

HB# 4680

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

Com. Sub. For
HOUSE BILL No. 4680

(By Delegate *Browning*)



Passed *March 12* 1994

In Effect *From* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4680
(By DELEGATE BROWNING)

[Passed March 12, 1994; in effect from passage.]

AN ACT to amend and reenact sections twenty-six, twenty-seven, twenty-seven-a, twenty-nine, thirty, thirty-one, thirty-three, thirty-four and thirty-seven, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article two-a, all relating to the division of public safety death, disability and retirement fund; contributions to fund; retirement awards and benefits; benefits upon disability retirement; retirement annual annuity adjustments; benefits to dependents of a member; refunds of contributions to members upon discharge or resignation; deferred retirements; creating a new state police retirement system; providing for administration of the system; creating retirement fund; providing for payment of retirement benefits and annual adjustments thereto; providing for payments upon disability or death; providing for payments with interest upon withdrawal from system.

Be it enacted by the Legislature of West Virginia:

That sections twenty-six, twenty-seven, twenty-seven-a, twenty-nine, thirty, thirty-one, thirty-three, thirty-four and thirty-seven, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article two-a, all to read as follows:

ARTICLE 2. DIVISION OF PUBLIC SAFETY.

§15-2-26. Continuation of death, disability and retirement fund; designating the consolidated public retirement board as administrator of fund.

1 There shall be continued the death, disability and
2 retirement fund heretofore created for the benefit of
3 members of the division of public safety and any
4 dependent of a retired or deceased member thereof.

5 There shall be deducted from the monthly payroll of
6 each member of the division of public safety and paid
7 into such fund six percent of the amount of his or her
8 salary: *Provided*, That beginning on the first day of July,
9 one thousand nine hundred ninety-four, there shall be
10 deducted from the monthly payroll of each member and
11 paid into the fund seven and one-half percent of the
12 amount of his or her salary: *Provided, however*, That on
13 and after the first day of July, one thousand nine
14 hundred ninety-five, there shall be deducted from the
15 monthly payroll of each member and paid into the fund
16 nine percent of the amount of his or her salary. An
17 additional twelve percent of the monthly salary of each
18 member of the division shall be paid by the state of West
19 Virginia monthly into such fund out of the annual
20 appropriation for the division: *Provided further*, That
21 beginning on the first day of July, one thousand nine
22 hundred ninety-five, the state shall pay thirteen percent
23 of the monthly salary of each member into the fund: *And*
24 *provided further*, That beginning on the first day of July,
25 one thousand nine hundred ninety-six, the state shall
26 pay fourteen percent of the monthly salary of each
27 member into the fund: *And provided further*, That on
28 and after the first day of July, one thousand nine
29 hundred ninety-seven, the state shall pay fifteen percent
30 of the monthly salary of each member into the retire-
31 ment fund. There shall also be paid into the fund
32 amounts that have previously been collected by the
33 superintendent of the division of public safety on

34 account of payments to members for court attendance
35 and mileage, rewards for apprehending wanted persons,
36 fees for traffic accident reports and photographs, fees
37 for criminal investigation reports and photographs, fees
38 for criminal history record checks, fees for criminal
39 history record reviews and challenges or from any other
40 sources designated by the superintendent. All moneys
41 payable into the fund shall be deposited in the state
42 treasury, and the treasurer and auditor shall keep a
43 separate account thereof on their respective books.

44 The moneys in this fund, and the right of a member
45 to a retirement allowance, to the return of contributions,
46 or to any benefit under the provisions of this article, are
47 hereby exempt from any state or municipal tax; shall
48 not be subject to execution, garnishment, attachment or
49 any other process whatsoever; and shall be unassignable
50 except as is provided in this article.

51 The death, disability and retirement fund shall be
52 administered by the consolidated public retirement
53 board created pursuant to article ten-d, chapter five of
54 this code.

55 All moneys paid into and accumulated in the death,
56 disability and retirement fund, except such amounts as
57 shall be designated or set aside by the retirement board
58 for payments of death, disability and retirement benefits
59 and awards, shall be invested by the state board of
60 investments as provided by law.

§15-2-27. Retirement; awards and benefits.

1 (a) The retirement board shall retire any member of
2 the division of public safety when the member has both
3 attained the age of fifty-five years and completed
4 twenty-five years of service as a member of the division,
5 including military service credit granted under the
6 provisions of section twenty-eight of this article.

7 (b) The retirement board shall retire any member of
8 the division of public safety who has lodged with the
9 secretary of the consolidated public retirement board his
10 or her voluntary petition in writing for retirement, and:

11 (1) Has or shall have completed twenty-five years of

12 service as a member of the division (including military
13 service credit granted under the provisions of section
14 twenty-eight of this article);

15 (2) Has or shall have attained the age of fifty years
16 and has or shall have completed twenty years of service
17 as a member of the division (excluding military service
18 credit granted under section twenty-eight of this
19 article); or

20 (3) Being under the age of fifty years has or shall have
21 completed twenty years of service as a member of the
22 division (excluding military service credit granted
23 under section twenty-eight of this article).

24 (c) When the retirement board retires any member
25 under any of the provisions of this section, the board
26 shall, by order in writing, make an award directing that
27 the member shall be entitled to receive annually and
28 that there shall be paid to the member from the death,
29 disability and retirement fund in equal monthly
30 installments during the lifetime of the member while in
31 status of retirement one or the other of two amounts,
32 whichever is the greater:

33 (1) An amount equal to five and one-half percent of
34 the aggregate of salary paid to the member during the
35 whole period of service as a member of the division of
36 public safety; or

37 (2) The sum of six thousand dollars.

38 When a member has or shall have served twenty years
39 or longer but less than twenty-five years as a member
40 of the division and shall be retired under any of the
41 provisions of this section before he or she shall have
42 attained the age of fifty years, payment of monthly
43 installments of the amount of retirement award to such
44 member shall commence on the date he or she attains
45 the age of fifty years.

46 Beginning on the fifteenth day of July one thousand
47 nine hundred ninety-four, in no event may the provisions
48 of section thirteen, article sixteen, chapter five of this
49 code be applied in determining eligibility to retire with
50 either immediate or deferred commencement of benefit.

§15-2-27a. Retirement annual annuity adjustments.

