WEST VIRGINIA CODE CHAPTER 18 ARTICLE 7A

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§18-7A-1. Establishment of retirement system.

A retirement system to be known as the "state Teachers Retirement System" is hereby established for the purpose of providing retirement allowances for the teachers of West Virginia.

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§18-7A-2. Supplemental benefits.

Nothing in this article shall be construed to preclude any employer from providing retirement benefits to retired teachers not eligible to benefits under this article; nor shall it be construed to preclude any employer from supplementing retirement benefits to be received by any of its employees under this article.

No such benefits, however, shall be paid to a present teacher who elects not to become a member of the Teachers Retirement System.

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§18-7A-2a. Governing boards of educational institutions authorized to pay supplemental retirement benefits.

The governing boards of state educational institutions shall have authority to provide retirement benefits for teachers and other employees who have served at the institutions under their control, to supplement benefits received by such employees under the state Teachers Retirement System. Payment therefor shall be made from funds appropriated for personal services at the institution from which the teacher or employee was retired, and the amount thereof shall be determined in accordance with rules promulgated by the governing board of the institution.

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§18-7A-3. Definitions.

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

"Accumulated contributions" means all deposits and all deductions from the gross salary of a contributor plus regular interest.

"Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member.

"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.

"Annuities" means the annual retirement payments for life granted beneficiaries in accordance with this article.

"Average final salary" means the average of the five highest fiscal year salaries earned as a member within the last 15 fiscal years of total service credit, including military service as provided in this article, or if total service is less than 15 years, the average annual salary for the period on which contributions were made: *Provided*, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and § 401(a)(17) of the Internal Revenue Code.

"Beneficiary" means the recipient of annuity payments made under the retirement system.

"Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with the employer or any participating employer in the system for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with a participating employer. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis.

"Contributor" means a member of the retirement system who has an account in the Teachers Accumulation Fund.

"Deposit" means a voluntary payment to his or her account by a member.

"Electing charter school" means a public charter school established pursuant to §18-5G-1 *et seq*. of this code which has elected to participate in this retirement system as permitted in the definitions of "Nonteaching member" and "Teacher member" in this section.

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"Employer" means the agency of and within the state which has employed or employs a member, a county board of education which has employed or employs a member, or an electing charter school which has employed or employs a member. "Participating public employer" or "participating employer" means "employer" unless the context clearly requires otherwise.

"Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, or the West Virginia Code of State Regulations, or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

"Employment term" means employment for at least 10 months, a month being defined as 20 employment days.

"Gross salary" means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the work was done. Gross salary also includes retroactive payments made to a member to correct a clerical error, or made pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member's rights to employment or wages, with all retroactive salary payments to be allocated to and considered paid in the periods in which the work was or would have been done. Gross salary does not include lump sum payments for bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

"Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

"Member" means any person who has accumulated contributions standing to his or her credit in the State Teachers Retirement System. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of membership pursuant to §18-7A-13 of this code.

"Members of the administrative staff of the public schools" means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

"Members of the extension staff of the public schools" means every agricultural agent, boys and girls club agent, and every member of the agricultural extension staff whose work is not

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primarily stenographic, clerical, or secretarial.

"New entrant" means a teacher who is not a present teacher.

"Nonteaching member" means any person, except a teacher member, who is regularly employed for full-time service by: (A) Any county board of education or educational services cooperative; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for Community and Technical College Education; (E) a governing board, as defined in §18B-1-2 of this code; or (F) a public charter school established pursuant to §18-5G-1 *et seq*. of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the retirement systems under this article and §18-7B-1 *et seq*. of this code, subject to §18-7B-7a of this code: *Provided*, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education, or a governing board commences on or after July 1, 1991, is not considered a nonteaching member.

"Plan year" means the 12-month period commencing on July 1 and ending the following June 30 of any designated year.

"Present member" means a present teacher or nonteacher who is a member of the retirement system.

"Present teacher" means any person who was a teacher within the 35 years beginning July 1, 1934, and whose membership in the retirement system is currently active.

"Prior service" means all service as a teacher completed prior to July 1, 1941, and all service of a present member who was employed as a teacher and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.

"Public schools" means all publicly supported schools, including colleges and universities, in this state. Unless the context clearly requires otherwise, "public school" may not include a public charter school which is not an "electing charter school" as defined herein.

"Refund beneficiary" means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

"Regular interest" means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.

"Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

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"Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

"Retirant" means any member who commences an annuity payable by the retirement system.

"Retirement board" means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq*. of this code.

"Retirement system" means the State Teachers Retirement System established by this article.

"Teacher member" means the following persons, if regularly employed for full-time service: (A) Any person employed by a public school for instructional service in the public schools of West Virginia; (B) principals employed by a public school; (C) librarians employed by a public school; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education, or the State Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and Rehabilitation, the Division of Health, or the Division of Human Services; (K) an employee of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools; (L) employees of an educational services cooperative who are performing services of an educational nature; (M) any person designated as a 21st

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Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the State Teachers Retirement System provided in this article; and (N) any person employed for instructional service or as a principal or librarian by a public charter school established pursuant to §18-5G-1 *et seq*. of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the retirement systems under this article and §18-7B-1 *et seq*. of this code.

"Total service" means all service as a teacher or nonteacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

Age more than 70 years shall be considered to be 70 years.

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§18-7A-3a. Federal qualification requirements.

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

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§18-7A-4. Teachers retirement board.

The general administration and the management of the retirement system are hereby continued in a "Teachers' Retirement Board" through June 30, 1991, and thereafter, in the Consolidated Public Retirement Board created by article ten-d, chapter five of this code. The retirement board shall have the right to sue and be sued, plead and be impleaded, contract and be contracted with and shall make all necessary rules and regulations to carry out the provisions of this article. All of the business of the board shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property shall be held in the name of the "Teachers' Retirement Board."

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§18-7A-5.

Repealed.

Acts, 2010 Reg. Sess., Ch. 33.

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§18-7A-6.

Repealed.

Acts, 2010 Reg. Sess., Ch. 33.

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§18-7A-7.

Repealed.

Acts, 2010 Reg. Sess., Ch. 33.

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§18-7A-8.

Repealed.

Acts, 2010 Reg. Sess., Ch. 33.

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§18-7A-9.

Repealed.

Acts, 2010 Reg. Sess., Ch. 33.

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§18-7A-10.

Repealed.

Acts, 2010 Reg. Sess., Ch. 33.

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§18-7A-11. Records; actuarial data; tables; specification of actuarial assumptions.

The retirement board shall maintain an individual account with each member, showing the amount of the member's contributions and the interest accumulations thereon. It shall collect and keep in convenient form data as may be necessary for the preparation of the required mortality and service tables, and for the compilation of such other information as may be needed for the actuarial valuation of the funds created by this article. The retirement board shall specify and adopt all actuarial assumptions for the system at its first meeting of every calendar year or as soon thereafter as may be practicable, which assumptions shall become part of the terms of the system.

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§18-7A-12. Reports by retirement board.

At such times as the retirement board may deem it necessary, but at least once within the first three years of the operation of this article and each quinquennial period thereafter, the retirement board shall employ a competent actuary to prepare a report containing an evaluation of the present and prospective assets and liabilities of the funds created by this article.

The retirement board shall publish an annual report showing the condition of the various funds created by this article. It shall certify in such report the amount of accumulated cash and securities in the funds and shall present a full account of the operation of the system.

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§18-7A-13. Membership in retirement system; cessation of membership; reinstatement of withdrawn service.

The membership of the retirement system shall consist of the following:

(a) New entrants, whose membership in the system is compulsory upon employment as teachers and nonteachers: Provided, That any teaching member or nonteaching member, as defined in section three of this article, who has concurrent employment in an additional job or jobs which would require the teaching member or nonteaching member to be a member of the West Virginia Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and Firefighters Retirement System or the West Virginia Emergency Medical Services Retirement System shall abide by the concurrent employment statutory provisions of said retirement system and shall participate in only one retirement system administered by the retirement board.

