

FILED

2014 MAR -7 P 6:05

**WEST VIRGINIA LEGISLATURE**

**EIGHTY-FIRST LEGISLATURE**

**REGULAR SESSION, 2014**



**ENROLLED**

**Senate Bill No. 443**

(BY SENATORS KIRKENDOLL, CANN, EDGELL AND CARMICHAEL)

[PASSED FEBRUARY 20, 2014; IN EFFECT FROM PASSAGE.]

SB 443

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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[Passed February 20, 2014; in effect from passage.]

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

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

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

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

§15-2A-2. Definitions.

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

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

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

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

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

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

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

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

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

34           (A) Is under the age of eighteen;

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

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

42           (9) "Dependent parent" means the member's or retirant's  
43 parent or stepparent claimed as a dependent by the member  
44 or retirant for federal income tax purposes at the time of the  
45 member's or retirant's death.

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

49           (11) "Final average salary" means the average of the  
50 highest annual compensation received for employment with  
51 the agency, including compensation paid for overtime  
52 service, received by the employee during any five calendar  
53 years within the employee's last ten years of service:  
54 *Provided*, That annual compensation for determining benefits  
55 during any determination period may not exceed the  
56 maximum compensation allowed as adjusted for cost of

57 living in accordance with section seven, article ten-d, chapter  
58 five of this code and Section 401(a)(17) of the Internal  
59 Revenue Code.

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

63 (13) "Internal Revenue Code" means the Internal  
64 Revenue Code of 1986, as amended.

65 (14) "Law-enforcement officer" means an individual  
66 employed or otherwise engaged in either a public or private  
67 position which involves the rendition of services relating to  
68 enforcement of federal, state or local laws for the protection  
69 of public or private safety, including, but not limited to,  
70 positions as deputy sheriffs, police officers, marshals, bailiffs,  
71 court security officers or any other law-enforcement position  
72 which requires certification, but excluding positions held by  
73 elected sheriffs or appointed chiefs of police whose duties are  
74 purely administrative in nature.

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

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

83 (17) "Partially disabled" means an employee's inability,  
84 on a probable permanent basis, to perform the essential duties  
85 of a law-enforcement officer by reason of any medically  
86 determinable physical or mental impairment which has lasted

87 or can be expected to last for a continuous period of not less  
88 than twelve months, but which impairment does not preclude  
89 the employee from engaging in other types of nonlaw-  
90 enforcement employment.

91 (18) "Physical or mental impairment" means an  
92 impairment that results from an anatomical, physiological or  
93 psychological abnormality that is demonstrated by medically  
94 accepted clinical and laboratory diagnostic techniques.

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

98 (20) "Qualified public safety employee" means any  
99 employee of a participating state or political subdivision who  
100 provides police protection, fire fighting services or  
101 emergency medical services for any area within the  
102 jurisdiction of the state or political subdivision, or such other  
103 meaning given to the term by Section 72(t)(10)(B) of the  
104 Internal Revenue Code or by Treasury Regulation §1.401(a)-  
105 1(b)(2)(v) as they may be amended from time to time.

106 (21) "Required beginning date" means April 1 of the  
107 calendar year following the later of: (a) The calendar year in  
108 which the member attains age seventy and one-half years; or  
109 (b) the calendar year in which he or she retires or otherwise  
110 separates from service with the agency after having attained  
111 the age of seventy and one-half years.

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

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

116           (24) "Surviving spouse" means the person to whom the  
117 member or retirant was legally married at the time of the  
118 member's or retirant's death and who survived the member  
119 or retirant.

120           (25) "Totally disabled" means an employee's probable  
121 permanent inability to engage in substantial gainful activity  
122 by reason of any medically determined physical or mental  
123 impairment that can be expected to result in death or that has  
124 lasted or can be expected to last for a continuous period of  
125 not less than twelve months. For purposes of this  
126 subdivision, an employee is totally disabled only if his or her  
127 physical or mental impairments are so severe that he or she is  
128 not only unable to perform his or her previous work as an  
129 employee of the agency, but also cannot, considering his or  
130 her age, education and work experience, engage in any other  
131 kind of substantial gainful employment which exists in the  
132 state regardless of whether: (A) The work exists in the  
133 immediate area in which the employee lives; (B) a specific  
134 job vacancy exists; or (C) the employee would be hired if he  
135 or she applied for work.