1 Every member of the division of public safety who is
2 fifty-five years of age or older and who is retired by the
3 retirement board under the provisions of section twenty-
4 seven of this article; every member of the division of
5 public safety who is retired by the retirement board
6 under the provisions of section twenty-nine or thirty of
7 this article; and every surviving spouse or other
8 beneficiary receiving a benefit pursuant to sections
9 thirty-three or thirty-four of this article, is eligible to
10 receive an annual retirement annuity adjustment equal
11 to three and seventy-five hundredths percent of his or
12 her retirement award or surviving spouse award:
13 *Provided*, That for any person retiring on and after the
14 fifteenth day of September, one thousand nine hundred
15 ninety-four, the annual retirement annuity adjustment
16 shall be equal to two percent of his or her retirement
17 award or award paid to a surviving spouse or other
18 beneficiary. Such adjustments may not be retroactive.
19 Yearly adjustments shall begin upon the first day of
20 July of each year. The annuity adjustments shall be
21 awarded and paid to the members from the death,
22 disability and retirement fund in equal monthly
23 installments while the member is in status of retire-
24 ment. The annuity adjustments shall supplement the
25 retirement awards and benefits as provided in this
26 article.

27 Any member or beneficiary who receives a benefit
28 pursuant to the provisions of sections twenty-nine,
29 thirty, thirty-three or thirty-four of this article shall
30 begin to receive the annual annuity adjustment one year
31 after the commencement of the benefit on the next July
32 first: *Provided*, That if the member has been retired for
33 less than one year when the first annuity adjustment is
34 given on that July first, that first annuity adjustment
35 will be a pro rata share of the full year's annuity
36 adjustment.

§15-2-29. Awards and benefits for disability — Incurred in performance of duty.

1 Any member of the division who has been or shall

2 become physically or mentally permanently disabled by
3 injury, illness or disease resulting from any occupational
4 risk or hazard inherent in or peculiar to the services
5 required of members of the division and incurred
6 pursuant to or while such member was or shall be
7 engaged in the performance of his or her duties as a
8 member of the division shall, if, in the opinion of the
9 retirement board, he or she is by reason of such cause
10 unable to perform adequately the duties required of him
11 or her as a member of the division, but is able to engage
12 in any other gainful employment, be retired from active
13 service by the retirement board. The member thereafter
14 shall be entitled to receive annually and there shall be
15 paid to such member from the death, disability and
16 retirement fund in equal monthly installments during
17 the lifetime of such member; or until the member
18 attains the age of fifty; or until such disability shall
19 sooner terminate, one or the other of two amounts,
20 whichever is greater:

21 (1) An amount equal to two thirds of the salary
22 received in the preceding twelve-month employment
23 period: *Provided*, That if the member had not been
24 employed with the division for twelve months prior to
25 the disability, the amount of monthly salary shall be
26 annualized for the purpose of determining the benefit;
27 or

28 (2) The sum of six thousand dollars.

29 Upon attaining age fifty, the member shall receive the
30 benefit provided for in subsection (c), section twenty-
31 seven of this article as it would apply to his or her
32 aggregate career earnings from the division through the
33 day immediately preceding his or her disability. The
34 recalculation of benefit upon a member attaining age
35 fifty shall be deemed to be a retirement under the
36 provisions of section twenty-seven of this article, for
37 purposes of determining the amount of annual annuity
38 adjustment and for all other purposes of this article.

39 If any member shall become permanently physically
40 or mentally disabled by injury, illness or disease
41 resulting from any occupational risk or hazard inherent

42 in or peculiar to the services required of members of the
43 division and incurred pursuant to or while such member
44 was or shall be engaged in the performance of his or
45 her duties as a member of the division, to the extent that
46 such member is or shall be incapacitated ever to engage
47 in any gainful employment, such member shall be
48 entitled to receive annually and there shall be paid to
49 such member from the death, disability and retirement
50 fund in equal monthly installments during the lifetime
51 of such member or until such disability shall sooner
52 terminate, an amount equal to the amount of the salary
53 received by the member in the preceding twelve-month
54 employment period: *Provided*, That in no event may
55 such amount be less than fifteen thousand dollars per
56 annum: *Provided, however*, That if the member had not
57 been employed with the division for twelve months prior
58 to the disability, the amount of monthly salary shall be
59 annualized for the purpose of determining the benefit.

60 The superintendent is authorized to expend moneys
61 from funds appropriated for the division in payment of
62 medical, surgical, laboratory, X-ray, hospital, ambu-
63 lance and dental expenses and fees, and reasonable costs
64 and expenses incurred in the purchase of artificial limbs
65 and other approved appliances which may be reasonably
66 necessary for any member of the division who has or
67 shall become temporarily, permanently or totally
68 disabled by injury, illness or disease resulting from any
69 occupational risk or hazard inherent in or peculiar to
70 the service required of members of the division and
71 incurred pursuant to or while such member was or shall
72 be engaged in the performance of duties as a member
73 of the division. Whenever the superintendent shall
74 determine that any disabled member is ineligible to
75 receive any of the aforesaid benefits at public expense
76 the superintendent shall, at the request of such disabled
77 member, refer such matter to the consolidated public
78 retirement board for hearing and final decision.

79 For the purposes of this section, the term "salary" does
80 not include any compensation paid for overtime service.

§15-2-30. Same—Due to other causes.

1 If any member while in active service of the division
2 has or shall, in the opinion of the retirement board,
3 become permanently disabled to the extent that such
4 member cannot adequately perform the duties required
5 of a member of the division from any cause other than
6 those set forth in the preceding section and not due to
7 vicious habits, intemperance or willful misconduct on
8 his or her part, such member shall be retired by the
9 retirement board. Such member shall be entitled to
10 receive annually and there shall be paid to such member
11 while in status of retirement, from the death, disability
12 and retirement fund in equal monthly installments
13 during the lifetime of such member or until such
14 disability shall sooner terminate, a sum equal to one half
15 the salary received in the preceding twelve-month
16 period: *Provided*, That if the member had not been
17 employed with the division for twelve months prior to
18 the disability, the amount of monthly salary shall be
19 annualized for the purpose of determining the benefit.
20 If such member, at the time of such retirement under
21 the terms of this section, shall have served twenty years
22 or longer as a member of the division, such member
23 shall be entitled to receive annually and there shall be
24 paid to such member from the death, disability and
25 retirement fund in equal monthly installments, com-
26 mencing on the date such member shall be retired and
27 continuing during the lifetime of such member, until the
28 member attains the age of fifty, while in status of
29 retirement an amount equal to one-half the salary
30 received by the member in the preceding twelve-month
31 period: *Provided*, That if the member had not been
32 employed with the division for twelve months prior to
33 the disability, the amount of monthly salary shall be
34 annualized for the purpose of determining the benefit.