(b) The membership of the retirement system shall not include any person who is an active member of or who has been retired by the West Virginia Public Employees Retirement System, the judge's retirement system, or the retirement system of the West Virginia State Police or the supplemental retirement system as provided in section four-a, article twenty-three of this chapter. The membership of any person in the retirement system ceases: (1) Upon the withdrawal of accumulated contributions after the cessation of service; (2) upon effective retirement date; (3) at death; or (4) upon the date, if any, when after the cessation of service, the outstanding balance of any loan obtained by the member pursuant to section thirty-four of this article or section five, article seven-d of this chapter, plus accrued interest, equals or exceeds the member's accumulated contributions.

(c) Any former member of the retirement system who has withdrawn accumulated contributions but subsequently reenters the retirement system may repay to the retirement fund the amount withdrawn, plus interest at a rate set by the board, compounded annually from the date of withdrawal to the date of repayment: Provided, That no repayment may be made until the former member has completed two years of contributory service after reentry; and the member shall be accorded all the rights to prior service and experience as were held at the time of withdrawal of the accumulated contributions: Provided, however, That no withdrawn service may be reinstated that has been transferred to another retirement system from which the member is currently or will in the future draw benefits based on the same service. The interest paid shall be deposited in the reserve fund.

(d) No member is eligible for prior service credit unless he or she is eligible for prior service pension, as prescribed by section twenty-two of this article; however, a new entrant who becomes a present teacher as provided in this subdivision shall be considered eligible for prior service pension upon retirement.

(e) Any individual who is a leased employee is not eligible to participate in the system. For purposes of this system, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing

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organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

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§18-7A-13a. Resumption of service by retirants.

(a) For the purpose of this section, reemployment of a retirant as a teacher or nonteacher may in no way impair the retirant's eligibility for a prior service pension or any other benefit provided by this article, except as provided in subsection (f) of this section.

(b) Retirants who qualified for an annuity because of age or service may not receive prior service allowance from the retirement board when employed as a teacher or nonteacher and when regularly employed by a public school. The payment of the allowance shall be discontinued on the first day of the month within which the employment begins and shall be resumed on the first day of the month succeeding the month within which the employment ceases. The annuity paid the retirant on first retirement resulting from the Teachers' Retirement System Fund shall continue throughout the public-school service and thereafter according to the option selected by the retirant upon first retirement.

(c) Retirants who qualified for an annuity because of disability may receive no further retirement payments if the retirement board finds that the disability of the retirant no longer exists; payment shall be discontinued on the first day of the month within which the finding is made. If the retirant returns to service as a teacher or nonteacher, he or she shall contribute to the Teachers' Retirement System Fund as a member of the system. His or her prior service eligibility, if any, shall not be impaired because of his or her disability retirement. Upon subsequent retirement, he or she shall receive credit for all contributory experience, anything to the contrary in this article notwithstanding.

(d) Notwithstanding any provision of this code to the contrary, a person who retires under the system provided by this article may subsequently become employed on either a full-time basis, part-time basis, or contract basis by any institution of higher education without any loss of retirement annuity or retirement benefits if the person's retirement commences between the effective date of the enactment of this section in 2002 and December 31, 2002: *Provided*, That the person may not be eligible to participate in any other state retirement system provided by this code.

(e) The retirement board may require of the retirants and their employers such reports, forms and verifications as it deems necessary to effectuate the provisions of this section and to ensure that a bona fide separation from service upon retirement has occurred.

(f) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by a participating employer after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity payable under the system. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or his or her employer fails to comply with subsection (e) of this section in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement; provided further that the board may take any actions necessary or appropriate in accordance with the provisions of §18-7A-14c of this

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code to recover such annuity payments so that an in-service distribution is not deemed to have been made.

(g) Prior to any retirant subsequently becoming employed with an employer on a permanent (regularly employed for full-time service or part-time service), substitute, per diem, leased employee or temporary basis, the employer shall notify the retirement board and the retirant, in writing, when the retirant's potential permanent, substitute, per diem, leased employee or temporary employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of either permanent, substitute, per diem, leased employee or temporary employment, the employer shall notify the retirement board, in writing, of the retirant's subsequent employment.

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§18-7A-13b. Option of certain present members to elect between state and federal retirement systems; payment of contributions to federal system.

Notwithstanding any other provision of this article to the contrary, any present member of the retirement system who as an employee of the board of Governors in the cooperative extension service of West Virginia University holds a federal appointment, making him eligible for membership in the federal civil service retirement system, shall have an option to terminate his membership in the state Teachers Retirement System at any time within twelve months after the effective date hereof, or to continue his membership if he so desires. If he elects to terminate his membership, he shall be entitled to withdrawal benefits similar to those that are provided in section twenty-three of this article for members who withdraw from service prior to retirement, and he shall be required to join the federal civil service retirement system. Any future employee in the cooperative extension service who is eligible for membership in the federal civil service retirement system shall be required to join that system, and shall be ineligible for membership in the state Teachers Retirement System during such period of employment. Should employment cease with the cooperative extension service of West Virginia University and the employee assumes a position that subjects him to membership in the Teachers Retirement System, he shall receive service credit for each year served in the cooperative extension service and within this state providing: (1) That the member pays to the system a contribution equal to the amount he contributed during his first full year of current employment, times the number of years for which credit is granted, plus interest at a rate equal to that established by the retirement board for the purchase of service as a teacher in the employment of the federal government, and (2) that such years of service for which he receives credit hereunder have not and will not, in the future, be used to obtain or enhance a retirement benefit from any other retirement system whatsoever, including the federal civil service retirement system.

The board of Governors shall have the authority and shall be required to withhold from each salary payment due any employee in the cooperative extension service, who is a member of the federal civil service retirement system, the amount of the contribution he is required to make to the federal treasury for such membership. Upon proper requisition of the board, the Auditor shall periodically issue a warrant payable to the treasurer of the United States for the total membership contributions so withheld from the salaries of all employees in the cooperative extension service.

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§18-7A-14. Contributions by members; contributions by employers; forfeitures.

(a) At the end of each month every member of the retirement system shall contribute six percent of that member's monthly gross salary to the retirement board: Provided, That any member employed by a state institution of higher education shall contribute on the member's full earnable compensation, unless otherwise provided in section fourteen-a of this article. The sums are due the State Teachers Retirement System at the end of each calendar month and shall be paid not later than fifteen days following the end of the calendar month. Each remittance shall be accompanied by a detailed summary of the sums withheld from the gross compensation of each member for that month on forms, either paper or electronic, provided by the State Teachers Retirement System for that purpose.

(b) Annually, the contributions of each member shall be credited to the member's account in the State Teachers Retirement System Fund. The contributions shall be deducted from the gross salaries of the members as prescribed in this section and every member shall be considered to have given consent to the deductions. No deductions, however, shall be made from the earnable compensation of any member who retired because of age or service and then resumed service unless as provided in section thirteen-a of this article.

(c) The aggregate of employer contributions, due and payable under this article, shall equal annually the total deductions from the gross salary of members required by this section. Beginning July 1, 1994, the rate shall be seven and one-half percent; beginning on July 1, 1995, the rate shall be nine percent; beginning on July 1, 1996, the rate shall be ten and one-half percent; beginning on July 1, 1997, the rate shall be twelve percent; beginning on July 1, 1998, the rate shall be thirteen and one-half percent; and beginning on July 1, 1999, and thereafter, the rate shall be fifteen percent: Provided, That the rate shall be seven and one-half percent for any individual who becomes a member of the State Teachers Retirement System for the first time on or after July 1, 2005, or any individual who becomes a member of the State Teachers Retirement System as a result of the voluntary transfer contemplated in article seven-d of this chapter.

(d) Payment by an employer to a member of the sum specified in the employment contract minus the amount of the employee's deductions shall be considered to be a full discharge of the employer's contractual obligation as to earnable compensation.

(e) Each employer shall file with the retirement board a completed enrollment form showing the contributor's date of birth and other data needed by the retirement board.

(f) Notwithstanding any other provisions of this article, forfeitures under the retirement system shall not be applied to increase the benefits any member would otherwise receive under the retirement system.

