

HB 4471

FILED

2008 APR -1 AM 11: 08

OFFICE OF THE CLERK  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2008

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**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR  
**House Bill No. 4471**

(By Delegates Spencer, DeLong, Caputo,  
Perry, Boggs, Stemple and Crosier)

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Passed March 8, 2008

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

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## H. B. 4471

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(BY DELEGATES SPENCER, DELONG, CAPUTO,  
PERRY, BOGGS, STEMPLE AND CROSIER)

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[Passed March 8, 2008; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2-24b; and to amend and reenact §15-2A-2, §15-2A-3, §15-2A-4, §15-2A-5, §15-2A-6, §15-2A-6a, §15-2A-6c, §15-2A-6d, §15-2A-7, §15-2A-8, §15-2A-9, §15-2A-10, §15-2A-11, §15-2A-11a, §15-2A-11b, §15-2A-12, §15-2A-13, §15-2A-14, §15-2A-15, §15-2A-17 and §15-2A-19 of said code, all relating to the West Virginia State Police Retirement Fund; requiring the State Police to collect a fee for certain fingerprinting services and deposit the fees into the retirement system; adding, deleting and modifying definitions; specifying the title of West Virginia State Police Retirement System; clarifying the usage of the terms “employee”, “member” and “retirant or retiree” as defined; clarifying the usage of the terms “fund”, “plan”, “system” or “retirement system” as defined; clarifying the usage of the term “base salary” as defined; clarifying the usage of the term “agency” as defined; authorizing the board to increase or decrease the employee’s contribution rate under specified circumstances; reducing the normal retirement age for

members; eliminating minimum required eligible direct rollover distributions paid directly to an eligible retirement plan; allowing distributions totaling less than two hundred dollars within the definition of “eligible rollover distribution”; clarifying the usage of the term “surviving spouse” as defined; clarifying surviving spouse payments when calculating the pro rata share of annuity adjustments; specifying the time frame that a retirant may receive deferred annuity payments; clarifying the age requirement for a retirant receiving a duty disability annuity; requiring the base salary of a member receiving a duty disability annuity to be annualized until the member has worked twelve months; specifying the title of the West Virginia Insurance Commission; clarifying the time frame for which a duty disability retirant receives a retirement benefit; specifying that disability petitions certify the job description of an employee applying for a disability retirement; specifying the time frame for receipt of awards and benefits to dependents of deceased employees; clarifying that death awards and benefits be calculated for the last full twelve-month employment period; requiring that death awards and benefits be paid to a named beneficiary or to the estate of the deceased member if there is no surviving spouse or dependents; eliminating duplicate language referring to a single receipt of state retirement benefits; and adding provisions specifying the time frame for receipt of beneficiary payments.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-2-24b; and that §15-2A-2, §15-2A-3, §15-2A-4, §15-2A-5, §15-2A-6, §15-2A-6a, §15-2A-6c, §15-2A-6d, §15-2A-7, §15-2A-8, §15-2A-9, §15-2A-10, §15-2A-11, §15-2A-11a, §15-2A-11b, §15-2A-12, §15-2A-13, §15-2A-14, §15-2A-15, §15-2A-17 and §15-2A-19 of said code be amended and reenacted, all to read as follows:

## **ARTICLE 2. WEST VIRGINIA STATE POLICE.**

**§15-2-24b. Fees for certain fingerprinting services; dedication of fees.**

1 In addition to any fees that may be established or  
2 collected by the State Police under any other provision of this  
3 article or rule promulgated pursuant thereto, the State Police  
4 shall collect a fee of twenty dollars for performing adult  
5 private employment fingerprinting or fingerprinting for  
6 federal firearm permits: *Provided*, That all state entities are  
7 exempt from the fee. Fees collected pursuant to this section  
8 shall be deposited into the West Virginia State Police  
9 Retirement System and shall be in addition to employer  
10 percent-of-payroll contribution.

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

**§15-2A-2. Definitions.**

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

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

6 (2) "Active military duty" means full-time active duty  
7 with the armed forces of the United States, namely, the  
8 United States Air Force, Army, Coast Guard, Marines or  
9 Navy; and service with the National Guard or reserve military  
10 forces of any of the armed forces when the employee has  
11 been called to active full-time duty.

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

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

15 (5) "Beneficiary" means a surviving spouse or other  
16 surviving beneficiary who is entitled to, or will be entitled to,  
17 an annuity or other benefit payable by the fund.

18 (6) "Board" means the Consolidated Public Retirement  
19 Board created pursuant to article ten-d, chapter five of this  
20 code.

21 (7) "Dependent child" means any unmarried child or  
22 children born to or adopted by a member or retirant of the  
23 fund who:

24 (A) Is under the age of eighteen;

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

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

32 (8) "Dependent parent" means the member's or retirant's  
33 parent or stepparent claimed as a dependent by the member  
34 or retirant for federal income tax purposes at the time of the  
35 member's or retirant's death.

36 (9) "Employee" means any person regularly employed in  
37 the service of the agency as a law-enforcement officer after  
38 the twelfth day of March, one thousand nine hundred ninety-  
39 four, and who is eligible to participate in the fund.

40 (10) "Final average salary" means the average of the  
41 highest annual compensation received for employment with  
42 the agency, including compensation paid for overtime

43 service, received by the employee during any five calendar  
44 years within the employee's last ten years of service.

45 (11) "Fund", "plan", "system" or "retirement system"  
46 means the West Virginia State Police Retirement Fund  
47 created and established by this article.

48 (12) "Internal Revenue Code" means the Internal  
49 Revenue Code of 1986, as amended.

50 (13) "Law-enforcement officer" means an individual  
51 employed or otherwise engaged in either a public or private  
52 position which involves the rendition of services relating to  
53 enforcement of federal, state or local laws for the protection  
54 of public or private safety, including, but not limited to,  
55 positions as deputy sheriffs, police officers, marshals,  
56 bailiffs, court security officers or any other law-enforcement  
57 position which requires certification, but excluding positions  
58 held by elected sheriffs or appointed chiefs of police whose  
59 duties are purely administrative in nature.