35 For the purposes of this section, the term "salary" does
36 not include any compensation paid for overtime service.

37 Upon attaining age fifty, the member shall receive the
38 benefit provided for in subsection (c), section twenty-
39 seven of this article as it would apply to his or her
40 aggregate career earnings from the division through the
41 day immediately preceding his or her disability. The

42 recalculation of benefit upon a member attaining age
43 fifty shall be deemed to be a retirement under the
44 provisions of section twenty-seven of this article, for
45 purposes of determining the amount of annual annuity
46 adjustment and for all other purposes of this article.

**§15-2-31. Same—Physical examinations; recall to active
duty; termination.**

1 The consolidated public retirement board may require
2 any member who has been or who shall be retired with
3 compensation on account of disability to submit to a
4 physical and/or mental examination by a physician or
5 physicians selected or approved by the board and cause
6 all costs incident to such examination including hospital,
7 laboratory, X-ray, medical and physicians' fees to be
8 paid out of funds appropriated to defray the current
9 expense of the division, and a report of the findings of
10 such physician or physicians shall be submitted in
11 writing to the consolidated public retirement board for
12 its consideration. If from such report or from such
13 report and hearing thereon the retirement board shall
14 be of opinion and find that such disabled member shall
15 have recovered from such disability to the extent that
16 he or she is able to perform adequately the duties of a
17 member of the division, the board shall order such
18 member to reassume active duty as a member of the
19 division and thereupon all payments from the death,
20 disability and retirement fund shall be terminated. If
21 from the report or the report and hearing thereon, the
22 board shall be of the opinion and find that the disabled
23 member shall have recovered from the disability to the
24 extent that he or she is able to engage in any gainful
25 employment but unable to adequately perform the
26 duties required as a member of the division, the board
27 shall order the payment, in monthly installments of an
28 amount equal to two thirds of the salary, in the case of
29 a member retired under the provisions of section
30 twenty-nine of this article, or equal to one-half of the
31 salary, in the case of a member retired under the
32 provisions of section thirty of this article, excluding any
33 compensation paid for overtime service, for the twelve-
34 month employment period preceding the disability:

35 *Provided*, That if the member had not been employed
36 with the division for twelve months prior to the
37 disability, the amount of monthly salary shall be
38 annualized for the purpose of determining the benefit.

**§15-2-33. Awards and benefits to dependents of member
— When member dies in performance of
duty, etc.; dependent child scholarship and
amount.**

1 The surviving spouse or the dependent child or
2 children or dependent parent or parents of any member
3 who has lost or shall lose his or her life by reason of
4 injury, illness or disease resulting from an occupational
5 risk or hazard inherent in or peculiar to the service
6 required of members while such member was or shall
7 be engaged in the performance of his or her duties as
8 a member of the division, or if said member shall die
9 from any cause after having been retired pursuant to
10 the provisions of section twenty-nine of this article, the
11 surviving spouse or other dependent shall be entitled to
12 receive and shall be paid from the death, disability and
13 retirement fund benefits as follows: To the surviving
14 spouse annually, in equal monthly installments during
15 his or her lifetime one or the other of two amounts,
16 which shall become immediately available and which
17 shall be the greater of:

18 (1) An amount equal to seven-tenths of the salary
19 received in the preceding twelve-month employment
20 period by the deceased member: *Provided*, That if the
21 member had not been employed with the division for
22 twelve months prior to the disability, the amount of
23 monthly salary shall be annualized for the purpose of
24 determining the benefit; or

25 (2) The sum of six thousand dollars.

26 In addition thereto such surviving spouse shall be
27 entitled to receive and there shall be paid to such person
28 one hundred dollars monthly for each dependent child
29 or children. If such surviving spouse dies or if there is
30 no surviving spouse, there shall be paid monthly to each
31 such dependent child or children from the death,
32 disability and retirement fund a sum equal to twenty-

33 five percent of the surviving spouse's entitlement. If
34 there are no surviving spouse and no dependent child
35 or children, there shall be paid annually in equal
36 monthly installments from the death, disability and
37 retirement fund to the dependent parents of the
38 deceased member during their joint lifetimes a sum
39 equal to the amount which a surviving spouse, without
40 children, would have received: *Provided*, That when
41 there is but one dependent parent surviving, that parent
42 is entitled to receive during his or her lifetime one half
43 the amount which both parents, if living, would have
44 been entitled to receive.

45 Any person qualified as a surviving dependent child
46 under this section shall, in addition to any other benefits
47 due under this or other sections of this article, be
48 entitled to receive a scholarship to be applied to the
49 career development education of that person. This sum
50 up to but not exceeding seven thousand five hundred
51 dollars shall be paid from the death, disability and
52 retirement fund to any university or college in this state
53 or to any trade or vocational school or other entity in
54 this state approved by the board, to offset the expenses
55 of tuition, room and board, books, fees or other costs
56 incurred in a course of study at any of those institutions
57 so long as the recipient makes application to the board
58 on an approved form and under such rules as the board
59 may provide, and maintains scholastic eligibility as
60 defined by the institution or the board. The board may
61 by appropriate rules define age requirements, physical
62 and mental requirements, scholastic eligibility, disbur-
63 sement methods, institutional qualifications and other
64 requirements as necessary and not inconsistent with this
65 section.

66 Awards and benefits for a member's surviving spouse
67 or dependents received under any section or any of the
68 provisions of this retirement system shall be in lieu of
69 receipt of any such benefits for such persons under the
70 provisions of any other state retirement system. Receipt
71 of benefits under any other state retirement system shall
72 be in lieu of any right to receive any benefits under this
73 retirement system, so that only a single receipt of

74 retirement benefits shall occur.

