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SB 539

FILED

2007 APR -3 PM 4: 25

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WEST VIRGINIA  
SENATE

**WEST VIRGINIA LEGISLATURE**

**SEVENTY-EIGHTH LEGISLATURE**

**REGULAR SESSION, 2007**



COMMITTEE SUBSTITUTE

FOR

**ENROLLED**

**Senate Bill No. 539**

(SENATORS FOSTER, MCKENZIE, PLYMALE  
AND KESSLER, *original sponsors*)



[Passed March 7, 2007; in effect ninety days from passage.]

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SECRETARY OF STATE

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AN ACT to amend and reenact §7-14D-2, §7-14D-9 and §7-14D-11 of the Code of West Virginia, 1931, as amended, all relating to the Deputy Sheriff Retirement System; amending the definition of "annuity start date"; requiring a member's application for retirement; and providing the basis for determining a member's retirement benefit.

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

That §7-14D-2, §7-14D-9 and §7-14D-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.**

**§7-14D-2. Definitions.**

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

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

11 (b) "Accumulated contributions" means the sum of all  
12 amounts deducted from the compensation of a member,  
13 or paid on his or her behalf pursuant to article ten-c,  
14 chapter five of this code, either pursuant to section  
15 seven of this article or section twenty-nine, article ten,  
16 chapter five of this code as a result of covered  
17 employment together with regular interest on the  
18 deducted amounts.

19 (c) "Active military duty" means full-time active duty  
20 with any branch of the armed forces of the United  
21 States, including service with the National Guard or  
22 reserve military forces when the member has been  
23 called to active full-time duty and has received no  
24 compensation during the period of that duty from any  
25 board or employer other than the armed forces.

26 (d) "Actuarial equivalent" means a benefit of equal  
27 value computed upon the basis of the mortality table  
28 and interest rates as set and adopted by the retirement  
29 board in accordance with the provisions of this article.

30 (e) "Annual compensation" means the wages paid to  
31 the member during covered employment within the  
32 meaning of Section 3401(a) of the Internal Revenue  
33 Code, but determined without regard to any rules that  
34 limit the remuneration included in wages based upon  
35 the nature or location of employment or services  
36 performed during the plan year plus amounts excluded  
37 under Section 414(h)(2) of the Internal Revenue Code  
38 and less reimbursements or other expense allowances,  
39 cash or noncash fringe benefits or both, deferred  
40 compensation and welfare benefits. Annual  
41 compensation for determining benefits during any  
42 determination period may not exceed one hundred fifty  
43 thousand dollars as adjusted for cost of living in  
44 accordance with Section 401(a)(17)(B) of the Internal  
45 Revenue Code.

46 (f) "Annual leave service" means accrued annual  
47 leave.

48 (g) "Annuity starting date" means the first day of the  
49 first calendar month following receipt of the retirement  
50 application by the board: *Provided*, That the member  
51 has ceased covered employment and reached early or  
52 normal retirement age.

53 (h) "Base salary" means a member's cash  
54 compensation exclusive of overtime from covered  
55 employment during the last twelve months of  
56 employment. Until a member has worked twelve

57 months, annualized base salary is used as base salary.

58 (i) "Board" means the Consolidated Public Retirement  
59 Board created pursuant to article ten-d, chapter five of  
60 this code.

61 (j) "County commission" has the meaning ascribed to  
62 it in section one, article one, chapter seven of this code.

63 (k) "Covered employment" means either: (1)  
64 Employment as a deputy sheriff and the active  
65 performance of the duties required of a deputy sheriff;  
66 or (2) the period of time which active duties are not  
67 performed but disability benefits are received under  
68 section fourteen or fifteen of this article; or (3)  
69 concurrent employment by a deputy sheriff in a job or  
70 jobs in addition to his or her employment as a deputy  
71 sheriff where the secondary employment requires the  
72 deputy sheriff to be a member of another retirement  
73 system which is administered by the Consolidated  
74 Public Retirement Board pursuant to article ten-d,  
75 chapter five of this code: *Provided*, That the deputy  
76 sheriff contributes to the fund created in section six of  
77 this article the amount specified as the deputy sheriff's  
78 contribution in section seven of this article.

79 (l) "Credited service" means the sum of a member's  
80 years of service, active military duty, disability service  
81 and annual leave service.