60 (14) "Member" means any person who has contributions  
61 standing to his or her credit in the fund and who has not yet  
62 entered into retirement status.

63 (15) "Month of service" means each month for which an  
64 employee is paid or entitled to payment for at least one hour  
65 of service for which contributions were remitted to the fund.  
66 These months shall be credited to the member for the  
67 calendar year in which the duties are performed.

68 (16) "Partially disabled" means an employee's inability,  
69 on a probable permanent basis, to perform the essential duties  
70 of a law-enforcement officer by reason of any medically  
71 determinable physical or mental impairment which has lasted  
72 or can be expected to last for a continuous period of not less  
73 than twelve months, but which impairment does not preclude

74 the employee from engaging in other types of nonlaw-  
75 enforcement employment.

76 (17) "Physical or mental impairment" means an  
77 impairment that results from an anatomical, physiological or  
78 psychological abnormality that is demonstrated by medically  
79 accepted clinical and laboratory diagnostic techniques.

80 (18) "Plan year" means the twelve-month period  
81 commencing on the first day of July of any designated year  
82 and ending the following thirtieth day of June.

83 (19) "Required beginning date" means the first day of  
84 April of the calendar year following the later of: (a) The  
85 calendar year in which the member attains age seventy and  
86 one-half years; or (b) the calendar year in which he or she  
87 retires or otherwise separates from service with the agency  
88 after having attained the age of seventy and one-half years.

89 (20) "Retirant" or "retiree" means any member who  
90 commences an annuity payable by the retirement system.

91 (21) "Salary" means the compensation of an employee,  
92 excluding any overtime payments.

93 (22) "Surviving spouse" means the person to whom the  
94 member or retirant was legally married at the time of the  
95 member's or retirant's death and who survived the member  
96 or retirant.

97 (23) "Totally disabled" means an employee's probable  
98 permanent inability to engage in substantial gainful activity  
99 by reason of any medically determined physical or mental  
100 impairment that can be expected to result in death or that has  
101 lasted or can be expected to last for a continuous period of  
102 not less than twelve months. For purposes of this  
103 subdivision, an employee is totally disabled only if his or her

104 physical or mental impairments are so severe that he or she  
105 is not only unable to perform his or her previous work as an  
106 employee of the agency, but also cannot, considering his or  
107 her age, education and work experience, engage in any other  
108 kind of substantial gainful employment which exists in the  
109 state regardless of whether: (A) The work exists in the  
110 immediate area in which the employee lives; (B) a specific  
111 job vacancy exists; or (C) the employee would be hired if he  
112 or she applied for work.

113 (24) "Years of service" means the months of service  
114 acquired by a member while in active employment with the  
115 agency divided by twelve. Years of service shall be  
116 calculated in years and fraction of a year from the date of  
117 active employment of the member with the agency through  
118 the date of termination of employment or retirement from the  
119 agency. If a member returns to active employment with the  
120 agency following a previous termination of employment with  
121 the agency and the member has not received a refund of  
122 contributions plus interest for the previous employment under  
123 section eight of this article, service shall be calculated  
124 separately for each period of continuous employment and  
125 years of service shall be the total service for all periods of  
126 employment. Years of service shall exclude any periods of  
127 employment with the agency for which a refund of  
128 contributions plus interest has been paid to the member  
129 unless the employee repays the previous withdrawal, as  
130 provided in section eight of this article, to reinstate the years  
131 of service.

**§15-2A-3. Continuation and administration of West Virginia  
State Police Retirement System; leased  
employees; federal qualification requirements.**

1 (a) The West Virginia State Police Retirement System is  
2 continued. Any West Virginia state trooper employed by the  
3 agency on or after the effective date of this article shall be a



4 member of this retirement system and may not qualify for  
5 membership in any other retirement system administered by  
6 the board so long as he or she remains employed by the State  
7 Police.

8 (b) Any individual who is a leased employee shall not be  
9 eligible to participate in the system. For purposes of this  
10 system, a "leased employee" means any individual who  
11 performs services as an independent contractor or pursuant to  
12 an agreement with an employee leasing organization or other  
13 similar organization. If a question arises regarding the status  
14 of an individual as a leased employee, the board has final  
15 power to decide the question.

16 (c) The board created pursuant to article ten-d, chapter  
17 five of this code shall administer the retirement system. The  
18 board may sue and be sued, contract and be contracted with  
19 and conduct all the business of the system in the name of the  
20 West Virginia State Police Retirement System.

21 (d) This fund is intended to meet the federal qualification  
22 requirements of Section 401(a) and related sections of the  
23 Internal Revenue Code as applicable to governmental plans.  
24 Notwithstanding any other provision of state law, the board  
25 shall administer the retirement system to fulfill this intent for  
26 the exclusive benefit of the employees, members, retirants  
27 and their beneficiaries. Any provision of this article  
28 referencing or relating to these federal qualification  
29 requirements shall be effective as of the date required by  
30 federal law. The board may promulgate rules and amend or  
31 repeal conflicting rules in accordance with the authority  
32 granted to the board pursuant to section one, article ten-d,  
33 chapter five of this code to assure compliance with this  
34 section.

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

1 The West Virginia State Police Retirement Fund is  
2 continued for the benefit of the members and retirants of the  
3 system created pursuant to this article and the dependents of  
4 any deceased or retired member of the system. All moneys  
5 paid into and accumulated in the fund, except any amounts  
6 designated or set aside by the board for payments of benefits  
7 as provided in this article, shall be invested by the West  
8 Virginia Investment Management Board as provided by law.

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

1 (a) There shall be deducted from the monthly payroll of  
2 each employee and paid into the fund created pursuant to  
3 section four of this article twelve percent of the amount of his  
4 or her salary: *Provided*, That after the first day of July, two  
5 thousand eight, if the unfunded liability of the Fund falls  
6 below the ninety percent threshold, then the employee rate of  
7 contribution shall be increased to thirteen percent of the  
8 amount of the employee's salary until the ninety percent or  
9 better funding level is again achieved. Once that funding  
10 level is achieved the employee contribution rate will be  
11 reduced to twelve percent.