75 For the purposes of this section, the term "salary" does
76 not include any compensation paid for overtime service.

**§15-2-33a. Awards and benefits to dependents of member
— Termination.**

1 When any surviving spouse of a member shall die or
2 remarry while receiving or being entitled to receive any
3 benefits under any section except section thirty-three of
4 this article, the surviving spouse may not from the date
5 of his or her remarriage, nor may the deceased
6 member's estate from the date of death of the surviving
7 spouse, be entitled to receive any benefits hereunder
8 whatsoever: *Provided*, That in any case where under the
9 terms of this article benefits are provided for a child or
10 children surviving the death or remarriage of the
11 surviving spouse, payment of benefits to that child or
12 children shall be calculated for payment from the date
13 the surviving spouse dies or remarries.

**§15-2-34. Same — When member dies from nonservice-
connected causes.**

1 In any case where a member while in active service
2 of the division, before having completed twenty years of
3 service as a member of the division, has died or shall
4 die from any cause other than those specified in this
5 article and not due to vicious habits, intemperance or
6 willful misconduct on his or her part, there shall be paid
7 annually in equal monthly installments from said death,
8 disability and retirement fund to the surviving spouse
9 of such member during his or her lifetime, or until such
10 time as said surviving spouse remarries, a sum equal to
11 one-half of the salary received in the preceding twelve-
12 month employment period by the deceased member:
13 *Provided*, That if the member had not been employed
14 with the division for twelve months prior to his or her
15 death, the amount of monthly salary shall be annualized
16 for the purpose of determining the benefit. Such benefit
17 shall become immediately available upon the death of
18 the member. If there is no surviving spouse, or the
19 surviving spouse dies or remarries, there shall be paid
20 monthly to each dependent child or children, from the

21 death, disability and retirement fund a sum equal to
22 twenty-five percent of the surviving spouse's entitle-
23 ment. If there are no surviving spouse and no dependent
24 child or children, there shall be paid annually in equal
25 monthly installments from the fund to the dependent
26 parents of the deceased member during their joint
27 lifetimes a sum equal to the amount which a surviving
28 spouse would have been entitled to receive: *Provided,*
29 That when there is but one dependent parent surviving,
30 that parent shall be entitled to receive during his or her
31 lifetime one-half the amount which both parents, if
32 living, would have been entitled to receive.

33 For the purposes of this section, the term "salary" does
34 not include compensation paid for overtime service.

**§15-2-37. Refunds to certain members upon discharge or
resignation; deferred retirement.**

1 (a) Any member who shall be discharged by order of
2 the superintendent or shall otherwise terminate employ-
3 ment with the division shall, at the written request of
4 the member to the retirement board, be entitled to
5 receive from the retirement fund a sum equal to the
6 aggregate of the principal amount of moneys deducted
7 from his or her salary and paid into the death, disability
8 and retirement fund plus four percent interest com-
9 pounded thereon calculated annually as provided and
10 required by this article.

11 (b) Any member who has ten or more years of service
12 with the division and who withdraws his or her
13 contributions, may thereafter be reenlisted as a member
14 of the division, but may not receive any prior service
15 credit on account of former service, unless following
16 reenlistment the member shall redeposit in the fund
17 established in article two-a of this chapter the amount
18 of the refund, together with interest thereon at the rate
19 of seven and one-half percent per annum from the date
20 of withdrawal to the date of redeposit, in which case he
21 or she shall receive the same credit on account of his
22 or her former service as if no refund had been made.
23 He or she shall become a member of the retirement
24 system established in article two-a of this chapter.

25 (c) Every member who completes ten years of service
26 with the division of public safety is eligible, upon
27 separation of employment with the division, either to
28 withdraw his or her contributions in accordance with
29 subsection (a) of this section or to choose not to withdraw
30 his or her accumulated contributions with interest.
31 Upon attainment of age sixty-two, a member who
32 chooses not to withdraw his or her contributions will be
33 eligible to receive a retirement annuity. Any member
34 choosing to receive the deferred annuity under this
35 subsection is not eligible to receive the annual annuity
36 adjustment provided in section twenty-seven-a of this
37 article. When the retirement board retires any member
38 under any of the provisions of this section, the board
39 shall, by order in writing, make an award directing that
40 the member is entitled to receive annually and that
41 there shall be paid to the member from the death,
42 disability and retirement fund in equal monthly
43 installments during the lifetime of the member while in
44 status of retirement one or the other of two amounts,
45 whichever is greater:

46 (1) An amount equal to five and one-half percent of
47 the aggregate of salary paid to the member during the
48 whole period of service as a member of the division of
49 public safety; or

50 (2) The sum of six thousand dollars.

51 The annuity shall be payable during the lifetime of the
52 member. The retiring member may choose, in lieu of
53 such a life annuity, an annuity in reduced amount
54 payable during the member's lifetime, with one-half of
55 such reduced monthly amount paid to his or her
56 surviving spouse if any, for the spouse's remaining
57 lifetime after the death of the member. Reduction of this
58 monthly benefit amount shall be calculated to be of
59 equal actuarial value to the life annuity the member
60 could otherwise have chosen.

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

§15-2A-1. Short title.

1 This article shall be known and may be cited as the

2 “West Virginia State Police Retirement System Act”.

§15-2A-2. Definitions.

1 As used in this article, unless the context clearly
2 requires a different meaning:

3 (1) “Active military duty” means full-time active duty
4 with the armed forces of the United States, namely, the
5 United States air force, army, coast guard, marines or
6 navy; and service with the national guard or reserve
7 military forces of any of such armed forces when the
8 member has been called to active full-time duty and has
9 received no compensation during the period of such duty
10 from any person other than the armed forces.

11 (2) “Base salary” means compensation paid to a
12 member without regard to any overtime pay.

13 (3) “Board” means the consolidated public retirement
14 board created pursuant to article ten-d, chapter five of
15 this code.

16 (4) “Division” means the division of public safety.

17 (5) “Final average salary” means the average of the
18 highest annual compensation received for employment
19 with the division, including compensation paid for
20 overtime service, received by the member during any
21 five years within the member’s last ten years of service.

22 (6) “Fund” means the West Virginia state police
23 retirement fund created pursuant to section four of this
24 article.

25 (7) “Member” or “employee” means a person regularly
26 employed in the service of the division of public safety
27 after the effective date of this article.