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§18-7A-14a. Options of certain members to elect between state Teachers Retirement System, a combination of that system and a supplemental retirement system, and a retirement plan other than the state Teachers Retirement System.

Notwithstanding any other provisions of this article to the contrary, any present member of the retirement system, or person who was a member on February 12, 1970, who, as an employee of the West Virginia board of regents was limited in the amount he could pay into the retirement system to $216 per year from July 1, 1963, to July 1, 1970, and to $288 from July 1, 1970, shall have the option, at any time within twelve months from the effective date hereof, to pay into the retirement system twice the amount of the difference between such limitations and the amount he would have paid therein had he been paying the full amount provided by law for members of the retirement system other than employees of the board of regents: Provided, That this additional payment into the retirement system by any such member who was employed by the board of regents while he was under thirty years of age shall be reduced to once the amount of such difference so far as any salary he received from the board while under thirty years of age is concerned.

If such a member makes such election, he must thereafter make contributions into the retirement system on his entire salary without limitation, unless later imposed by law, and after such election is made the board of regents as his employer shall no longer make payments for such employee for the supplemental retirement plan authorized by section four-a, article twenty-three of this chapter, but the matching contributions made by the state or employer in his behalf for retirement plans shall be limited to those provided by sections fourteen and sixteen of this article.

Notwithstanding the provisions of subsection (a) of Plan B, section twenty-six of this article, or any other provision herein, any such member who exercises such option and makes the required additional payment will then be considered entitled to retirement, death, withdrawal and all other benefits under the retirement system to the same extent as if he had been paying into the retirement system the full amount provided by law for members of the system other than employees of the board of regents throughout the period of his membership in the retirement system.

Any such member who does not make such election shall have the options of retaining his present status under the retirement system and the supplemental retirement plan as provided by section four-a, article twenty-three of this chapter, or of ceasing to pay any portion of his salary into the retirement system and paying a percentage of his entire salary into a retirement plan established by the board of regents pursuant to the provisions of said section four-a, article twenty-three of this chapter. In the event he makes the latter election he shall, upon retirement, receive benefits under the retirement system as if he had retired at the date he ceased making payments into the system, except that between such time and the time of actual retirement regular interest shall be considered in computing such benefits.

A person employed by the West Virginia board of regents in the future shall have the option,

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as of the date of his employment, to elect whether he is to pay a percentage of his entire salary into the state retirement system, or to pay a percentage of such salary into a retirement plan established by the board of regents pursuant to the provisions of section four-a, article twenty-three of this chapter, and shall receive benefits according to the retirement plan he selects.

Since persons employed by the former board of Governors of West Virginia University, and by the state Board of Education at institutions of higher education, on July 1, 1969, became employees of the West Virginia board of regents on that date, employment by such board of Governors and the state Board of Education at institutions of higher education shall be deemed to have been employment by the board of regents for the purposes of this section.

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§18-7A-14b. Members' option to make contributions for periods of temporary total disability.

Any member who was absent from work while receiving temporary total disability benefits pursuant to the provisions of chapter twenty-three of this code as a result of a compensable injury received in the course of and as a result of his or her employment with the covered employer, may purchase credited service for that time period or those time periods the member was absent from work as a result of a compensable injury and receiving temporary total disability benefits: Provided, That the member returned to work with his or her covered employer within one year following the cessation of temporary total disability benefits. The member desiring to purchase such credited service may do so only by lump sum payment from personal funds within two years of the end of the disability period for which credit is sought to be purchased: Provided, however, That in order to purchase such service credit, the member shall pay to the board his or her regular contribution and an equal amount that represents the employer's contribution, based on the salary the member was receiving immediately prior to having sustained such compensable injury: Provided further, That the member purchasing service credit under the provisions of this section may not be charged interest. The maximum number of years of service credit that may be purchased under this section shall not exceed two: And provided further, That each year purchased under this section shall count as a year of experience for purposes of the increment set forth in section two or section eight-a, article four, chapter eighteen-a of this code, as applicable.

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§18-7A-14c. Correction of errors; underpayments; overpayments.

(a) *General rule*. — Upon learning of any errors, the board shall correct errors in the retirement system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) *Underpayments to the retirement system*. — Any error resulting in an underpayment to the retirement system, may be corrected by the member or retirant remitting the required employee contribution or underpayment and the participating public employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the retirement system will result in the plan paying the retirant an additional amount, this additional payment shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) *Overpayments to the retirement system by an employer*. — When mistaken or excess employer contributions or other employer overpayments have been made to the retirement system, the board shall credit the employer with an amount equal to the erroneous overpayment, to be offset against the employer's future liability for employer contributions to the retirement system. If the employer has no future liability for employer contributions to the retirement system, the retirement board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the retirement board for returning employer overpayments to the retirement system.

(d*) Overpayments to the retirement system by an employee*. — When mistaken or excess employee contributions or overpayments, have been made to the retirement system, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts and may use any means authorized or permitted under the provisions of section 401(a), *et seq*. of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the employer employing the individual to pay the individual the amounts as wages, with the retirement board crediting the participating public employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the retirement system, the retirement board shall refund said amount directly to the employer: *Provided*, That the wages paid to the individual shall not be

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considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the retirement board for returning member overpayments.

(e) *Overpayments from the retirement system*. — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the retirement system shall repay the amount of any overpayment to the retirement system in any manner permitted by the board. If the member, retirant, beneficiary or other person who received the overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the remaining overpayment shall be offset against the benefit payment owed in a manner consistent with the retirement board's error correction policy. Interest shall not accumulate on any corrective payment made to the retirement system pursuant to this subsection.

(f) *Underpayments from the retirement system*. — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the retirement system less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the retirement system pursuant to this subsection.

(g) *Eligibility errors*. — If the board finds that an individual, employer, or both individual and employer currently or formerly participating in the retirement system is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the retirement system. Any erroneous payments to the retirement system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the retirement system to such individual shall be returned to the retirement system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the retirement system, but was eligible to and required to be participating in the retirement system, the board shall as soon as practicable notify the individual and his or her employer of the determination, and the individual and his or her employer shall prospectively commence participation in the retirement system as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the retirement system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section,

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including interest.

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§18-7A-15. Collection of membership contributions.

Each employer shall each month deduct six percent from the salary of each employee who is a member of the retirement system, in an amount not to exceed the amount named in §18-7A-14 of this code, and shall at the end of each month remit to the retirement board the amounts so deducted, and shall transmit therewith a list of all new members employed and the name and number of members transferring from another county. At such times as the retirement board may deem advisable each employer shall report to the retirement board the total amount so deducted from the salary of each employee. The monthly payments which members would receive from employers as compensation for service in the absence of this article shall be decreased by the amount of the contribution due hereunder.

Each employer shall be held accountable for the sum composing the contributions made by its member employees. Whenever any county board of education or electing charter school fails to make timely remittance of the member contributions deducted as provided in this section, the retirement board may take such steps as are necessary and authorized pursuant to § 5-10D-13 of this code.

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§18-7A-16. Transfer of appropriations.

The retirement board, on receipt of contributions from teachers deducted and remitted by employers as provided in section fifteen of this article, shall make requisition on the State Auditor for an amount equaling such contributions. On receipt of the requisitions duly certified, the State Auditor shall transfer the amount so requisitioned from the general state revenue fund to the employers accumulation fund.

At the beginning of each quarter the Governor shall transfer to the employers accumulation fund one fourth of the annual appropriations therefor.

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§18-7A-17. Statement and computation of teachers' service.

(a) Under rules adopted by the retirement board, each teacher and nonteaching member shall file a detailed statement of his or her length of service as a teacher or nonteacher for which he or she claims credit. The retirement board shall determine what part of a year is the equivalent of a year of service. In computing the service, however, it shall credit no period of more than a month's duration during which a member was absent without pay, nor shall it credit for more than one year of service performed in any calendar year.