12 (b) The State of West Virginia's contributions to the  
13 retirement system, as determined by the board by legislative  
14 rule promulgated in accordance with the provisions of article  
15 three, chapter twenty-nine-a of this code, shall be a percent  
16 of the employees' total annual base salary related to benefits  
17 under this retirement system. In determining the amount, the  
18 board shall give consideration to setting the amount at a sum  
19 equal to an amount which, if paid annually by the state, will  
20 be sufficient to provide for the total normal cost of the  
21 benefits expected to become payable to all members and  
22 retirants and to amortize any unfunded liability found by  
23 application of the actuarial funding method chosen for that  
24 purpose by the board over a period of years determined

25 actuarially appropriate. When proposing a rule for  
26 promulgation which relates to the amount of employer  
27 contribution, the board may promulgate emergency rules  
28 pursuant to the provisions of article three, chapter  
29 twenty-nine-a of this code if the inability of the board to  
30 increase state contributions will detrimentally affect the  
31 actuarial soundness of the retirement system. A signed  
32 statement from the state actuary shall accompany the  
33 statement of facts and circumstances constituting an  
34 emergency which shall be filed in the State Register. For  
35 purposes of this section, subdivision (2), subsection (b),  
36 section fifteen-a, article three, chapter twenty-nine-a of this  
37 code is not applicable to the Secretary of State's  
38 determination of whether an emergency rule should be  
39 approved. The state's contributions shall be paid monthly  
40 into the fund created pursuant to section four of this article  
41 out of the annual appropriation for the agency.

42 (c) Notwithstanding any other provisions of this article,  
43 forfeitures under the system shall not be applied to increase  
44 the benefits any member or retirant would otherwise receive  
45 under the system.

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

1 (a) A member may retire with full benefits upon attaining  
2 the age of fifty and completing twenty-five or more years of  
3 service or attaining the age of fifty-two and completing  
4 twenty years or more of service by filing with the board his  
5 or her voluntary application in writing for retirement. A  
6 member who is less than age fifty-two may retire upon  
7 completing twenty years or more of service: *Provided*, That  
8 he or she will receive a reduced benefit that is of equal  
9 actuarial value to the benefit the member would have  
10 received if the member deferred commencement of his or her  
11 accrued retirement benefit to the age of fifty-two.

12 (b) When the board retires a member with full benefits  
13 under the provisions of this section, the board, by order in  
14 writing, shall make a determination that the member is  
15 entitled to receive an annuity equal to two and three-fourths  
16 percent of his or her final average salary multiplied by the  
17 number of years, and fraction of a year, of his or her service  
18 at the time of retirement. The retirant's annuity shall begin  
19 the first day of the calendar month following the month in  
20 which the member's application for the annuity is filed with  
21 the board on or after his or her attaining age and service  
22 requirements and termination of employment.

23 (c) In no event may the provisions of section thirteen,  
24 article sixteen, chapter five of this code be applied in  
25 determining eligibility to retire with either a deferred or  
26 immediate commencement of benefit.

**§15-2A-6a. Federal law maximum benefit limitations.**

1 Notwithstanding any other provision of this article or  
2 state law, the board shall administer the retirement system in  
3 compliance with the limitations of Section 415 of the Internal  
4 Revenue Code and Treasury regulations under that section to  
5 the extent applicable to governmental plans so that no  
6 annuity or other benefit provided under this system shall  
7 exceed those limitations. The extent to which any annuity or  
8 other benefit payable under this retirement system shall be  
9 reduced as compared with the extent to which an annuity,  
10 contributions or other benefits under any other defined  
11 benefit plans or defined contribution plans required to be  
12 taken into consideration under Section 415 of the Internal  
13 Revenue Code shall be determined by the board in a manner  
14 that shall maximize the aggregate benefits payable to the  
15 member. If the reduction is under this retirement system, the  
16 board shall advise affected members or retirants of any  
17 additional limitation on the annuities required by this section.

**§15-2A-6c. Direct rollovers.**

1 (a) This section applies to distributions made on or after  
2 the first day of January, one thousand nine hundred ninety-  
3 three. Notwithstanding any provision of this article to the  
4 contrary that would otherwise limit a distributee's election  
5 under this system, a distributee may elect, at the time and in  
6 the manner prescribed by the board, to have any portion of an  
7 eligible rollover distribution paid directly to an eligible  
8 retirement plan specified by the distributee in a direct  
9 rollover. For purposes of this section, the following  
10 definitions apply:

11 (1) "Eligible rollover distribution" means any distribution  
12 of all or any portion of the balance to the credit of the  
13 distributee, except that an eligible rollover distribution does  
14 not include any of the following: (i) Any distribution that is  
15 one of a series of substantially equal periodic payments not  
16 less frequently than annually made for the life or life  
17 expectancy of the distributee or the joint lives or the joint life  
18 expectancies of the distributee and the distributee's  
19 designated beneficiary or for a specified period of ten years  
20 or more; (ii) any distribution to the extent the distribution is  
21 required under Section 401(a)(9) of the Internal Revenue  
22 Code; (iii) the portion of any distribution that is not  
23 includable in gross income determined without regard to the  
24 exclusion for net unrealized appreciation with respect to  
25 employer securities; and (iv) any hardship distribution  
26 described in Section 401(k)(2)(B)(i)(iv) of the Internal  
27 Revenue Code. For distributions after the thirty-first day of  
28 December, two thousand one, a portion of a distribution shall  
29 not fail to be an eligible rollover distribution merely because  
30 the portion consists of after-tax employee contributions  
31 which are not includable in gross income. However, this  
32 portion may be paid only to an individual retirement account  
33 or annuity described in Section 408(a) or (b) of the Internal  
34 Revenue Code or to a qualified defined contribution plan

35 described in Section 401(a) or 403(a) of the Internal Revenue  
36 Code that agrees to separately account for amounts  
37 transferred, including separately accounting for the portion of  
38 the distribution which is includable in gross income and the  
39 portion of the distribution which is not includable.