28 (8) “Salary” means the compensation of a member,
29 excluding any overtime payments.

**§15-2A-3. Creation and administration of West Virginia
state police retirement system.**

1 There is hereby created the West Virginia state police
2 retirement system. Any West Virginia state trooper
3 employed by the division of public safety on or after the

4 effective date of this article shall be a member of this
5 retirement system and may not qualify for membership
6 in any other retirement system administered by the
7 consolidated public retirement board, so long as he or
8 she remains employed by the division.

9 The consolidated public retirement board created
10 pursuant to article ten-d, chapter five of this code shall
11 administer the West Virginia state police retirement
12 system. The board may sue and be sued, contract and
13 be contracted with and conduct all the business of the
14 system in the name of the West Virginia state police
15 retirement system.

§15-2A-4. Participation in system; creation of fund.

1 There is hereby created the "West Virginia state
2 police retirement fund" for the benefit of the members
3 of the retirement system created pursuant to this article
4 and the dependents of any deceased or retired member
5 of the system.

6 All moneys paid into and accumulated in the fund,
7 except such amounts as shall be designated or set aside
8 by the board for payments of benefits as provided in this
9 article, shall be invested by the state board of invest-
10 ments as provided by law.

**§15-2A-5. Members' contributions; employer contribu-
tions.**

1 There shall be deducted from the monthly payroll of
2 each member and paid into the fund created pursuant
3 to section four of this article, twelve percent of the
4 amount of his or her salary. An additional twelve
5 percent of the monthly salary of each member of the
6 division shall be paid by the state of West Virginia
7 monthly into such fund out of the annual appropriation
8 for the division.

§15-2A-6. Retirement; commencement of benefits.

1 A member may retire with full benefits upon attain-
2 ing the age of fifty-five and completing twenty or more
3 years of service, by lodging with the consolidated public
4 retirement board his or her voluntary petition in writing

5 for retirement. A member who is less than age fifty-five
6 may retire upon completing twenty years or more of
7 service: *Provided*, That he or she will receive a reduced
8 benefit that is of equal actuarial value to the benefit the
9 member would have received if the member deferred
10 commencement of his or her accrued retirement benefit
11 to the age of fifty-five.

12 When the retirement board retires a member with full
13 benefits under the provisions of this section, the board,
14 by order in writing, shall make a determination that the
15 member is entitled to receive an annuity equal to two
16 and three-fourths percent of his or her final average
17 salary multiplied by the number of years, and fraction
18 of a year, of his or her service in the division at the time
19 of retirement.

20 In no event may the provisions of section thirteen,
21 article sixteen, chapter five be applied in determining
22 eligibility to retire with either a deferred or immediate
23 commencement of benefit.

§15-2A-7. Annual annuity adjustment.

1 Every member of the division of public safety who is
2 sixty-three years of age or older and who is retired by
3 the retirement board under the provisions of section six
4 of this article; every member who is retired under the
5 provisions of sections nine or ten of this article; and
6 every surviving spouse receiving a benefit pursuant to
7 sections twelve, thirteen or fourteen of this article is
8 eligible to receive an annual retirement annuity
9 adjustment equal to one percent of his or her retirement
10 award or surviving spouse award. Such adjustments
11 may not be retroactive. Yearly adjustments shall begin
12 upon the first day of July of each year. The annuity
13 adjustments shall be awarded and paid to a member
14 from the fund in equal monthly installments while the
15 member is in status of retirement. The annuity adjust-
16 ments shall supplement the retirement awards and
17 benefits provided in this article.

18 Any member or beneficiary who receives a benefit
19 pursuant to the provisions of sections nine, ten, twelve,
20 thirteen or fourteen of this article shall begin to receive

21 the annual annuity adjustment one year after the
22 commencement of the benefit on the next July first:
23 *Provided*, That if the member has been retired for less
24 than one year when the first annuity adjustment is given
25 on that July first, that first annuity adjustment will be
26 a pro rata share of the full year's annuity adjustment.

**§15-2A-8. Refunds to certain members upon discharge or
resignation; deferred retirement.**

1 (a) Any member who shall be discharged by order of
2 the superintendent or shall otherwise terminate employ-
3 ment with the division shall, at the written request of
4 the member to the retirement board, be entitled to
5 receive from the retirement fund a sum equal to the
6 aggregate of the principal amount of moneys deducted
7 from the salary of the member and paid into the
8 retirement fund plus four percent interest compounded
9 thereon calculated annually as provided and required by
10 this article.

11 (b) Any member withdrawing contributions who may
12 thereafter be reenlisted as a member of the division,
13 shall not receive any prior service credit on account of
14 the former service, unless following his or her reenlist-
15 ment the member shall redeposit in the fund the amount
16 of the refund, together with interest thereon at the rate
17 of seven and one-half percent per annum from the date
18 of withdrawal to the date of redeposit, in which case he
19 or she shall receive the same credit on account of his
20 or her former service as if no refund had been made.

21 (c) Every member who completes ten years of service
22 with the division of public safety is eligible, upon
23 separation of employment with the division, to either
24 withdraw his or her contributions in accordance with
25 subsection (a) of this section, or to choose not to
26 withdraw his or her accumulated contributions with
27 interest. Upon attainment of age sixty-two, a member
28 who chooses not to withdraw his or her contributions
29 will be eligible to receive a retirement annuity. The
30 annuity shall be payable during the lifetime of the
31 member, and shall be in the amount of his or her
32 accrued retirement benefit as determined under section

33 six of this article. The retiring member may choose, in
34 lieu of such a life annuity, an annuity in reduced amount
35 payable during the member's lifetime, with one-half of
36 the reduced monthly amount paid to his or her surviving
37 spouse if any, for the spouse's remaining lifetime after
38 the death of the member. Reduction of such monthly
39 benefit amount shall be calculated to be of equal
40 actuarial value to the life annuity the member could
41 otherwise have chosen. Any member choosing to receive
42 the deferred annuity under this subsection is not eligible
43 to receive the annual annuity adjustment provided in
44 section seven of this article.