136           (26) "Years of service" means the months of service  
137 acquired by a member while in active employment with the  
138 agency divided by twelve. Years of service shall be  
139 calculated in years and fraction of a year from the date of  
140 active employment of the member with the agency through  
141 the date of termination of employment or retirement from the  
142 agency. If a member returns to active employment with the  
143 agency following a previous termination of employment with  
144 the agency and the member has not received a refund of  
145 contributions plus interest for the previous employment under  
146 section eight of this article, service shall be calculated  
147 separately for each period of continuous employment and  
148 years of service shall be the total service for all periods of  
149 employment. Years of service shall exclude any periods of

150 employment with the agency for which a refund of  
151 contributions plus interest has been paid to the member  
152 unless the employee repays the previous withdrawal, as  
153 provided in section eight of this article, to reinstate the years  
154 of service.

**§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 July 1, 2008, if the funding  
5 percentage of the fund determined by the board falls below  
6 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, shall be a  
14 percent of the employees' total annual base salary related to  
15 benefits under this retirement system. In determining the  
16 amount, the board shall give consideration to setting the  
17 amount at a sum equal to an amount which, if paid annually  
18 by the state, will be sufficient to provide for the total normal  
19 cost of the benefits expected to become payable to all  
20 members and retirants and to amortize any unfunded liability  
21 found by application of the actuarial funding method chosen  
22 for that purpose by the board over a period of years  
23 determined actuarially appropriate. The state's contributions  
24 shall be paid monthly into the fund created pursuant to  
25 section four of this article out of the annual appropriation for  
26 the agency.



27 (c) Notwithstanding any other provisions of this article,  
28 forfeitures under the system shall not be applied to increase  
29 the benefits any member or retirant would otherwise receive  
30 under the system.

**§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 an  
9 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 employec 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 twenty-  
21 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  
45 that they intend to pursue judicial review of the board's  
46 decision.

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

57 (f) If after review of a disability retirant's annual  
58 statement of earnings, tax records or other financial

59 information, as required or otherwise obtained by the board,  
60 the board determines that earnings of the recipient of total  
61 disability benefits in the preceding year are sufficient to show  
62 that the recipient engaged in substantial gainful activity, the  
63 disability retiree's disability annuity shall be terminated by  
64 the board, upon recommendation of the board's disability  
65 review committee, on the first day of the month following the  
66 board's action.

67 (g) If the board obtains information that a partially  
68 disabled disability retiree is employed as a law-enforcement  
69 officer, the disability retiree's disability annuity shall be  
70 terminated by the board, upon recommendation of the board's  
71 disability review committee, the first day of the month  
72 following the board's action.

73 (h) Any person who wishes to reapply for disability  
74 retirement and whose disability retirement has been  
75 terminated by the board pursuant to this section may do so  
76 within ninety days of the effective date of termination:  
77 *Provided*, That any person reapplying for disability benefits  
78 shall undergo an examination at the applicant's expense by an  
79 appropriate medical professional selected by the board as part  
80 of the reapplication process.

81 (I) Notwithstanding other provisions in this section, any  
82 person whose disability retirement has been terminated by the  
83 board pursuant to this section may apply for regular  
84 retirement benefits upon meeting eligibility requirements of  
85 age and years of service.

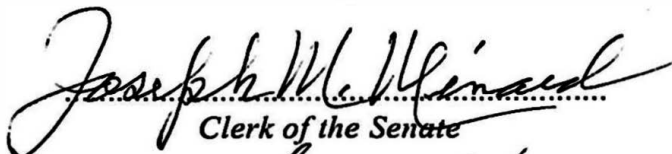
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

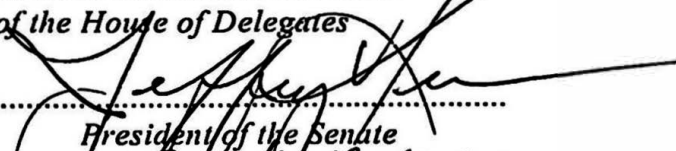
  
.....  
Chairman House Committee

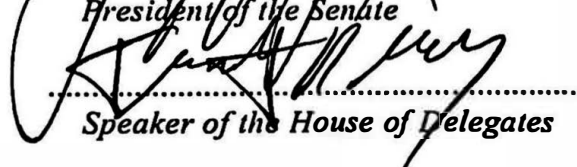
Originated in the Senate.

In effect 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 *26*  
Day of *March*, 2014.

  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 03 2014

Time 12:01 pm