40 (2) "Eligible retirement plan" means an individual  
41 retirement account described in Section 408(a) of the Internal  
42 Revenue Code, an individual retirement annuity described in  
43 Section 408(b) of the Internal Revenue Code, an annuity plan  
44 described in Section 403(a) of the Internal Revenue Code or  
45 a qualified plan described in Section 401(a) of the Internal  
46 Revenue Code that accepts the distributee's eligible rollover  
47 distribution: *Provided*, That in the case of an eligible  
48 rollover distribution to the surviving spouse, an eligible  
49 retirement plan is an individual retirement account or  
50 individual retirement annuity. For distributions after the  
51 thirty-first day of December, two thousand one, an eligible  
52 retirement plan also means an annuity contract described in  
53 Section 403(b) of the Internal Revenue Code and an eligible  
54 plan under Section 457(b) of the Internal Revenue Code  
55 which is maintained by a state, political subdivision of a state  
56 or any agency or instrumentality of a state or political  
57 subdivision of a state and which agrees to separately account  
58 for amounts transferred into the plan from this system.

59 (3) "Distributee" means an employee or former  
60 employee. In addition, the employee's or former employee's  
61 surviving spouse and the employee's or former employee's  
62 spouse or former spouse who is the alternate payee under a  
63 qualified domestic relations order, as defined in Section  
64 414(p) of the Internal Revenue Code with respect to  
65 governmental plans, are distributees with regard to the  
66 interest of the spouse or former spouse.

67 (4) "Direct rollover" means a payment by the system to  
68 the eligible retirement plan.

69 (b) Nothing in this section may be construed as  
70 permitting rollovers into this system or any other retirement  
71 system administered by the board.

**§15-2A-6d. Rollovers and transfers to purchase service credit  
or repay withdrawn contributions.**

1 (a) This section applies to rollovers and transfers as  
2 specified in this section made on or after the first day of  
3 January, two thousand two. Notwithstanding any provision  
4 of this article to the contrary that would otherwise prohibit or  
5 limit rollovers and plan transfers to this system, the  
6 retirement system shall accept the following rollovers and  
7 plan transfers on behalf of an employee solely for the purpose  
8 of purchasing permissive service credit, in whole and in part,  
9 as otherwise provided in this article or for the repayment of  
10 withdrawn or refunded contributions, in whole and in part,  
11 with respect to a previous forfeiture of service credit as  
12 otherwise provided in this article: (i) One or more rollovers  
13 within the meaning of Section 408(d)(3) of the Internal  
14 Revenue Code from an individual retirement account  
15 described in Section 408(a) of the Internal Revenue Code or  
16 from an individual retirement annuity described in Section  
17 408(b) of the Internal Revenue Code; (ii) one or more  
18 rollovers described in Section 402 (c) of the Internal Revenue  
19 Code from a retirement plan that is qualified under Section  
20 401(a) of the Internal Revenue Code or from a plan described  
21 in Section 403(b) of the Internal Revenue Code; (iii) one or  
22 more rollovers described in Section 457(e)(16) of the Internal  
23 Revenue Code from a governmental plan described in  
24 Section 457 of the Internal Revenue Code; or (iv) direct  
25 trustee-to-trustee transfers or rollovers from a plan that is  
26 qualified under Section 401(a) of the Internal Revenue Code  
27 from a plan described in Section 403(b) of the Internal  
28 Revenue Code or from a governmental plan described in  
29 Section 457 of the Internal Revenue Code: *Provided*, That  
30 any rollovers or transfers pursuant to this section shall be

31 accepted by the system only if made in cash or other asset  
32 permitted by the board and only in accordance with the  
33 policies, practices and procedures established by the board  
34 from time to time. For purposes of this section, the following  
35 definitions apply:

36 (1) "Permissive service credit" means service credit  
37 which is permitted to be purchased under the terms of the  
38 retirement system by voluntary contributions in an amount  
39 which does not exceed the amount necessary to fund the  
40 benefit attributable to the period of service for which the  
41 service credit is being purchased, all as defined in Section  
42 415(n)(3)(A) of the Internal Revenue Code.

43 (2) "Repayment of withdrawn or refunded contributions"  
44 means the payment into the retirement system of the funds  
45 required pursuant to this article for the reinstatement of  
46 service credit previously forfeited on account of any refund  
47 or withdrawal of contributions permitted in this article, as set  
48 forth in Section 415(k)(3) of the Internal Revenue Code.

49 (b) Nothing in this section shall be construed as  
50 permitting rollovers or transfers into this system or any other  
51 system administered by the board other than as specified in  
52 this section and no rollover or transfer shall be accepted into  
53 the system in an amount greater than the amount required for  
54 the purchase of permissive service credit or repayment of  
55 withdrawn or refunded contributions.

56 (c) Nothing in this section shall be construed as  
57 permitting the purchase of service credit or repayment of  
58 withdrawn or refunded contributions except as otherwise  
59 permitted in this article.

**§15-2A-7. Annual annuity adjustment.**



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

17 (b) Any retirant or surviving spouse who receives a  
18 benefit pursuant to the provisions of section nine, ten, twelve,  
19 thirteen or fourteen of this article shall begin to receive the  
20 annual annuity adjustment one year after the commencement  
21 of the benefit on the next July first: *Provided*, That if the  
22 retirant has been retired for less than one year or if the  
23 surviving spouse has been in receipt of surviving spouse  
24 payments for less than one year when the first annuity  
25 adjustment is given on that July first, that first annuity  
26 adjustment will be a pro rata share of the full year's annuity  
27 adjustment.

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

1 (a) Any employee who is discharged by order of the  
2 superintendent or otherwise terminates employment with the  
3 agency is, at the written request of the member to the board,  
4 entitled to receive from the fund a sum equal to the aggregate  
5 of the principal amount of moneys deducted from his or her

6 base salary and paid into the fund plus four percent interest  
7 compounded thereon calculated annually as provided and  
8 required by this article.