**§15-2A-9. Awards and benefits for disability — Incurred
in performance of duty.**

1 Any member of the division who has been or shall
2 become physically or mentally permanently disabled by
3 injury, illness or disease resulting from any occupational
4 risk or hazard inherent in or peculiar to the services
5 required of members of the division and incurred
6 pursuant to or while the member was or shall be
7 engaged in the performance of his or her duties as a
8 member of the division shall, if, in the opinion of the
9 retirement board, he or she is by reason of such cause
10 unable to perform adequately the duties required of him
11 or her as a member of the division, but is able to engage
12 in other gainful employment be retired from active
13 service by the board. The member shall thereafter be
14 entitled to receive annually and there shall be paid to
15 the member from the fund in equal monthly instal-
16 lments during the lifetime of the member; or until the
17 member attains the age of fifty-five or until such
18 disability shall sooner terminate, one or the other of two
19 amounts, whichever is greater:

20 (1) An amount equal to six-tenths of the base salary
21 received in the preceding twelve-month employment
22 period: *Provided,* That if the member had not been
23 employed with the division for twelve months prior to
24 the disability, the amount of monthly salary shall be
25 annualized for the purpose of determining the benefit;
26 or

27 (2) The sum of six thousand dollars.

28 Upon attaining age fifty-five, the member shall
29 receive the benefit provided for in section six of this
30 article as it would apply to his or her final average
31 salary based on earnings from the division through the
32 day immediately preceding his or her disability. The
33 recalculation of benefit upon a member attaining age
34 fifty-five shall be deemed to be a retirement under the
35 provisions of section six of this article, for purposes of
36 determining the amount of annual annuity adjustment
37 and for all other purposes of this article.

38 If any member shall become permanently physically
39 or mentally disabled by injury, illness or disease
40 resulting from any occupational risk or hazard inherent
41 in or peculiar to the services required of members of the
42 division and incurred pursuant to or while such member
43 was or shall be engaged in the performance of his or
44 her duties as a member of the division to the extent that
45 the member is or shall be incapacitated ever to engage
46 in any gainful employment, the member shall be
47 entitled to receive annually and there shall be paid to
48 such member from the fund in equal monthly instal-
49 ments during the lifetime of the member or until such
50 disability shall sooner terminate, an amount equal to the
51 amount of the base salary received by the member in
52 the preceding twelve-month employment period.

53 The superintendent of the division is authorized to
54 expend moneys from funds appropriated for the division
55 in payment of medical, surgical, laboratory, X-ray,
56 hospital, ambulance and dental expenses and fees, and
57 reasonable costs and expenses incurred in the purchase
58 of artificial limbs and other approved appliances which
59 may be reasonably necessary for any member of the
60 division who has or shall become temporarily, perman-
61 ently or totally disabled by injury, illness or disease
62 resulting from any occupational risk or hazard inherent
63 in or peculiar to the service required of members of the
64 division and incurred pursuant to or while the member
65 was or shall be engaged in the performance of duties
66 as a member of the division. Whenever the superintend-
67 ent shall determine that any disabled member is

68 ineligible to receive any of the aforesaid benefits at
69 public expense the superintendent shall, at the request
70 of the disabled member, refer such matter to the board
71 for hearing and final decision.

§15-2A-10. Same — Due to other causes.

1 If any member while in active service of the division
2 has or shall, in the opinion of the board, become
3 permanently disabled to the extent that he or she cannot
4 adequately perform the duties required of a member of
5 the division from any cause other than those set forth
6 in the preceding section and not due to vicious habits,
7 intemperance or willful misconduct on his or her part,
8 the member shall be retired by the board. There shall
9 be paid to the member from the fund in equal monthly
10 installments, commencing on the date the member shall
11 be retired and continuing during the lifetime of the
12 member; or until the member attains the age of fifty-
13 five; while in status of retirement an amount equal to
14 one-half the base salary received by the member in the
15 preceding twelve-month period: *Provided*, That if the
16 member had not been employed with the division for
17 twelve months prior to the disability, the amount of
18 monthly salary shall be annualized for the purpose of
19 determining the benefit.

20 Upon attaining age fifty-five, the member shall
21 receive the benefit provided for in section six of this
22 article as it would apply to his or her final average
23 salary based on earnings from the division through the
24 day immediately preceding his or her disability. The
25 recalculation of benefit upon a member attaining age
26 fifty-five shall be deemed to be a retirement under the
27 provisions of section six of this article, for purposes of
28 determining the amount of annual annuity adjustment
29 and for all other purposes of this article.

§15-2A-11. Same — Physical examinations; recall to active duty; termination.

1 The board may require any member who has been or
2 who shall be retired with compensation on account of
3 disability to submit to a physical and/or mental
4 examination by a physician or physicians selected or

5 approved by the retirement board and cause all costs
6 incident to such examination including hospital, labor-
7 atory, X-ray, medical and physicians' fees to be paid out
8 of funds appropriated to defray the current expenses of
9 the division, and a report of the findings of such
10 physician or physicians shall be submitted in writing to
11 the board for its consideration. If from the report or
12 from the report and hearing thereon the board shall be
13 of opinion and find that the disabled member shall have
14 recovered from such disability to the extent that he or
15 she is able to perform adequately the duties of a member
16 of the division, the board shall order the member to
17 reassume active duty as a member of the division and
18 thereupon all payments from the fund shall be termi-
19 nated. If from the report or the report and hearing
20 thereon, the board shall be of the opinion and find that
21 the disabled member has recovered from the disability
22 to the extent that he or she is able to engage in any
23 gainful employment but unable to adequately perform
24 the duties required as a member of the division, the
25 board shall order in the case of a member retired under
26 the provisions of section nine of this article that the
27 disabled member be paid from the fund an amount
28 equal to six-tenths of the base salary paid to the member
29 in the last twelve-month employment period. The board
30 shall order in the case of a member retired under the
31 provisions of section ten of this article that the disabled
32 member be paid from the fund an amount equal to one-
33 fourth of the base salary paid to the member in the last
34 twelve-month employment period: *Provided*, That if the
35 member had not been employed with the division for
36 twelve months prior to the disability, the amount of
37 monthly salary shall be annualized for the purpose of
38 determining the benefit.

§15-2A-12. Awards and benefits to dependents of member — When member dies in performance of duty, etc.; dependent child scholarship and amount.