82 (m) "Deputy sheriff" means an individual employed as  
83 a county law-enforcement deputy sheriff in this state  
84 and as defined by section two, article fourteen of this  
85 chapter.

86 (n) "Dependent child" means either:

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

88 (A) A natural child of the member;

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

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

93 (D) A stepchild of the member residing in the  
94 member's household at the time of the member's death;  
95 or

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

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

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

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

105 (o) "Dependent parent" means the father or mother of  
106 the member who was claimed as a dependent by the  
107 member for federal income tax purposes at the time of  
108 the member's death.

109 (p) "Disability service" means service received by a

110 member, expressed in whole years, fractions thereof or  
111 both, equal to one half of the whole years, fractions  
112 thereof or both, during which time a member receives  
113 disability benefits under section fourteen or fifteen of  
114 this article.

115 (q) "Early retirement age" means age forty or over and  
116 completion of twenty years of service.

117 (r) "Effective date" means the first day of July, one  
118 thousand nine hundred ninety-eight.

119 (s) "Final average salary" means the average of the  
120 highest annual compensation received for covered  
121 employment by the member during any five consecutive  
122 plan years within the member's last ten years of service.  
123 If the member did not have annual compensation for the  
124 five full plan years preceding the member's attainment  
125 of normal retirement age and during that period the  
126 member received disability benefits under section  
127 fourteen or fifteen of this article then "final average  
128 salary" means the average of the monthly salary  
129 determined paid to the member during that period as  
130 determined under section seventeen of this article  
131 multiplied by twelve.

132 (t) "Fund" means the West Virginia Deputy Sheriff  
133 Retirement Fund created pursuant to section six of this  
134 article.

135 (u) "Hour of service" means:

136 (1) Each hour for which a member is paid or entitled  
137 to payment for covered employment during which time  
138 active duties are performed. These hours shall be

139 credited to the member for the plan year in which the  
140 duties are performed; and

141 (2) Each hour for which a member is paid or entitled  
142 to payment for covered employment during a plan year  
143 but where no duties are performed due to vacation,  
144 holiday, illness, incapacity including disability, layoff,  
145 jury duty, military duty, leave of absence or any  
146 combination thereof and without regard to whether the  
147 employment relationship has terminated. Hours under  
148 this paragraph shall be calculated and credited  
149 pursuant to West Virginia Division of Labor rules. A  
150 member will not be credited with any hours of service  
151 for any period of time he or she is receiving benefits  
152 under section fourteen or fifteen of this article; and

153 (3) Each hour for which back pay is either awarded or  
154 agreed to be paid by the employing county commission,  
155 irrespective of mitigation of damages. The same hours  
156 of service shall not be credited both under this  
157 paragraph and paragraph (1) or (2) of this subdivision.  
158 Hours under this paragraph shall be credited to the  
159 member for the plan year or years to which the award  
160 or agreement pertains rather than the plan year in  
161 which the award, agreement or payment is made.

162 (v) "Member" means a person first hired as a deputy  
163 sheriff after the effective date of this article, as defined  
164 in subsection (r) of this section, or a deputy sheriff first  
165 hired prior to the effective date and who elects to  
166 become a member pursuant to section five or section  
167 seventeen of this article. A member shall remain a  
168 member until the benefits to which he or she is entitled  
169 under this article are paid or forfeited.



170 (w) "Monthly salary" means the portion of a member's  
171 annual compensation which is paid to him or her per  
172 month.

173 (x) "Normal form" means a monthly annuity which is  
174 one twelfth of the amount of the member's accrued  
175 benefit which is payable for the member's life. If the  
176 member dies before the sum of the payments he or she  
177 receives equals his or her accumulated contributions on  
178 the annuity starting date, the named beneficiary shall  
179 receive in one lump sum the difference between the  
180 accumulated contributions at the annuity starting date  
181 and the total of the retirement income payments made  
182 to the member.

183 (y) "Normal retirement age" means the first to occur  
184 of the following: (1) Attainment of age fifty years and  
185 the completion of twenty or more years of service; (2)  
186 while still in covered employment, attainment of at least  
187 age fifty years and when the sum of current age plus  
188 years of service equals or exceeds seventy years; (3)  
189 while still in covered employment, attainment of at least  
190 age sixty years and completion of five years of service;  
191 or (4) attainment of age sixty-two years and completion  
192 of five or more years of service.