9 (b) Any member withdrawing contributions who may  
10 thereafter be reemployed by the agency shall not receive any  
11 prior service credit in the fund on account of former service.  
12 The employee may redeposit in the fund established by this  
13 article the amount of the refund, together with interest  
14 thereon at the rate of seven and one-half percent per annum  
15 from the date of withdrawal to the date of redeposit, in which  
16 case he or she shall receive the same credit on account of his  
17 or her former service as if no refund had been made.

18 (c) Every employee who completes ten years of service  
19 with the agency is eligible, upon separation of employment,  
20 to either withdraw his or her contributions in accordance with  
21 subsection (a) of this section or to choose not to withdraw his  
22 or her accumulated contributions. Upon attainment of age  
23 sixty-two, a member who chooses not to withdraw his or her  
24 contributions is eligible to receive a retirement annuity. The  
25 annuity shall be payable during the lifetime of the retirant and  
26 shall be in the amount of his or her accrued retirement benefit  
27 as determined under section six of this article. The retirant  
28 may choose, in lieu of a life annuity, an annuity in a reduced  
29 amount payable during the retirant's lifetime, with one half  
30 of the reduced monthly amount paid to his or her surviving  
31 spouse for the spouse's remaining lifetime after the death of  
32 the retirant. Reduction of the monthly benefit amount shall  
33 be calculated to be of equal actuarial value to the life annuity  
34 the retirant could otherwise have chosen. Any retirant  
35 choosing to receive the deferred annuity under this subsection  
36 is not eligible to receive the annual annuity adjustment  
37 provided in section seven of this article. A retiring member  
38 under the provisions of this section may receive retirement  
39 annuity payments on the first day of the month following his  
40 or her attaining age sixty-two and upon receipt of the

41 application for retirement. The board shall promptly provide  
42 the member with an explanation of his or her optional forms  
43 of retirement benefits and, upon receipt of properly executed  
44 forms from the agency and member, the board shall process  
45 the member's request for and commence payments as soon  
46 as administratively feasible.

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

1 (a) Any employee of the agency who has not yet entered  
2 retirement status on the basis of age and service and who  
3 becomes partially disabled by injury, illness or disease  
4 resulting from any occupational risk or hazard inherent in or  
5 peculiar to the services required of employees of the agency  
6 or incurred pursuant to or while the employee was engaged  
7 in the performance of his or her duties as an employee of the  
8 agency shall, if, in the opinion of the board, he or she is, by  
9 reason of that cause, unable to perform adequately the duties  
10 required of him or her as an employee of the agency, but is  
11 able to engage in other gainful employment in a field other  
12 than law enforcement, be retired from active service by the  
13 board. The retirant thereafter is entitled to receive annually  
14 from the fund in equal monthly installments during his or her  
15 lifetime, or until the retirant attains the age of fifty-five or  
16 until the disability eligibility sooner terminates, one or the  
17 other of two amounts, whichever is greater:

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

24 (2) The sum of six thousand dollars. The first day of the  
25 month following the date in which the retirant attains age

26 fifty-five, the retirant shall receive the benefit provided in  
27 section six of this article as it would apply to his or her final  
28 average salary based on earnings from the agency through the  
29 day immediately preceding his or her disability. The  
30 recalculation of benefit upon a retirant attaining age fifty-five  
31 shall be considered to be a retirement under the provisions of  
32 section six of this article for purposes of determining the  
33 amount of annual annuity adjustment and for all other  
34 purposes of this article: *Provided*, That a retirant who is  
35 partially disabled under this article may not, while in receipt  
36 of benefits for partial disability, be employed as a law-  
37 enforcement officer: *Provided, however*, That a retirant on  
38 a partial disability under this article may serve as an elected  
39 sheriff or appointed chief of police in the state without a loss  
40 of disability retirement benefits as long as the elected or  
41 appointed position is shown, to the satisfaction of the board,  
42 to require the performance of administrative duties and  
43 functions only, as opposed to the full range of duties of a  
44 law-enforcement officer.

45 (b) Any member who has not yet entered retirement  
46 status on the basis of age and service and who becomes  
47 physically or mentally disabled by injury, illness or disease  
48 on a probable permanent basis resulting from any  
49 occupational risk or hazard inherent in or peculiar to the  
50 services required of employees of the agency or incurred  
51 pursuant to or while the employee was or is engaged in the  
52 performance of his or her duties as an employee of the  
53 agency to the extent that the employee is incapacitated ever  
54 to engage in any gainful employment, the employee is  
55 entitled to receive annually, and there shall be paid from the  
56 fund in equal monthly installments during his or her lifetime  
57 or until the disability sooner terminates, an amount equal to  
58 the base salary received by the employee in the preceding full  
59 twelve-month employment period. Until a member has  
60 worked twelve months, the amount of monthly base salary shall be  
61 annualized for the purpose of determining the benefit.

62 (c) The superintendent of the agency may expend moneys  
63 from funds appropriated for the agency in payment of  
64 medical, surgical, laboratory, X-ray, hospital, ambulance and  
65 dental expenses and fees and reasonable costs and expenses  
66 incurred in the purchase of artificial limbs and other  
67 approved appliances which may be reasonably necessary for  
68 any retirant who is temporarily, permanently or totally  
69 disabled by injury, illness or disease resulting from any  
70 occupational risk or hazard inherent in or peculiar to the  
71 service required of employees of the agency or incurred  
72 pursuant to or while the employee was or shall be engaged in  
73 the performance of duties as an employee of the agency.  
74 Whenever the superintendent determines that any disabled  
75 retirant is ineligible to receive any of the benefits in this  
76 section at public expense, the superintendent shall, at the  
77 request of the disabled retirant, refer the matter to the board  
78 for hearing and final decision. In no case will the  
79 compensation rendered to health care providers for medical  
80 and hospital services exceed the then current rate schedule  
81 approved by the West Virginia Insurance Commission. Upon  
82 termination of employment and receipt of properly executed  
83 forms from the agency and the member, the board shall  
84 process the member's disability retirement benefit and  
85 commence annuity payments as soon as administratively  
86 feasible.