1 The surviving spouse, the dependent child or children
2 or dependent parent or parents of any member who has
3 lost or shall lose his or her life by reason of injury, illness

4 or disease resulting from an occupational risk or hazard
5 inherent in or peculiar to the service required of
6 members while the member was or shall be engaged in
7 the performance of his or her duties as a member of the
8 division, or the survivor of a member who dies from any
9 cause after having been retired pursuant to the provi-
10 sions of section nine of this article, shall be entitled to
11 receive and shall be paid from the fund benefits as
12 follows: To the surviving spouse annually, in equal
13 monthly installments during his or her lifetime an
14 amount equal to two thirds of the base salary received
15 in the preceding twelve-month period by the deceased
16 member: *Provided*, That if the member had not been
17 employed with the division for twelve months prior to
18 his or her death, the amount of monthly salary shall be
19 annualized for the purpose of determining the benefit.

20 In addition thereto, the surviving spouse shall be
21 entitled to receive and there shall be paid to such person
22 one hundred dollars monthly for each dependent child
23 or children. If the surviving spouse dies or if there is
24 no surviving spouse, there shall be paid monthly to each
25 dependent child or children from the fund a sum equal
26 to one-fourth of the surviving spouse's entitlement. If
27 there are no surviving spouse and no dependent child
28 or children, there shall be paid annually in equal
29 monthly installments from the fund to the dependent
30 parents of the deceased member during their joint
31 lifetimes a sum equal to the amount which a surviving
32 spouse, without children, would have received: *Provided*,
33 That when there is but one dependent parent surviving,
34 that parent is entitled to receive during his or her
35 lifetime one-half the amount which both parents, if
36 living, would have been entitled to receive.

37 Any person qualifying as a surviving dependent child
38 under this section shall, in addition to any other benefits
39 due under this or other sections of this article, be
40 entitled to receive a scholarship to be applied to the
41 career development education of that person. This sum,
42 up to but not exceeding seven thousand five hundred
43 dollars, shall be paid from the fund to any university
44 or college in this state or to any trade or vocational

45 school or other entity in this state approved by the
46 board, to offset the expenses of tuition, room and board,
47 books, fees or other costs incurred in a course of study
48 at any of these institutions so long as the recipient makes
49 application to the board on an approved form and under
50 such rules as the board may provide, and maintains
51 scholastic eligibility as defined by the institution or the
52 board. The board may by appropriate rules define age
53 requirements, physical and mental requirements,
54 scholastic eligibility, disbursement methods, institu-
55 tional qualifications and other requirements as neces-
56 sary and not inconsistent with this section.

57 Awards and benefits for a surviving spouse or
58 dependents of a member received under any section or
59 any of the provisions of this retirement system shall be
60 in lieu of receipt of any benefits for these persons under
61 the provisions of any other state retirement system.
62 Receipt of benefits under any other state retirement
63 system shall be in lieu of any right to receive any
64 benefits under this retirement system, so that only a
65 single receipt of state retirement benefits shall occur.

**§15-2-13. Same — When member dies from nonservice-
connected causes.**

1 In any case where a member while in active service
2 of the division, before having completed twenty years of
3 service as a member of the division, has died or shall
4 die from any cause other than those specified in this
5 article and not due to vicious habits, intemperance or
6 willful misconduct on his or her part, there shall be paid
7 annually in equal monthly installments from the fund
8 to the surviving spouse of the member during his or her
9 lifetime, or until such time as the surviving spouse
10 remarries, a sum equal to one-half of the base salary
11 received in the preceding twelve-month employment
12 period by the deceased member: *Provided*, That if the
13 member had not been employed with the division for
14 twelve months prior to the disability, the amount of
15 monthly salary shall be annualized for the purpose of
16 determining the benefit. If there is no surviving spouse
17 or the surviving spouse dies or remarries, there shall be
18 paid monthly to each dependent child or children from

19 the fund a sum equal to one-fourth of the surviving
20 spouse's entitlement. If there are no surviving spouse
21 and no dependent child or children, there shall be paid
22 annually in equal monthly installments from the fund
23 to the dependent parents of the deceased member
24 during their joint lifetimes a sum equal to the amount
25 that a surviving spouse would have been entitled to
26 receive: *Provided, however,* That when there is but one
27 dependent parent surviving, then that parent shall be
28 entitled to receive during his or her lifetime one-half the
29 amount which both parents, if living, would have been
30 entitled to receive.

§15-2A-14. Awards and benefits to dependents of member — When member dies after retirement or after serving twenty years.

1 When any member of the division has completed
2 twenty years of service or longer as a member of the
3 division and has died or shall die from any cause or
4 causes other than those specified in this article before
5 having been retired by the board, and when a member
6 in retirement status has died or shall die after having
7 been retired by the board under the provisions of this
8 article, there shall be paid annually in equal monthly
9 installments from the fund to the surviving spouse of the
10 member, commencing on the date of the death of the
11 member and continuing during the lifetime or until
12 remarriage of the surviving spouse, an amount equal to
13 two thirds of the retirement benefit which the deceased
14 member was receiving while in status of retirement, or
15 would have been entitled to receive to the same effect
16 as if the member had been retired under the provisions
17 of this article immediately prior to the time of his or
18 her death. In no event shall the annual benefit payable
19 be less than five thousand dollars. In addition thereto,
20 the surviving spouse is entitled to receive and there shall
21 be paid to the surviving spouse from the fund the sum
22 of one hundred dollars monthly for each dependent child
23 or children. If the surviving spouse dies or remarries,
24 or if there is no surviving spouse, there shall be paid
25 monthly from the fund to each dependent child or
26 children of the deceased member a sum equal to one-

27 fourth of the surviving spouse's entitlement. If there is
28 no surviving spouse or no surviving spouse eligible to
29 receive benefits and no dependent child or children,
30 there shall be paid annually in equal monthly instal-
31 lments from the fund to the dependent parents of the
32 deceased member during their joint lifetimes a sum
33 equal to the amount which a surviving spouse without
34 children would have been entitled to receive: *Provided,*
35 That when there is but one dependent parent surviving,
36 that parent shall be entitled to receive during his or her
37 lifetime one-half the amount which both parents, if
38 living, would have been entitled to receive.

39 The member may choose a higher percentage of
40 surviving spouse benefits by taking an actuarially
41 determined reduced initial benefit so that the chosen
42 spouse benefit and initial benefit would be actuarially
43 equivalent to the normal spouse benefit and initial
44 benefit. The retirement board shall design these benefit
45 options and provide them as choices for the member to
46 select. For the purposes of this subsection, "initial
47 benefit" means the benefit received by the member upon
48 retirement.