(b) For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of that state or territory, the retirement board shall grant credit to the member: *Provided*, That the member shall pay to the system 12 percent of that member's gross salary earned during the first full year of current employment whether a member of the Teachers Retirement System or the Teachers' Defined Contribution Retirement System, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service credit granted at the time of retirement may not exceed the lesser of 10 years or 50 percent of the member's total service as a teacher in West Virginia. Any purchase of out-of-state service, as provided in this article, may not be used to establish eligibility for a retirement allowance and the retirement board shall grant credit for the purchased service as additional service only: *Provided, however*, That a purchase of out-of-state service is prohibited if the service is used to obtain a retirement benefit from another retirement system: *Provided further*, That salaries paid to members for service prior to entrance into the retirement system may not be used to compute the average final salary of the member under the retirement system.

(c) No members may be considered absent from service while serving as a member or employee of the Legislature of the State of West Virginia during any duly constituted session of that body or while serving as an elected member of a county commission during any duly constituted session of that body.

(d) No member may be considered absent from service as a teacher or nonteacher while serving as an officer with a statewide professional teaching association, or who has served in that capacity, and no retirant, who served in that capacity while a member, may be considered to have been absent from service as a teacher by reason of that service: *Provided*, That the period of service credit granted for that service may not exceed 10 years: *Provided, however*, That a member or retirant who is serving or has served as an officer of a statewide professional teaching association shall make deposits to the Teachers Retirement System, for the time of any absence, in an amount double the amount which he or she would have contributed in his or her regular assignment for a like period of time.

(e) The Teachers Retirement System shall grant service credit to any former or present member of the West Virginia Public Employees Retirement System who has been a contributing member of the Teachers Retirement System for more than three years, for service previously credited by the Public Employees Retirement System upon his or her

written request and: (1) Shall require the transfer of the member's Public Employees Retirement System accumulated contributions to the Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn from the Public Employees Retirement System, plus interest at a rate to be determined by the retirement board, compounded annually from the date of withdrawal to the date of payment, any time prior to the member's effective retirement date: *Provided*, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the Teachers Retirement System during the period of his or her membership in the Public Employees Retirement System, plus interest at a rate determined by the retirement board, compounded annually from the date the additional contribution would have been made had the member been under the Teachers Retirement System to the date of payment: *Provided, however*, That members of the Public Employees Retirement System who first became a member of the Public Employees Retirement System on or after July 1, 2023, may only transfer service credit to the Teachers Retirement System if they first became a member of the Teachers Retirement System on or after July 1, 2015. All interest paid or transferred shall be deposited in the reserve fund.

(f) For service as a teacher in an elementary or secondary parochial school, located within this state and fully accredited by the West Virginia Department of Education, the retirement board shall grant credit to the member: *Provided*, That the member shall pay to the system 12 percent of that member's gross salary earned during the first full year of current employment whether a member of the Teachers Retirement System or the Teachers' Defined Contribution Retirement System, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service granted at the time of retirement may not exceed the lesser of 10 years or 50 percent of the member's total service as a teacher in the West Virginia public school system. Any purchase of parochial school service, as provided in this section, may not be used to establish eligibility for a retirement allowance and retirement board shall grant credit for the purchase as additional service only: *Provided, however*, That a purchase of parochial school service is prohibited if the service is used to obtain a retirement benefit from another retirement system.

(g) Active members who previously worked in Comprehensive Employment and Training Act (CETA) may receive service credit for time served in that capacity: *Provided*, That in order to receive service credit under the provisions of this subsection the following conditions shall be met: (1) The member shall have moved from temporary employment with the participating employer to permanent full-time employment with the participating employer within 120 days following the termination of the member's CETA employment; (2) the retirement board shall receive evidence that establishes to a reasonable degree of certainty as determined by the retirement board that the member previously worked in CETA; and (3) the member shall pay to the retirement board an amount equal to the employer and employee contribution plus interest at the amount set by the retirement board for the amount of service credit sought pursuant to this subsection: *Provided, however*, That the

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maximum service credit that may be obtained under the provisions of this subsection is two years: *Provided further*, That a member shall apply and pay for the service credit allowed under this subsection and provide all necessary documentation by March 31, 2003: *And provided further*, That the retirement board shall exercise due diligence to notify affected employees of the provisions of this subsection.

(h) If a member is not eligible for prior service credit or pension as provided in this article, then his or her prior service may not be considered a part of his or her total service.

(i) A member who withdrew from membership may regain his or her former membership rights as specified in §18-7A-13 of this code only in case he or she has served two years since his or her last withdrawal.

(j) Subject to the provisions of subsections (a) through (k), inclusive, of this section, the retirement board shall verify as soon as practicable the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible for the certificates under the provisions of this article. The certificates shall state the length of the prior service credit, but in no case shall the prior service credit exceed 40 years.

(k) Notwithstanding any provision of this article to the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office require that member to be absent from his or her teaching or administrative duties, the time served in discharge of his or her duties of the legislative office are credited as time served for purposes of computing service credit: *Provided*, That the retirement board may not require any additional contributions from that member in order for the retirement board to credit him or her with the contributing service credit earned while discharging official legislative duties: *Provided, however*, That nothing in this section may be construed to relieve the employer from making the employer contribution at the member's regular salary rate or rate of pay from that employer on the contributing service credit earned while the member is discharging his or her official legislative duties. These employer payments shall commence as of June 1, 2000: *Provided further*, That any member to which the provisions of this subsection apply may elect to pay to the retirement board an amount equal to what his or her contribution would have been for those periods of time he or she was serving in the Legislature. The periods of time upon which the member paid his or her contribution shall then be included for purposes of determining his or her final average salary as well as for determining years of service: *And provided further*, That a member using the provisions of this subsection is not required to pay interest on any contributions he or she may decide to make.

(l) The Teachers Retirement System shall grant service credit to any former member of the State Police Death, Disability and Retirement System who has been a contributing member for more than three years for service previously credited by the State Police Death, Disability and Retirement System; and: (1) Shall require the transfer of the member's contributions to the Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn any time prior to the member's retirement: *Provided*, That the member shall add to the

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amounts transferred or repaid under this paragraph an amount which is sufficient to equal the contributions he or she would have made had the member been under the Teachers Retirement System during the period of his or her membership in the State Police Death, Disability and Retirement System plus interest at a rate to be determined by the retirement board compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.

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§18-7A-17a. Qualified military service.

(a) Except as provided in subsection (b) of this section, for the purpose of this article, the retirement board shall grant prior service credit to members of the retirement system who were honorably discharged from active duty service in any of the Armed Forces of the United States in any period of national emergency within which a federal Selective Service Act was in effect. For purposes of this section, "Armed Forces" includes Women's Army Corps, women's appointed volunteers for emergency service, Army Nurse Corps, SPARS, Women's Reserve and other similar units officially part of the military service of the United States. The military service is considered equivalent to public school teaching, and the salary equivalent for each year of that service is the actual salary of the member as a teacher for his or her first year of teaching after discharge from military service. Prior service credit for military service shall not exceed 10 years for any one member, nor shall it exceed 25 percent of total service at the time of retirement. Notwithstanding the preceding provisions of this subsection, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in §5-10D-1 of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code. No military service credit may be used in more than one retirement system administered by the Consolidated Public Retirement Board.

(b) Subsection (a) of this section does not apply to any member who first becomes an employee of a participating public employer on or after July 1, 2015. This subsection applies to any member who first became an employee of a participating public employer on or after July 1, 2015, and also applies to any member who became an employee of a participating public employer before July 1, 2015, and is unable to meet the requirements of subsection (a) of this section.

(1) Any member may purchase up to 60 months of military service credit for time served in active military duty prior to first becoming an employee of a participating public employer if all of the following conditions are met:

(A) The member has completed a complete fiscal year of contributory service;

(B) The active military duty occurs prior to the date on which the member first becomes an employee of a participating public employer; and

(C) The employee pays to the retirement system the actuarial reserve purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system, or within 48 months of July 1, 2015, whichever is later: *Provided*, That any employee who

ceases employment with a participating public employer before completing the required actuarial reserve purchase amount in full shall not be eligible to purchase the military service.