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

1 (a) If any employee while in active service of the agency  
2 becomes partially or totally disabled on a probable permanent  
3 basis to the extent that the employee cannot adequately  
4 perform the duties required of an employee of the agency  
5 from any cause other than those set forth in the preceding  
6 section and not due to vicious habits, intemperance or willful  
7 misconduct on his or her part, the employee shall be retired  
8 by the board. There shall be paid annually to the retirant  
9 from the fund in equal monthly installments, commencing on

10 the date the retirant is retired and continuing during the  
11 lifetime of the retirant or until the retirant attains the age of  
12 fifty-five; while in status of retirement an amount equal to  
13 one half the base salary received by the retirant in the  
14 preceding full twelve-month period: *Provided*, That if the  
15 retirant had not been employed with the agency for twelve  
16 full months prior to the disability, the amount of monthly  
17 base salary shall be annualized for the purpose of  
18 determining the benefit.

19 (b) The first day of the month following the date in which  
20 the retirant attains age fifty-five, the retirant shall receive the  
21 benefit provided in section six of this article as it would apply  
22 to his or her final average salary based on earnings from the  
23 agency through the day immediately preceding his or her  
24 disability. The recalculation of benefit upon a retirant  
25 attaining age fifty-five shall be considered to be a retirement  
26 under the provisions of section six of this article for purposes  
27 of determining the amount of annual annuity adjustment and  
28 for all other purposes of this article.

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

1 The board may require any disabled retirant to submit to  
2 a physical or mental examination or both a physical and  
3 mental examination by a physician or physicians selected or  
4 approved by the board and cause all costs incident to the  
5 examination, including hospital, laboratory, X-ray, medical  
6 and physicians' fees, to be paid out of funds appropriated to  
7 defray the current expenses of the agency, and the physician  
8 or physicians shall submit a report of the findings of the  
9 physician or physicians in writing to the board for its  
10 consideration. If from the report, or from the report and  
11 hearing on the report, the board is of the opinion and finds  
12 that the disabled retirant has recovered from the disability to  
13 the extent that he or she is able to perform adequately the  
14 duties of a law-enforcement officer, the board shall order that

15 all payments from the fund to that disabled retirant be  
16 terminated. If from the report, or the report and hearing on  
17 the report, the board is of the opinion and finds that the  
18 disabled retirant has recovered from his or her previously  
19 determined probable permanent disability to the extent that  
20 he or she is able to engage in any gainful employment, but  
21 unable to adequately perform the duties of a law-enforcement  
22 officer, the board shall order, in the case of a disabled retirant  
23 receiving benefits under the provisions of section nine of this  
24 article, that the disabled retirant be paid annually from the  
25 fund an amount equal to six tenths of the base salary paid to  
26 the retirant in the last full twelve-month employment period.  
27 The board shall order, in the case of a disabled retirant  
28 receiving benefits under the provisions of section ten of this  
29 article, that the disabled retirant be paid from the fund an  
30 amount equal to one fourth of the base salary paid to the  
31 retirant in the last full twelve-month employment period:  
32 *Provided*, That if the retirant had not been employed with the  
33 agency for twelve full months prior to the disability, the  
34 amount of monthly salary shall be annualized for the purpose  
35 of determining the benefit.

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

1 (a) Not later than thirty days after an employee becomes  
2 a member of the fund, the employer shall forward to the  
3 board a copy of the physician's report of a physical  
4 examination which incorporates the standards or procedures  
5 described in section seven, article two, chapter fifteen of this  
6 code. A copy of the physicians's report shall be placed in the  
7 employee's retirement system file maintained by the board.

8 (b) Application for a disability benefit may be made by  
9 an employee or, if the employee is under an incapacity, by a  
10 person acting with legal authority on the employee's behalf.

11 After receiving an application for a disability benefit, the  
12 board shall notify the superintendent of the agency that an  
13 application has been filed: *Provided*, That when, in the  
14 judgment of the superintendent, an employee is no longer  
15 physically or mentally fit for continued duty as an employee  
16 of the agency and the employee has failed or refused to make  
17 application for disability benefits under this article, the  
18 superintendent may petition the board to retire the employee  
19 on the basis of disability pursuant to legislative rules  
20 proposed in accordance with article three, chapter  
21 twenty-nine-a of this code. Within thirty days of the  
22 superintendent's receipt of the notice from the board or the  
23 filing of the superintendent's petition with the board, the  
24 superintendent shall forward to the board a statement  
25 certifying the duties of the employee's job description,  
26 information relating to the superintendent's position on the  
27 work relatedness of the employee's alleged disability,  
28 complete copies of the employee's medical file and any other  
29 information requested by the board in its processing of the  
30 application.

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

35 (d) The board shall notify an employee and the  
36 superintendent of its final action on the disability application  
37 or petition within ten days of the board's final action. The  
38 notice shall be sent by certified mail, return receipt requested.  
39 If either the employee or the superintendent is aggrieved by  
40 the decision of the board and intends to pursue judicial  
41 review of the board's decision as provided in section four,  
42 article five, chapter twenty-nine-a of this code, the party  
43 aggrieved shall notify the board within twenty days of the  
44 employee's or superintendent's receipt of the board's notice that  
45 they intend to pursue judicial review of the board's decision.



46 (e) The board may require a disabled retirant to file an  
47 annual statement of earnings and any other information  
48 required in rules which may be adopted by the board. The  
49 board may waive the requirement that a disabled retirant file  
50 the annual statement of earnings if the board's physician  
51 certifies that the recipient's disability is ongoing. The board  
52 shall annually examine the information submitted by the  
53 disabled retirant. If a disabled retirant refuses to file the  
54 statement or information, the disability benefit shall be  
55 suspended until the statement and information are filed.