193 (z) "Partially disabled" means a member's inability to  
194 engage in the duties of deputy sheriff by reason of any  
195 medically determinable physical or mental impairment  
196 that can be expected to result in death or that has lasted  
197 or can be expected to last for a continuous period of not  
198 less than twelve months. A member may be determined  
199 partially disabled for the purposes of this article and  
200 maintain the ability to engage in other gainful  
201 employment which exists within the state but which

202 ability would not enable him or her to earn an amount  
203 at least equal to two-thirds of the average annual  
204 compensation earned by all active members of this plan  
205 during the plan year ending as of the most recent  
206 thirtieth day of June, as of which plan data has been  
207 assembled and used for the actuarial valuation of the  
208 plan.

209 (aa) "Public Employees Retirement System" means  
210 the West Virginia Public Employee's Retirement System  
211 created by article ten, chapter five of this code.

212 (bb) "Plan" means the West Virginia Deputy Sheriff  
213 Death, Disability and Retirement Plan established by  
214 this article.

215 (cc) "Plan year" means the twelve-month period  
216 commencing on the first day of July of any designated  
217 year and ending the following thirtieth day of June.

218 (dd) "Regular interest" means the rate or rates of  
219 interest per annum, compounded annually, as the board  
220 adopts in accordance with the provisions of this article.

221 (ee) "Retirement income payments" means the annual  
222 retirement income payments payable under the plan.

223 (ff) "Spouse" means the person to whom the member  
224 is legally married on the annuity starting date.

225 (gg) "Surviving spouse" means the person to whom  
226 the member was legally married at the time of the  
227 member's death and who survived the member.

228 (hh) "Totally disabled" means a member's inability to

229 engage in substantial gainful activity by reason of any  
230 medically determined physical or mental impairment  
231 that can be expected to result in death or that has lasted  
232 or can be expected to last for a continuous period of not  
233 less than twelve months. For purposes of this  
234 subdivision: (1) A member is totally disabled only if his  
235 or her physical or mental impairment or impairments  
236 are so severe that he or she is not only unable to  
237 perform his or her previous work as a deputy sheriff but  
238 also cannot, considering his or her age, education and  
239 work experience, engage in any other kind of  
240 substantial gainful employment which exists in the  
241 state regardless of whether: (A) The work exists in the  
242 immediate area in which the member lives; (B) a specific  
243 job vacancy exists; or (C) the member would be hired if  
244 he or she applied for work.

245 (2) "Physical or mental impairment" is an impairment  
246 that results from an anatomical, physiological or  
247 psychological abnormality that is demonstrated by  
248 medically accepted clinical and laboratory diagnostic  
249 techniques. A member's receipt of social security  
250 disability benefits creates a rebuttable presumption that  
251 the member is totally disabled for purposes of this plan.  
252 Substantial gainful employment rebuts the presumption  
253 of total disability.

254 (ii) "*Year of service*". — A member shall, except in his  
255 or her first and last years of covered employment, be  
256 credited with year of service credit based upon the  
257 hours of service performed as covered employment and  
258 credited to the member during the plan year based upon  
259 the following schedule:

| 260 | Hours of Service | Years of Service |
|-----|------------------|------------------|
|-----|------------------|------------------|

|     |                          |          |
|-----|--------------------------|----------|
| 261 |                          | Credited |
| 262 | Less than 500 . . . . .  | 0        |
| 263 | 500 to 999 . . . . .     | 1/3      |
| 264 | 1,000 to 1,499 . . . . . | 2/3      |
| 265 | 1,500 or more . . . . .  | 1        |

266        During a member's first and last years of covered  
 267 employment, the member shall be credited with one  
 268 twelfth of a year of service for each month during the  
 269 plan year in which the member is credited with an hour  
 270 of service. A member is not entitled to credit for years  
 271 of service for any time period during which he or she  
 272 received disability payments under section fourteen or  
 273 fifteen of this article. Except as specifically excluded,  
 274 years of service include covered employment prior to  
 275 the effective date. Years of service which are credited  
 276 to a member prior to his or her receipt of accumulated  
 277 contributions upon termination of employment  
 278 pursuant to section thirteen of this article or section  
 279 thirty, article ten, chapter five of this code, shall be  
 280 disregarded for all purposes under this plan unless the  
 281 member repays the accumulated contributions with  
 282 interest pursuant to section thirteen of this article or  
 283 had prior to the effective date made the repayment  
 284 pursuant to section eighteen, article ten, chapter five of  
 285 this code.