(2) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first becomes an employee of a participating public employer on or after July 1, 2015, but who does not remain employed and contributing to the retirement system for at least a complete fiscal year after his or her initial employment, shall be considered to have met the requirement of said paragraph the first time he or she becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service. Such a member shall be considered to have met the requirement of paragraph (C) of said subdivision if he or she pays to the retirement system the actuarial reserve purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member the first time he or she becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(3) A member who first becomes an employee of a participating public employer on or after July 1, 2015, may purchase military service credit for active military duty performed on or after the date he or she first becomes an employee of a participating public employer only if all of the following conditions are met: *Provided*, That the maximum military service credit such member may purchase shall take into account any military service credit purchased for active military duty pursuant to subdivision (1) of this subsection in addition to any military service credit purchased pursuant to this subdivision:

(A) The member was an employee of a participating public employer, terminated employment and experienced a break in contributing service in the retirement system of one or more months, performed active military service while not an employee of the participating public employer and not contributing to the retirement system, then again becomes an employee of a participating public employer and completes at least a complete fiscal year of contributory service;

(B) The member does not qualify for military service credit for such active military duty pursuant to subsection (d) of this section; and

(C) The member pays to the retirement system the actuarial reserve purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member after he or she again becomes an employee of a participating public employer immediately following the period of active military duty and break in service and completes at least a complete fiscal year of contributory service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(4) Notwithstanding paragraph (A), subdivision (3) of this subsection, a member who

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otherwise meets the requirements of said paragraph, but who does not remain employed and contributing to the retirement system for at least a complete fiscal year when he or she first becomes an employee of a participating public employer after the period of active military duty and break in service, shall be considered to have met the requirement of said paragraph the first time he or she again becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service. Such a member shall be considered to have met the requirement of paragraph (C) of said subdivision if he or she pays to the retirement system the actuarial reserve purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member for the first time he or she again becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(5) For purposes of this subsection, the following definitions shall apply:

(A) "Active military duty" means full-time active duty in the Armed Forces of the United States for a period of 30 or more consecutive calendar days. Active military duty does not include inactive duty of any kind.

(B) "Actuarial reserve purchase amount" means the purchase annuity rate multiplied by the purchase accrued benefit, calculated as of the calculation month, plus annual interest accruing at 7.5 percent from the calculation month through the purchase month, compounded monthly.

(C) "Armed forces of the United States" means the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard, the reserve components thereof, and the National Guard of the United States or the National Guard of a state or territory when members of the same are on full-time active duty pursuant to Title 10 or Title 32 of the United States Code.

(D) "Calculation month" means the month immediately following the month in which the member completes a complete fiscal year of contributory service with a participating public employer required by subdivision (1), (2), (3) or (4) of this subsection, as applicable.

(E) "Purchase accrued benefit" means two percent times the purchase military service times the purchase average monthly salary.

(F) "Purchase age" means the age of the employee in years and completed months as of the first day of the calculation month.

(G) "Purchase annuity rate" means the actuarial lump sum annuity factor calculated as of the calculation month based on the following actuarial assumptions: Interest rate of 7.5 percent; mortality of the 1971 group annuity mortality table, 50 percent blended male and female rates, applied on a unisex basis to all members; if purchase age is under age 62, a deferred annuity factor with payments commencing at age 62; and if purchase age is 62 or over, an

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immediate annuity factor with payments starting at the purchase age.

(H) "Purchase average monthly salary" means the average monthly salary of the member during the number of months of the member's contract during the fiscal year of contributory service required by subdivisions (1), (2), (3) and (4) of this subsection, as applicable. For any member who first became an employee of a participating public employer before July 1, 2015, the purchase average monthly salary means the average monthly salary of the member during the number of months of the member's contract during his or her complete fiscal year of contributory service on or after July 1, 2015.

(I) "Purchase military service" means the amount of military service being purchased by the employee in months up to the 60-month maximum, calculated in accordance with subdivision (7) of this subsection.

(J) "Purchase month" means the month in which the employee deposits the actuarial reserve lump sum purchase amount into the plan trust fund in full payment of the service credit being purchased or makes the final payment of the actuarial reserve purchase amount into the plan trust fund in full payment of the service credit being purchased.

(6) A member may purchase military service credit for a period of active military duty pursuant to this subsection only if the member received an honorable discharge for the period. Anything other than an honorable discharge, including, but not limited to, a general or under honorable conditions discharge, an entry-level separation discharge, an other than honorable conditions discharge or a dishonorable discharge, shall disqualify the member from receiving military service credit for the period of service. The board shall require a member requesting military service credit to provide official documentation establishing that the requirements set forth in this subsection have been met.

(7) To calculate the amount of military service credit a member may purchase, the board shall add the total number of days in each period of a member's active military duty eligible to be purchased, divide the total by 30, and round up or down to the nearest integer (fractions of 0.5 shall be rounded up), in order to yield the total number of months of military service credit a member may purchase, subject to the 60-month maximum. A member may purchase all or part of the maximum amount of military service credit he or she is eligible for in one-month increments.

(8) To receive credit, a member must submit a request to purchase military service credit to the board, on such form or in such other manner as shall be required by the board, within the complete fiscal year period required by subdivision (1), (2), (3) or (4) of this subsection, as applicable. The board shall then calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the member within the 48-month period required by said subdivisions, as applicable. A member purchasing military service credit pursuant to this subsection must do so in a single, lump sum payment: *Provided*, That the board may accept partial, installment or other similar payments if the employee executes a contract with the board specifying the amount of military service to be purchased and the payments

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required: *Provided, however*, That any failure to pay the contract amount in accordance with this section shall be treated as an overpayment or excess contribution subject to §18-7A-14c of this code and no military service shall be credited.

(9) The board shall require a member requesting military service credit to provide official documentation establishing that the requirements set forth in this subsection have been met.

(10) Military service credit purchased pursuant to this subsection shall not be considered contributing service credit or contributory service for purposes of this article.

(11) If a member who has purchased military service credit pursuant to this subsection is eligible for and requests a withdrawal of accumulated contributions pursuant to the provisions of this article, he or she shall also receive a refund of the actuarial reserve purchase amount he or she paid to the retirement system to purchase military service credit, together with regular interest on such amount.

(c) No period of military service shall be used to obtain credit in more than one retirement system administered by the board and once used in any system, a period of military service may not be used again in any other system.

(d) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code and the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA), and regulations promulgated thereunder, as the same may be amended from time to time. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code.

(e) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board has final power to determine the period. The board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in §18-10D-1 of this code, may propose rules to administer this section for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code.

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§18-7A-17b. Military service credit for members of the West Virginia National Guard.

(a)(1) The Legislature recognizes the men and women who have dedicated themselves to the defense and service of this state through their service in the West Virginia National Guard. It is the intent of this section to confer military service credit upon members of the Teachers Retirement System for any time served in the West Virginia National Guard when they meet the requirements of this section.

(2) In addition to any benefit provided by federal law, any active member of the retirement system who currently or previously has served in the West Virginia National Guard may purchase credited service for the time served in the West Virginia National Guard, not to exceed sixty months if the following conditions are met:

(A) The active member substantiates by appropriate documentation or evidence his or her service in the West Virginia National Guard;

(B) The active member has completed a complete fiscal year of contributory service to the retirement system on or after July 1, 2015; and

(C) The employee pays to the retirement system the actuarial reserve purchase amount within forty-eight months after July 1, 2015, if he or she was employed with an employer during a complete fiscal year in fiscal year 2016 or the first date on which employer and employee contributions are received by the retirement system for the member for a complete fiscal year if he or she was not employed with an employer for a complete fiscal year during fiscal year 2016 and while he or she continues to be in the employ of an employer and contributing to the retirement system: Provided, That any member who ceases employment with an employer before completing the required actuarial reserve purchase amount in full is not eligible to purchase the military service.

(3) Any member of the retirement system who serves, or has served, in the West Virginia National Guard may purchase one month of military service credit for every fifteen points earned toward a reserve component retirement during a qualifying year as computed in subdivision (7) of this subsection. For purposes of this section, points will be verified using the National Guard Current Annual Statement, Point Credit Summary or other equivalent document, along with any documentation of any periods of active service with the State of West Virginia as verified by the Adjutant General’s office. All documentation will be submitted to the retirement board by the active member.