**§15-2A-11b. Annual report on each employer's disability retirement experience.**

1 Not later than the first day of January, two thousand six,  
2 and each first day of January thereafter, the board shall  
3 prepare a report for the preceding fiscal year of the disability  
4 retirement experience of the West Virginia State Police  
5 Retirement Fund. The report shall specify the total number  
6 of disability applications submitted, the status of each  
7 application as of the last day of the fiscal year, total  
8 applications granted or denied and the percentage of  
9 disability benefit recipients to the total number agency  
10 employees who are members of the fund. The report shall be  
11 submitted to the Governor and the chairpersons of the  
12 standing committees of the Senate and House of Delegates  
13 with primary responsibility for retirement legislation.

**§15-2A-12. Awards and benefits to dependents of employees or retirants - When employee dies in performance of duty, etc.; dependent child scholarship and amount.**

1 The surviving spouse, the dependent child or children or  
2 dependent parent or parents of any employee who has lost or  
3 shall lose his or her life by reason of injury, illness or disease  
4 resulting from an occupational risk or hazard inherent in or

5 peculiar to the service required of employees while the  
6 employee was engaged in the performance of his or her  
7 duties as an employee of the agency, or the survivor of a  
8 retirant who dies from any cause after having been retired  
9 pursuant to the provisions of section nine of this article, is  
10 entitled to receive and shall be paid from the fund benefits as  
11 follows: To the surviving spouse annually, in equal monthly  
12 installments during his or her lifetime, one or the other of two  
13 amounts, which shall become payable the first day of the  
14 month following the employee's or retirant's death and which  
15 shall be the greater of:

16 (1) An amount equal to nine tenths of the base salary  
17 received in the preceding full twelve-month employment  
18 period by the deceased employee: *Provided*, That if the  
19 employee had not been employed with the agency for twelve  
20 full months prior to his or her death, the amount of monthly  
21 salary shall be annualized for the purpose of determining the  
22 benefit; or

23 (2) The sum of ten thousand dollars.

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

39 no surviving spouse, dependent child, or dependent parent of  
40 the deceased member, the accumulated contributions shall be  
41 paid to a named beneficiary or beneficiaries: *Provided*  
42 *further*, That if there is no surviving spouse, dependent child,  
43 dependent parent of the deceased member or any named  
44 beneficiary or beneficiaries, then the accumulated  
45 contributions shall be paid to the estate of the deceased  
46 member.

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

65 A surviving spouse or dependent of an employee meeting  
66 the requirements of this section is entitled to receive  
67 beneficiary payments on the first day of the month following  
68 the date the deceased member is removed from payroll by the  
69 agency. A surviving spouse or dependent of a member who  
70 is not currently an employee meeting the requirements of this  
71 section is entitled to receive beneficiary payments on the first  
72 day of the month following the date of the deceased  
73 member's death. A surviving spouse or dependent of a

74   retirant meeting the requirements of this section is entitled to  
75   receive beneficiary payments on the first day of the month  
76   following the date of the deceased retirant's death. Upon  
77   receipt of properly executed forms from the agency and  
78   surviving spouse or dependent, the board shall process the  
79   surviving spouse or dependent benefit as soon as  
80   administratively feasible.

81           It is the intent of the Legislature that the levels of benefits  
82   provided by operation of this section from the effective date  
83   of the enactment of this section during the regular session of  
84   the Legislature, two thousand five, be the same levels of  
85   benefits as provided by this section as amended and  
86   reenacted during the fourth extraordinary session of the  
87   Legislature, two thousand five. Accordingly, the effective  
88   date of the operation of this section as amended and  
89   reenacted during the fourth extraordinary session of the  
90   Legislature, two thousand five, is expressly made  
91   retrospective to the ninth day of April, two thousand five.

**§15-2A-13. Same -- When member dies from nonservice-  
connected causes before serving twenty years.**

1           (a) In any case where an employee while in active service  
2   of the agency, before having completed twenty years of  
3   service as an employee of the agency, dies from any cause  
4   other than those specified in this article and not due to  
5   vicious habits, intemperance or willful misconduct on his or  
6   her part, there shall be paid annually in equal monthly  
7   installments from the fund to the surviving spouse of the  
8   member during his or her lifetime, or until the surviving  
9   spouse remarries, a sum equal to one half of the base salary  
10   received in the preceding full twelve-month employment  
11   period by the deceased member: *Provided*, That if the  
12   member had not been employed with the agency for twelve  
13   full months prior to the disability, the amount of monthly  
14   salary shall be annualized for the purpose of determining the

15 benefit. If there is no surviving spouse or the surviving  
16 spouse dies or remarries, there shall be paid monthly to each  
17 dependent child or children from the fund a sum equal to one  
18 fourth of the surviving spouse's entitlement. If there is no  
19 surviving spouse and no dependent child or children, there  
20 shall be paid annually in equal monthly installments from the  
21 fund to the dependent parents of the deceased member during  
22 their joint lifetimes a sum equal to the amount that a  
23 surviving spouse would have been entitled to receive:  
24 *Provided, however,* That when there is one dependent parent  
25 surviving, then that parent is entitled to receive during his or  
26 her lifetime one half the amount which both parents, if living,  
27 would have been entitled to receive: *Provided further,* That  
28 if there is no surviving spouse, dependent child or dependent  
29 parent of the deceased member, the accumulated  
30 contributions shall be paid to a named beneficiary or  
31 beneficiaries: *And provided further,* That if there is no  
32 surviving spouse, dependent child, dependent parent of the  
33 deceased member or any named beneficiary or beneficiaries,  
34 then the accumulated contributions shall be paid to the estate  
35 of the deceased member.

36 (b) A surviving spouse or dependent of an employee  
37 meeting the requirements of this section is entitled to receive  
38 beneficiary payments on the first day of the month following  
39 the date the deceased member is removed from payroll by the  
40 agency. A surviving spouse or dependent of a member who  
41 is not currently an employee meeting the requirements of this  
42 section is entitled to receive beneficiary payments on the first  
43 day of the month following the date of the deceased  
44 member's death. A surviving spouse or dependent of a  
45 retirant meeting the requirements of this section is entitled to  
46 receive beneficiary payments on the first day of the month  
47 following the date of the deceased retirant's death. Upon  
48 receipt of properly executed forms from the agency and  
49 surviving spouse or dependent, the board shall process the

50 surviving spouse or dependent benefit as soon as  
51 administratively feasible.