§15-2A-15. Exemption from taxation, garnishment and other process.

1 The moneys in the fund and the right of a member
2 to a retirement allowance, to the return of contributions,
3 or to any benefit under the provisions of this article, are
4 hereby exempt from any state or municipal tax; shall
5 not be subject to execution, garnishment, attachment or
6 any other process whatsoever; and shall be unassignable
7 except as is provided in this article.

§15-2A-16. Fraud; penalties.

1 Any person who knowingly makes any false statement
2 or who falsifies or permits to be falsified any record or
3 records of the retirement system in any attempt to
4 defraud that system is guilty of a misdemeanor, and,
5 upon conviction, shall be punished by a fine not to
6 exceed one thousand dollars, or confinement in the
7 county jail not to exceed one year or both.

§15-2A-17. Awards and benefits to dependents of member — Termination.

1 When any surviving spouse of a member shall die or
2 remarry while receiving or being entitled to receive any
3 benefits under any section except section twelve of this
4 article, the surviving spouse may not from the date of
5 his or her remarriage, nor may the estate from the date
6 of death of the deceased member's surviving spouse, be
7 entitled to receive any benefits hereunder whatsoever:
8 *Provided*, That in any case where under the terms of this
9 article benefits are provided for a child or children
10 surviving the death or remarriage of the surviving
11 spouse, payment of benefits to that child or children
12 shall be calculated for payment from the date the
13 surviving spouse dies or remarries.

§15-2A-18. Authority to continue payments to certain dependents.

1 The board may continue payments of a surviving
2 spouse's entitlement in full to any dependent child who
3 continues to be dependent by reason of mental or
4 physical incapacity as determined by the board, not-
5 withstanding the age of the dependent child or other
6 provisions of this article.

§15-2A-19. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict.

1 (a) Any member who has previously served on active
2 military duty is entitled to receive additional credited
3 service for the purpose of determining the amount of
4 retirement award under the provisions of this article for
5 a period equal to the active military duty not to exceed
6 five years, subject to the following:

7 (1) That he or she has been honorably discharged from
8 the armed forces;

9 (2) That he or she substantiates by appropriate
10 documentation or evidence his or her period of active
11 military duty;

12 (3) That he or she is receiving no benefits from any
13 other retirement system for his or her active military
14 duty; and

15 (4) That, except with respect to disability retirement
16 pay awarded under this article, he or she has actually
17 served with the division for twenty years exclusive of his
18 or her active military duty.

19 (b) In addition, any person who while a member of the
20 division was commissioned, enlisted or inducted into the
21 armed forces of the United States or, being a member
22 of the reserve officers' corps, was called to active duty
23 in the armed forces between the first day of September,
24 one thousand nine hundred forty, and the close of
25 hostilities in World War II, or between the twenty-
26 seventh day of June, one thousand nine hundred fifty,
27 and the close of the armed conflict in Korea on the
28 twenty-seventh day of July, one thousand nine hundred
29 fifty-three, between the first day of August, one
30 thousand nine hundred sixty-four and the close of the
31 armed conflict in Vietnam, or during any other period
32 of armed conflict by the United States whether sancti-
33 oned by a declaration of war by the Congress or by
34 executive or other order of the president, is entitled to
35 and shall receive credit on the minimum period of
36 service required by law for retirement pay from the
37 service of the division of public safety, or its predecessor
38 agency, for a period equal to the full time that he or she
39 has or, pursuant to that commission, enlistment,
40 induction or call, shall have served with the armed
41 forces subject to the following:

42 (1) That he or she has been honorably discharged from
43 the armed forces;

44 (2) That within ninety days after honorable discharge
45 from the armed forces, he or she presented himself or
46 herself to the superintendent and offered to resume
47 service as an active member of the division; and

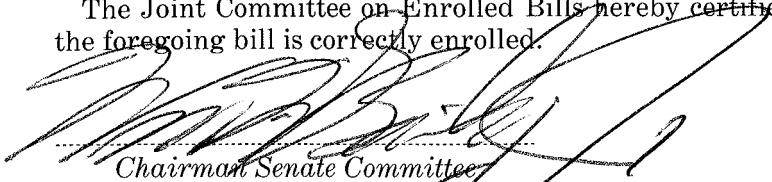
48 (3) That he or she has made no voluntary act, whether
49 by reenlistment, waiver of discharge, acceptance of
50 commission or otherwise, to extend or participate in
51 extension of the period of service with the armed forces

52 beyond the period of service for which he or she was
53 originally commissioned, enlisted, inducted or called.

54 (c) The total amount of military service credit
55 allowable under this section may not exceed five years
56 for any member of the division.

Enr. Com. Sub. for H. B. 4680] 30

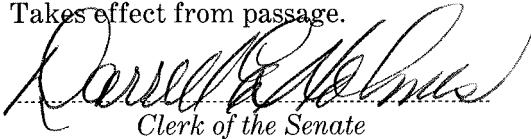
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

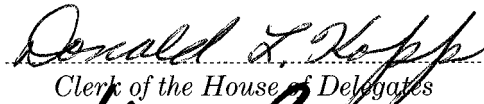

Chairman Senate Committee


Ernest C. Moore
Chairman House Committee

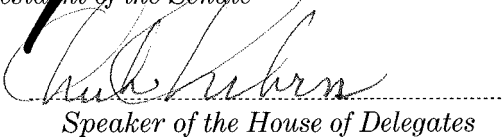
Originating in the House.

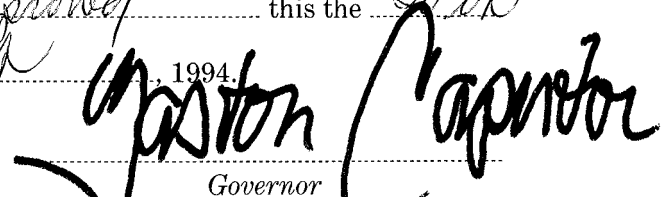
Takes effect from passage.


Clerk of the Senate


Donald L. Kopp
Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within *is approved* this the *30th*
day of *March* 1994.

Gaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/29/94

Time 11:49 AM