(4) In no event, however, may a member purchase or receive a total of more than sixty months of military service credit under this section, section seventeen-a, article seven-a, chapter eighteen; or any other retirement system administered by the retirement board.

(5) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the retirement board shall have the final power to determine the

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period.

(6) To receive credit, an active member must submit a request to purchase military service credit to the retirement board, on such form or in such other manner as shall be required by the retirement board, within the complete fiscal year required by this subsection or by October 31, 2016, whichever occurs later. The retirement board shall then calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the employee within the forty-eight-month period required by this subsection, as applicable. An active member purchasing military service credit pursuant to this subsection must do so in a single, lump sum payment: Provided, That the retirement board may accept partial installments or other similar payments if the employee executes a contract with the board specifying the amount of military service to be purchased and the payments required: Provided, however, That any failure to pay the contract amount in accordance with this section shall be treated as an overpayment or excess contribution subject to section fourteen-c of this article and no military service shall be credited.

(7) To calculate the amount of military service credit an active member may purchase, the retirement board shall add the total number of points accrued in a qualifying year, divide the total by fifteen, and round up or down to the nearest integer (fractions of 0.5 or greater shall be rounded up), in order to yield the total number of months of military service credit an active member may purchase, subject to the sixty-month maximum. An active member may purchase in one-month increments all or part of the maximum amount of military service credit for which he or she is eligible.

(8) If a member who has purchased military service credit pursuant to this subsection is eligible for and requests a withdrawal of accumulated contributions pursuant to the provisions of this article, he or she shall also receive a refund of the actuarial reserve purchase amount he or she paid to the retirement system to purchase military service credit, together with regular interest on the amount.

(9) Military service credit purchased pursuant to this subsection may not be considered contributing service credit or contributory service for purposes of this article.

(b)(1) Active members of an employer who continue concurrently in active service of the State of West Virginia with the West Virginia National Guard after the eligible period to purchase military service credit as set forth in subsection (a) of this section, or active members who join the West Virginia National Guard after participation in the retirement system has commenced may purchase military service credit earned after the service computed under subsection (a) of this section up to the sixty-month maximum in every even calendar year following if the following conditions are met:

(A) The active member substantiates by appropriate documentation or evidence his or her service in the West Virginia National Guard;

(B) The active member has completed a complete fiscal year of contributory service to the

retirement system in the prior odd year; and

(C) The active member pays to the retirement system the actuarial reserve purchase amount within three months from the date of the cost letter provided by the retirement board and while he or she continues to be in the employ of an employer and contributing to the retirement system: Provided, That a member who ceases employment with an employer before completing the required actuarial reserve purchase amount in full is not eligible to purchase the military service credit.

(2) Any member of the retirement system who serves or has served in the West Virginia National Guard may purchase one month of military service credit for every fifteen points earned toward a reserve component retirement during a qualifying year as computed in subdivision (6) of this subsection. For purposes of this section, points will be verified using the Army National Guard Current Annual Statement, Point Credit Summary or other equivalent document, along with any documentation of any periods of Active service with the State of West Virginia as verified by the Adjutant General's Office. All documentation shall be submitted to the retirement board by the active member.

(3) In no event, however, may a member purchase or receive a total of more than sixty months of military service credit under this section, section seventeen-a, article seven-a, chapter eighteen, or any other retirement system administered by the retirement board.

(4) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the retirement board shall have final power to determine the period.

(5) To receive credit, an active member must submit a request to purchase military service credit to the retirement board, on such form or in such other manner as shall be required by the retirement board, by October 31 of each even calendar year following the years computed under subsection (a) of this section. The retirement board shall then calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the active member within three months from the date of the cost letter provided by the retirement board. An active member purchasing military service credit pursuant to this subsection must do so in a single, lump sum payment.

(6) To calculate the amount of military service credit an active member may purchase, the retirement board shall add the total number of points accrued in a qualifying year, divide the total by fifteen. and round up or down to the nearest integer (fractions of 0.5 or greater shall be rounded up), in order to yield the total number of months of military service credit an active member may purchase, subject to the sixty-month maximum. An active member may purchase in one month increments, all or part of the maximum amount of military service credit for which he or she is eligible.

(7) If a member who has purchased military service credit pursuant to this subsection is eligible for and requests a withdrawal of accumulated contributions pursuant to the

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provisions of this article, he or she shall also receive a refund of the actuarial reserve purchase amount he or she paid to the retirement system to purchase military service credit, together with regular interest on the amount.

(8) Military service credit purchased pursuant to this subsection may not be considered contributing service credit or contributory service for purposes of this article.

(c) For purposes of this section:

(1) "Active service of the State of West Virginia" means full-time state active duty in the West Virginia Army National Guard or the West Virginia Air National Guard when the duty is performed upon orders of the Adjutant General of the West Virginia National Guard or the Governor of West Virginia and which is funded entirely by the state.

(2) "Actuarial reserve purchase amount" means the purchase annuity rate multiplied by the purchase accrued benefit, calculated as of the calculation month, plus annual interest accruing at seven and one-half percent from the calculation month through the purchase month, compounded monthly: Provided, That if the employee elects to pay the full purchase amount on an installment or partial payment basis as permitted under subsection (a) of this section, the actuarial reserve purchase amount will include the lump sum payment plus additional interest accruing at seven and one-half percent until the purchase amount is paid in full.

(3) "Calculation month" means the month immediately following the month in which the employee completes a complete fiscal year of contributory service with an employer on or after July 2015 for computations under subsection (a) of this section, or the month immediately following the month in which the employee completes a complete fiscal year of contributory service with an employer in the preceding odd calendar year for computations under subsection (b) of this section.

(4) "Purchase accrued benefit" means two percent times the purchase military service times the purchase average monthly salary.

(5) "Purchase age" means the age of the employee in years and completed months as of the first day of the calculation month.

(6) "Purchase annuity rate" means the actuarial lump sum annuity factor calculated as of the calculation month based on the following actuarial assumptions:

(A) Interest rate of seven and one-half percent;

(B) Mortality of the 1971 group annuity mortality table, fifty percent blended male and female rates, applied on a unisex basis to all members; and

(C) If purchase age is under age sixty-two, a deferred annuity factor with payments commencing at age sixty-two; or

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(D) If purchase age is sixty-two or over, an immediate annuity factor with payments starting at the purchase age.

(7) "Purchase average monthly salary" means the average monthly salary of the active member during the number of months of the member's contract during the fiscal year of contributory service as required by this section.

(8) "Purchase military service" means the amount of military service being purchased by the active member in months up to the sixty-month maximum, calculated in accordance with subdivision (7) of subsection (a) and subdivision (6) of Subsection (b) of this section.

(9) "Purchase month" means the month in which the active member deposits the actuarial reserve lump sum purchase amount in full payment of the service credit being purchased or makes the final payment of the actuarial reserve purchase amount into the plan trust fund in full payment of the service credit being purchased.

(10) "Qualifying year" means any year in which a member earns the minimum number of points required to receive credit for the year toward retired pay pursuant to Section 12732 of Title 10, United States Code.

(11) "Service in the West Virginia National Guard" means full-time active duty for annual training in the National Guard, Inactive Duty Training, Active Duty Operational Support, Active Duty Special Work, funeral honors, State Active Duty as a member of the West Virginia National Guard or any other similar periods of Title 32 service or active service of the State of West Virginia.

(12) "West Virginia National Guard" means the West Virginia Army National Guard and the West Virginia Air National Guard.

(d) The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in section one, article ten-d of chapter five, may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to administer this section.

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§18-7A-18. Teachers Retirement System Fund; transfers.

(a) There is hereby created in the State Treasury a special revenue account designated the "Teachers Employers Contribution Collection Account" to be administered by the Consolidated Public Retirement Board. The Teachers Employers Contribution Collection Account shall be an interest-bearing account with interest credited to and deposited in the account and transferred in accordance with the provisions of this section: Provided, That on or before June 30, 2014, the Consolidated Public Retirement Board shall close the Teachers Employers Contribution Collection Account and transfer any balance in the Teachers Employers Contribution Collection Account to the Teachers Retirement System Fund. After the Teachers Employers Contribution Collection Account is closed, any amounts required to be transferred or remitted to the Teachers Employers Contribution Collection Account shall be transferred or remitted to the Teachers Retirement System Fund.

