2A-5. Employee contributions; employer contributions;**
9 **forfeitures.**

10 (a) There shall be deducted from the monthly payroll of each
11 employee and paid into the fund created pursuant to section four of
12 this article twelve percent of the amount of his or her salary:
13 *Provided*, That after July 1, 2008, if the ~~unfunded liability~~
14 funding percentage of the fund determined by the board falls below
15 the ninety percent threshold, then the employee rate of
16 contribution shall be increased to thirteen percent of the amount
17 of the employee's salary until the ninety percent or better funding
18 level is again achieved. Once that funding level is achieved the
19 employee contribution rate will be reduced to twelve percent.

20 (b) The State of West Virginia's contributions to the
21 retirement system, as determined by the board ~~by legislative rule~~
22 ~~promulgated in accordance with the provisions of article three,~~
23 ~~chapter twenty-nine-a of this code,~~ shall be a percent of the

1 employees' total annual base salary related to benefits under this
2 retirement system. In determining the amount, the board shall give
3 consideration to setting the amount at a sum equal to an amount
4 which, if paid annually by the state, will be sufficient to provide
5 for the total normal cost of the benefits expected to become
6 payable to all members and retirants and to amortize any unfunded
7 liability found by application of the actuarial funding method
8 chosen for that purpose by the board over a period of years
9 determined actuarially appropriate. ~~When proposing a rule for~~
10 ~~promulgation which relates to the amount of employer contribution,~~
11 ~~the board may promulgate emergency rules pursuant to the provisions~~
12 ~~of article three, chapter twenty-nine-a of this code if the~~
13 ~~inability of the board to increase state contributions will~~
14 ~~detrimentally affect the actuarial soundness of the retirement~~
15 ~~system. A signed statement from the state actuary shall accompany~~
16 ~~the statement of facts and circumstances constituting an emergency~~
17 ~~which shall be filed in the State Register. For purposes of this~~
18 ~~section, subdivision (2), subsection (b), section fifteen-a,~~
19 ~~article three, chapter twenty-nine-a of this code is not applicable~~
20 ~~to the Secretary of State's determination of whether an emergency~~
21 ~~rule should be approved. The state's contributions shall be paid~~
22 monthly into the fund created pursuant to section four of this
23 article out of the annual appropriation for the agency.

1 (c) Notwithstanding any other provisions of this article,
2 forfeitures under the system shall not be applied to increase the
3 benefits any member or retirant would otherwise receive under the
4 system.

5 **§15-2A-11a. Physical examinations of prospective members;**
6 **application for disability benefit;**
7 **determinations.**

8 (a) Not later than thirty days after an employee becomes a
9 member of the fund, the employer shall forward to the board a copy
10 of the physician's report of a physical examination which
11 incorporates the standards or procedures described in section
12 seven, article two, chapter fifteen of this code. A copy of the
13 physicians's report shall be placed in the employee's retirement
14 system file maintained by the board.

15 (b) Application for a disability benefit may be made by an
16 employee or, if the employee is under an incapacity, by a person
17 acting with legal authority on the employee's behalf. After
18 receiving an application for a disability benefit, the board shall
19 notify the superintendent of the agency that an application has
20 been filed: *Provided*, That when, in the judgment of the
21 superintendent, an employee is no longer physically or mentally fit
22 for continued duty as an employee of the agency and the employee
23 has failed or refused to make application for disability benefits

1 under this article, the superintendent may petition the board to
2 retire the employee on the basis of disability pursuant to
3 legislative rules proposed in accordance with article three,
4 chapter twenty-nine-a of this code. Within thirty days of the
5 superintendent's receipt of the notice from the board or the filing
6 of the superintendent's petition with the board, the superintendent
7 shall forward to the board a statement certifying the duties of the
8 employee's job description, information relating to the
9 superintendent's position on the work relatedness of the employee's
10 alleged disability, complete copies of the employee's medical file
11 and any other information requested by the board in its processing
12 of the application.

13 (c) The board shall propose legislative rules in accordance
14 with article three, chapter twenty-nine-a of this code relating to
15 the processing of applications and petitions for disability
16 retirement under this article.

17 (d) The board shall notify an employee and the superintendent
18 of its final action on the disability application or petition
19 within ten days of the board's final action. The notice shall be
20 sent by certified mail, return receipt requested. If either the
21 employee or the superintendent is aggrieved by the decision of the
22 board and intends to pursue judicial review of the board's decision
23 as provided in section four, article five, chapter twenty-nine-a of

1 this code, the party aggrieved shall notify the board within twenty
2 days of the employee's or superintendent's receipt of the board's
3 notice that they intend to pursue judicial review of the board's
4 decision.

5 (e) The board may require a disabled retirant to file an
6 annual statement of earnings and any other information required in
7 rules which may be adopted by the board. The board may waive the
8 requirement that a disabled retirant file the annual statement of
9 earnings if the board's physician certifies that the recipient's
10 disability is ongoing. The board shall annually examine the
11 information submitted by the disabled retirant. If a disabled
12 retirant refuses to file the statement or information, the
13 disability benefit shall be suspended until the statement and
14 information are filed.

15 (f) If after review of a disability retirant's annual
16 statement of earnings, tax records or other financial information,
17 as required or otherwise obtained by the board, the board
18 determines that earnings of the recipient of total disability
19 benefits in the preceding year are sufficient to show that the
20 recipient engaged in substantial gainful activity, the disability
21 retirant's disability annuity shall be terminated by the board,
22 upon recommendation of the board's disability review committee, on
23 the first day of the month following the board's action.

1 (g) If the board obtains information that a partially disabled
2 disability retirant is employed as a law-enforcement officer, the
3 disability retirant's disability annuity shall be terminated by the
4 board, upon recommendation of the board's disability review
5 committee, the first day of the month following the board's action.

6 (h) Any person who wishes to reapply for disability retirement
7 and whose disability retirement has been terminated by the board
8 pursuant to this section may do so within ninety days of the
9 effective date of termination: *Provided*, That any person reapplying
10 for disability benefits shall undergo an examination at the
11 applicant's expense by an appropriate medical professional selected
12 by the board as part of the reapplication process.

13 (i) Notwithstanding other provisions in this section, any
14 person whose disability retirement has been terminated by the board
15 pursuant to this section may apply for regular retirement benefits
16 upon meeting eligibility requirements of age and years of service.

NOTE: The purpose of this bill is to remove the requirement for the Consolidated Public Retirement Board to set the employer contribution rate by legislative rule; to require termination of a disability annuity when CPRB determines that the retirant has engaged in substantial gainful activity; to require termination of a disability annuity when a partially disabled retirant becomes employed as a law-enforcement officer; to provide for reapplication of disability retirement within 90 days of effective termination; to clarify that those who are terminated may apply for regular retirement benefits upon eligibility; and to make technical corrections in sections two and five of this article.

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