286        (jj) "Required beginning date" means the first day of  
 287 April of the calendar year following the later of: (i) The  
 288 calendar year in which the member attains age seventy  
 289 and one-half; or (ii) the calendar year in which he or she

290 retires or otherwise separates from covered  
291 employment.

**§7-14D-9. Retirement; commencement of benefits.**

1 A member may retire and commence to receive  
2 retirement income payments on the first day of the  
3 calendar month following the board's receipt of the  
4 member's voluntary written application for retirement.  
5 Before receiving retirement income payments, the  
6 member shall have ceased covered employment and  
7 reached early or normal retirement age. The retirement  
8 income payments shall be in an amount as provided  
9 under section eleven of this article: *Provided*, That  
10 retirement income payments under this plan shall be  
11 subject to the provisions of section nine-b of this article.  
12 Upon receipt of the application, the board shall  
13 promptly provide the member with an explanation of  
14 his or her optional forms of retirement benefits and  
15 upon receipt of properly executed forms from the  
16 member, the board shall process the member's request  
17 and commence payments as soon as administratively  
18 feasible.

**§7-14D-11. Retirement benefits.**

1 This section provides for a member's accrued benefit  
2 payable starting at the member's annuity starting date  
3 which follows the completion of a written application  
4 for the commencement of benefits. The member shall  
5 receive the accrued retirement benefit in the normal  
6 form or in an actuarial equivalent amount in an  
7 optional form as provided under section twelve of this  
8 chapter. The first day of the calendar month following  
9 the calendar month of birth shall be used in lieu of any

10 birth date that does not fall on the first day of a  
11 calendar month.

12 (a) *Normal retirement.* — A member whose annuity  
13 starting date is the date the member attains normal  
14 retirement age or later is entitled to his or her accrued  
15 retirement benefit based on years of service and final  
16 average salary at termination of employment.

17 (b) *Early retirement.* — A member who ceases covered  
18 employment and has attained early retirement age while  
19 in covered employment may elect to receive retirement  
20 income payments commencing on the first day of the  
21 month coincident with or following the date the  
22 member ceases covered employment. “Normal  
23 retirement age” for such a member is the first day of the  
24 calendar month coincident with or next following the  
25 month in which the member attains the age of fifty  
26 years. If the member’s annuity starting date is prior to  
27 the date the member attains normal retirement age, his  
28 or her accrued benefit is reduced to the actuarial  
29 equivalent benefit amount based on the years and  
30 months by which his or her annuity starting date  
31 precedes the date he or she attains normal retirement  
32 age.

33 (c) Retirement benefits shall be paid monthly in an  
34 amount equal to one twelfth of the retirement income  
35 payments elected and at those times established by the  
36 board. Notwithstanding any other provision of the  
37 plan, a member who is married on the annuity starting  
38 date will receive his or her retirement income payments  
39 in the form of a sixty-six and two-thirds percent joint  
40 and survivor annuity with his or her spouse unless prior  
41 to the annuity starting date the spouse waives the form  
42 of benefit.

Enr. Com. Sub. for S. B. No. 539] 14

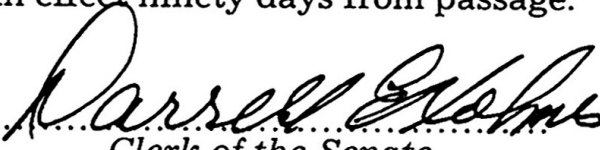
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

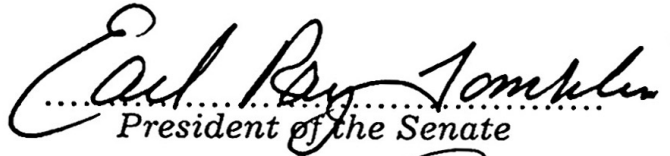
  
.....  
Chairman House Committee

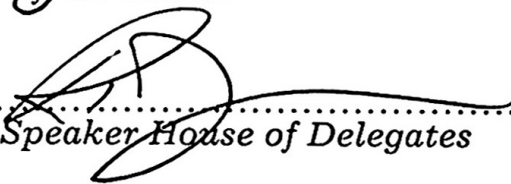
Originated in the Senate.

In effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within *is approved* ..... this  
the *3rd* Day of *April* ....., 2007.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 20 2007

Time 4:00 pm