(b) There is hereby continued in the State Treasury a separate irrevocable trust designated the Teachers Retirement System Fund. The Teachers Retirement System Fund shall be invested as provided in section nine-a, article six, chapter twelve of this code.

(c) Beginning July 1, 2014, there shall be deposited into the Teachers Retirement System Fund, the following:

(1) Contributions of employers, through state appropriations, and the amounts shall be included in the budget bill submitted annually by the Governor;

(2) Beginning on July 1, 2005, contributions from each county in an amount equal to fifteen percent of all salary paid in excess of that authorized for minimum salaries in sections two and eight-a, article four, chapter eighteen-a of this code and any salary equity authorized in section five of said article or any county supplement equal to the amount distributed for salary equity among the counties for each individual who was a member of the Teachers Retirement System before July 1, 2005: Provided, That the rate shall be seven and one-half percent for any individual who becomes a member of the Teachers Retirement System for the first time on or after July 1, 2005 or any individual who becomes a member of the Teachers Retirement System as a result of the transfer contemplated in article seven-d of this chapter;

(3) Member contributions provided in section fifteen of this article;

(4) Gifts and bequests to the fund and any accretions and accumulations which may properly be paid into and become a part of the fund;

(5) Specific appropriations to the fund made by the Legislature;

(6) Interest on the investment of any part or parts of the fund; and

(7) Any other moneys, available and not otherwise expended, which may be appropriated or transferred to the Teachers Retirement System or the Fund.

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(d) The Teachers Retirement System Fund shall be the fund from which annuities shall be paid.

(e) The Consolidated Public Retirement Board has sole authority to direct and approve the making of any and all fund transfers as provided in this section, anything in this code to the contrary notwithstanding.

(f) References in the code to the Teachers Accumulation Fund, the Employers Accumulation Fund, the Benefit Fund, the Reserve Fund and the Expense Fund mean the Teachers Retirement System Fund.

WV Legislature

§18-7A-18a. Calculation of allocation to Teachers Retirement System Fund.

(a) There shall be an annual allocation from the State General Revenue Fund to the Teachers Retirement System Fund, created by section eighteen of this article, equal to the actuarially required contribution, reduced by any employer contributions and other allocated amounts.

(b) There shall be an additional allocation in each year an amount equal to the total of all irrevocably forfeited amounts in the suspension account established in section eleven, article seven-b of this chapter plus earnings thereon which have been certified to the several contributing employers as irrevocably forfeited in the prior fiscal year and subsequently used by the contributing employers to reduce their total aggregate contribution requirements pursuant to section seventeen, article seven-b of this chapter.

(c) The additional allocation provided in this section represents a funding method by which a part of a rational amortization plan will be established to amortize the current unfunded liability of the Teachers Retirement System created by this article. The additional allocations are not and shall not be construed to be moneys which are owed to, nor earned by any employee.

WV Legislature

§18-7A-19. Custody of funds; disbursements; bond of custodian; annual statement.

The State Treasurer shall be the custodian of the funds and securities of the retirement system. Disbursements from the funds of the retirement system shall be made by the custodian only upon warrants signed by a member or members of the retirement board, or an official thereof, authorized to do so by resolution of the retirement board. The State Treasurer shall give a separate and additional bond in such amount as may be fixed by the Governor for the faithful performance of the duties as custodian of the retirement system. Such bond shall be approved by the Governor and filed in the same office as are the bonds of other state officers. The cost of such bond shall be paid from the expense fund.

The custodian shall furnish annually to the retirement board a sworn statement of the amount of the funds in his custody belonging to the retirement system.

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§18-7A-20. Investment of funds.

The members of the retirement board shall be the trustees of the several funds created by this article, and shall determine from time to time what part of the moneys belonging to the retirement system shall be invested. When such board shall determine to invest any moneys or to convert or sell any securities, it shall by resolution so direct the custodian. The board of public works is hereby empowered to determine in what securities the investments shall be made, but such investments shall be made only in those securities to which the board of public works is limited in the investment of workers' compensation funds under section two, article three, chapter twenty-three of this code, or in bonds, notes, or other instruments evidencing loans secured by mortgages or deeds of trust insured, or with respect to which commitments to insure have been made by the United States, or by the secretary of agriculture, pursuant to the Bankhead-Jones Farm Tenant Act of 1937, as heretofore or hereinafter amended. It shall be the duty of every county, school district or municipality issuing any bonds to offer them in writing to the board of public works, prior to advertising the bonds for sale. The board of public works, within fifteen days after receipt of such offer, may accept or reject such offer in whole or in part. It shall be the duty of the custodian to collect the principal and the interest on investments when they become due and payable and to credit such collections to the retirement system.

WV Legislature

§18-7A-21. Misuse of funds; penalties.

No member nor employee of the retirement board, for himself or as an agent or partner of others, or for a corporation of which he is an officer, stockholder or member, shall directly or indirectly borrow any of the funds or deposits of the retirement board or in any manner use such funds except to make such payments as are authorized by the board under this article. Any member or employee violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, be fined not more than $1,000 or be imprisoned for one year, or both.

WV Legislature

§18-7A-22. Persons eligible for prior service pensions.

The following shall be eligible for prior service pensions:

(a) Present members upon retirement;

(b) Any person who has served at least twenty-five years as a teacher prior to July 1, 1941; and

(c) A new entrant who becomes a present teacher.

WV Legislature

§18-7A-23. Withdrawal and death benefits.

(a) Benefits upon withdrawal from service prior to retirement under the provisions of this article shall be as follows:

(1) A contributor who withdraws from service for any cause other than death, disability or retirement shall, upon application, be paid his or her accumulated contributions up to the end of the fiscal year preceding the year in which application is made, after offset of any outstanding loan balance, plus accrued loan interest, pursuant to section thirty-four of this article, but in no event shall interest be paid beyond the end of five years following the year in which the last contribution was made: Provided, That the contributor, at the time of application, is then no longer under contract, verbal or otherwise, to serve as a teacher; or

(2) Except as provided in section twenty-five-b of this article, if the inactive member has completed twenty years of total service, he or she may elect to receive at age sixty an annuity which shall be computed as provided in this article: Provided, That if the inactive member has completed at least five, but fewer than twenty, years of total service in this state, he or she may elect to receive at age sixty-two an annuity which shall be computed as provided in this article. The inactive member must notify the retirement board in writing concerning the election. If the inactive member has completed fewer than five years of service in this state, he or she shall be subject to the provisions as outlined in subdivision (1) of this subsection.

(b) Benefits upon the death of a contributor prior to retirement under the provisions of this article shall be paid as follows:

(1) If the contributor was at least fifty years old and if his or her total service as a teacher or nonteaching member was at least twenty-five years at the time of his or her death, then the surviving spouse of the deceased, provided the spouse is designated as the sole primary refund beneficiary, is eligible for an annuity computed as though the deceased were actually a retirant at the time of death and had selected a survivorship option which pays the spouse the same monthly amount which would have been received by the deceased; or

(2) If the facts do not permit payment under subdivision (1) of this subsection, then the following sum shall be paid to the refund beneficiary of the contributor: (A) The contributor's accumulated contributions up to the plan year of his or her death plus an amount equal to his or her member contributions: Provided, That the latter sum shall emanate from the Employer's Accumulation Fund; and (B) the refund beneficiary of any individual who became a member of the retirement system as a result of the voluntary transfer contemplated in article seven-d of this chapter shall also be paid the member contributions plus the vested portion of employer contributions made on his or her behalf to the Teachers' Defined Contribution Retirement System, plus any earnings thereon, as of June 30, 2008, as stated by the retirement board.

WV Legislature

§18-7A-23a. Terminal benefits.