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

1 (a) When any employee of the agency has completed  
2 twenty years of service or longer as an employee of the  
3 agency and dies from any cause or causes other than those  
4 specified in this article before having been retired by the  
5 board and when a retirant has died or dies after having been  
6 retired by the board under the provisions of this article, there  
7 shall be paid annually in equal monthly installments from the  
8 fund to the surviving spouse of the member or retirant, during  
9 the lifetime or until remarriage of the surviving spouse, an  
10 amount equal to two thirds of the retirement benefit which  
11 the deceased retirant was receiving while in status of  
12 retirement or would have been entitled to receive to the same  
13 effect as if the member had been retired under the provisions  
14 of this article immediately prior to the time of his or her  
15 death. In no event shall the annual benefit payable be less  
16 than five thousand dollars. In addition, the surviving spouse  
17 is entitled to receive and there shall be paid to the surviving  
18 spouse from the fund the sum of one hundred dollars monthly  
19 for each dependent child. If the surviving spouse dies or  
20 remarries, or if there is no surviving spouse, there shall be  
21 paid monthly from the fund to each dependent child or  
22 children of the deceased member a sum equal to one fourth  
23 of the surviving spouse's entitlement. If there is no surviving  
24 spouse or no surviving spouse eligible to receive benefits and  
25 no dependent child or children, there shall be paid annually  
26 in equal monthly installments from the fund to the dependent  
27 parents of the deceased member during their joint lifetimes a  
28 sum equal to the amount which a surviving spouse without  
29 children would have been entitled to receive: *Provided*, That  
30 when there is one dependent parent surviving, that parent is

31 entitled to receive during his or her lifetime one-half the  
32 amount which both parents, if living, would have been  
33 entitled to receive: *Provided, however*, That if there is no  
34 surviving spouse, dependent child or dependent parent of the  
35 deceased member, the accumulated contributions shall be  
36 paid to a named beneficiary or beneficiaries: *Provided*  
37 *further*, That if there is no surviving spouse, dependent child,  
38 dependent parent of the deceased member or any named  
39 beneficiary or beneficiaries, then the accumulated  
40 contributions shall be paid to the estate of the deceased  
41 member.

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

**§15-2A-15. Exemption from taxation, garnishment and other  
process; exception for certain qualified domestic  
relations orders.**

1 The moneys in the fund and the right of a member or  
2 retirant to a retirement allowance, to the return of  
3 contributions or to any benefit under the provisions of this  
4 article are hereby exempt from any state or municipal tax; are  
5 not subject to execution, garnishment, attachment or any  
6 other process whatsoever except that the benefits or  
7 contributions under this system are subject to "qualified  
8 domestic relations orders" as that term is defined in Section  
9 414(p) of the Internal Revenue Code with respect to  
10 governmental plans; and are unassignable except as is  
11 provided in this article.

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

1       When any surviving spouse of a member or retirant dies  
2 or remarries 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 his or  
5 her remarriage, nor may the estate from the date of death of  
6 the deceased member's or retirant's surviving spouse, be  
7 entitled to receive any benefits under this article whatsoever:  
8 *Provided*, That in any case where under the terms of this  
9 article benefits are provided for a child or children surviving  
10 the death or remarriage of the surviving spouse, payment of  
11 benefits to that child or children shall be calculated for  
12 payment from the date the surviving spouse dies or remarries.

**§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; qualified military service.**

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



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

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

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

40 (2) That, within ninety days after honorable discharge  
41 from the armed forces, he or she presented himself or herself  
42 to the superintendent and offered to resume service as an  
43 active member of the agency; and


44 (3) That he or she has made no voluntary act, whether by  
45 reenlistment, waiver of discharge, acceptance of commission  
46 or otherwise, to extend or participate in extension of the


47 period of service with the armed forces beyond the period of  
48 service for which he or she was originally commissioned,  
49 enlisted, inducted or called.

50 (c) The total amount of military service credit allowable  
51 under this section may not exceed five years for any member  
52 of the agency.

53 (d) Notwithstanding the preceding provisions of this  
54 section, contributions, benefits and service credit with respect  
55 to qualified military service shall be provided in accordance  
56 with Section 414 (u) of the Internal Revenue Code. For  
57 purposes of this section, "qualified military service" has the  
58 same meaning as in Section 414 (u) of the Internal Revenue  
59 Code. The board shall determine all questions and make all  
60 decisions relating to this section and, pursuant to the  
61 authority granted to the board in section one, article ten-d,  
62 chapter five of this code, may promulgate rules relating to  
63 contributions, benefits and service credit to comply with  
64 Section 414 (u) of the Internal Revenue Code.

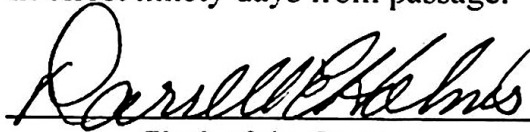
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
\_\_\_\_\_  
Chairman Senate Committee

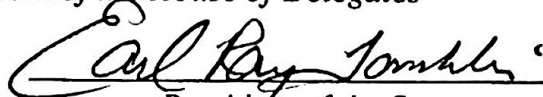
  
\_\_\_\_\_  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

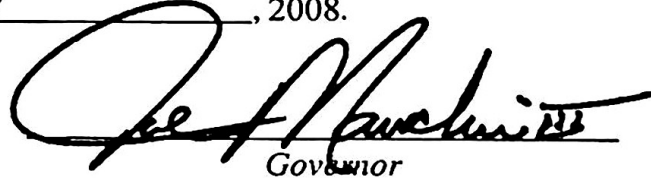
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 18<sup>th</sup>  
day of April, 2008.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 26 2008

Time 3:05p