(a) This section provides for the payment of the balance in a retired member's account to paid in the manner described in this section in the event that all claims to benefits payable to, or on behalf of, a member expire before his or her member account has been fully exhausted. The expiration of the rights to benefits would be on the later of either the death of the retired member drawing benefits under a straight life annuity, or the death of a survivor annuitant drawing benefits under any optional form of benefit selected by the retired member.

(b) In the event that all claims to benefits payable to, or on behalf of, a retired member expire, and the accumulated contributions exceed the accumulated net benefit payments paid to or on behalf of the retired member, the balance in the retired member's account shall be paid to the person or persons as the retired member has nominated by written designation duly executed and filed with the board of trustees. If there is no designated person or persons surviving the retired member following the expiration of the claims, the excess of the accumulated contributions over the accumulated net benefit, if any, shall be paid to the retired member's estate: Provided, That the provisions of this section are retroactive to all members who entered retirement status on or after June 9, 2000.

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§18-7A-24.

Repealed.

Acts, 2006 Reg. Sess., Ch. 200.

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§18-7A-25. Eligibility for retirement allowance.

(a) Except for a person who first becomes a member of the retirement system on or after July 1, 2015, any actively contributing member who has attained the age of 60 years or any member who has 35 years of total service as a teacher or nonteaching member in West Virginia, regardless of age, is eligible for an annuity. No new entrant nor present member is eligible for an annuity, however, if either has less than five years of service to his or her credit: *Provided*, That on and after July 1, 2013, any person who becomes a new member of this retirement system shall, in qualifying for retirement under this section, have five or more years of contributory service, all of which shall be actual, contributory ones.

(b) Except for a person who first becomes a member of the retirement system on or after July 1, 2015, any member who has attained the age of 55 years and who has served 30 years as a teacher or nonteaching member in West Virginia is eligible for an annuity.

(c) Except for a person who first becomes a member of the retirement system on or after July 1, 2015, any member who has served at least 30 but less than 35 years as a teacher or nonteaching member in West Virginia and is less than 55 years of age is eligible for an annuity, but the annuity shall be the reduced actuarial equivalent of the annuity the member would have received if the member were age 55 at the time the annuity was applied for.

(d) The request for any annuity shall be made by the member in writing to the retirement board, but in case of retirement for disability, the written request may be made by either the member or the employer.

(e) A member is eligible for annuity for disability if he or she satisfies the conditions in either subdivision (1) or (2) of this subsection and meets the conditions of subdivision (3) of this subsection as follows:

(1) His or her service as a teacher or nonteaching member in West Virginia must total at least 10 years and service as a teacher or nonteaching member must have been terminated because of disability, which disability must have caused absence from service for at least six months before his or her application for disability annuity is approved.

(2) His or her service as a teacher or nonteaching member in West Virginia must total at least five years and service as a teacher or nonteaching member must have been terminated because of disability, which disability must have caused absence from service for at least six months before his or her application for disability annuity is approved and the disability is a direct and total result of an act of student violence directed toward the member.

(3) A medical examination by a physician or physicians selected by the retirement board must show that the member is at the time mentally or physically incapacitated for service as a teacher or nonteaching member, that for that service the disability is total and likely to be permanent and that he or she should be retired in consequence of the disability.

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(f) Continuance of the disability of the retirant shall be established by medical examination, as prescribed in subdivision (3), subsection (e) of this section, annually for five years after retirement, and thereafter at such times required by the retirement board. Effective July 1,1998, a member who has retired because of a disability may select an option of payment under the provisions of §18-7A-28: *Provided*, That any option selected under the provisions of §18-7A-28 shall be in all respects the actuarial equivalent of the straight life annuity benefit the disability retirant receives or would receive if the options under said section were not available and that no beneficiary or beneficiaries of the disability retirant may receive a greater benefit, nor receive any benefit for a greater length of time, than the beneficiary or beneficiaries would have received had the disability retirant not made any election of the options available under said section. In determining the actuarial equivalence, the retirement board shall take into account the life expectancies of the member and the beneficiary: *Provided, however*, That the life expectancies may at the discretion of the retirement board be established by an underwriting medical director of a competent insurance company offering annuities. Payment of the disability annuity provided in this article shall cease immediately if the retirement board finds that the disability of the retirant no longer exists, or if the retirant refuses to submit to medical examination as required by this section.

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§18-7A-25a. Prohibited forced retirement of college and university professors.

As of the effective date of this section, no person serving under a contract of unlimited tenure or similar arrangement providing for unlimited tenure at an institution of higher education shall be compelled to retire from such employment prior to attaining seventy years of age. In the event such person shall reach age seventy in the middle of a semester or fiscal year, such person shall not be compelled to retire prior to the end of the semester or fiscal year: Provided, That in no event shall such retirement be postponed beyond six months after the date on which such person attained the age of seventy: Provided, however, That nothing in this section shall be construed to preclude discharge of such person for cause.

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§18-7A-25b. Withdrawal and eligibility for retirement allowance for a person who first becomes a member of the retirement system on or after July 1, 2015.

(a) A person who first becomes a member of the retirement system on or after July 1, 2015, who has ten or more years of contributing service, and attains or has attained the age of sixty-two years, may retire upon his or her written application filed with the board of trustees setting forth the date on which the member desires to be retired. Upon retirement, the member shall receive an annuity provided in section twenty-six of this article.

(b) Any person who first becomes a member of the retirement system on or after July 1, 2015, who has ten or more years of contributing service and who leaves the employ of a participating public employer prior to attaining age sixty-two years for any reason except his or her disability or death, is entitled to an annuity computed according to section twenty-two of this article: Provided, That he or she does not withdraw his or her accumulated contributions from the members' deposit fund. His or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty-four years.

(c) Any member who qualifies for deferred retirement benefits in accordance with subsections (a) and (b) of this section and has twenty or more years of contributing service in force is entitled to an annuity computed as in subsection (a) of this section: Provided, That he or she does not withdraw his or her accumulated contributions from the members' deposit fund: Provided, however, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty-three.

(d) Notwithstanding any of the other provisions of this section or of this article, except sections twenty-eight-a and twenty-eight-b of this article, and pursuant to rules promulgated by the board, any member who first becomes a member of the retirement system on or after July 1, 2015, and has ten or more years of contributing service in force, is currently employed by a participating public employer and who elects to take early retirement, which for the purposes of this subsection means retirement following attainment of age sixty but prior to attaining age sixty-two, is entitled to the full computation of annuity according to section twenty-two of this article but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty-two when he or she would have been entitled to full computation of benefit without any reduction: Provided, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty.

(e) Any member who first becomes a member of the retirement system on or after July 1, 2015, and has twenty or more years of contributing service in force, is currently employed by a participating public employer and who elects to take early retirement, which for the purposes of this subsection means retirement following attainment of age fifty-seven but prior to attaining age sixty-two, is entitled to the full computation of annuity according to

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section twenty-two of this article but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty-two when he or she would have been entitled to full computation of benefit without any reduction: Provided, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age fifty-seven.

(f) Any member who first becomes a member of the retirement system on or after July 1, 2015, and has thirty or more years of contributing service in force, is currently employed by a participating public employer and who elects to take early retirement, which for the purposes of this subsection means retirement following attainment of age fifty-five but prior to attaining age sixty-two, is entitled to the full computation of annuity according to section twenty-two of this article but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty-two when he or she would have been entitled to full computation of benefit without any reduction: Provided, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age fifty-five.

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§18-7A-26. Computation of annuities.

(a) Retirants whose annuities were approved by the retirement board effective before July 1, 1980, shall be paid the annuities which were approved by the retirement board.

(b) Annuities approved by the retirement board effective after June 30, 1980, shall be computed as provided in this section.

(c) Upon establishment of eligibility for a retirement allowance, a member shall be granted an annuity which shall be two percent of the member's average salary multiplied by his or her total service credit, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section twenty-eight-a of this article.

In this subsection "average salary" means the average of the highest annual salaries received by the member during any five plan years contained within his or her last fifteen years of total service credit: Provided, That the highest annual salary used in this calculation for certain members employed by the West Virginia Higher Education Policy Commission under its control shall be $4,800, as provided by section fourteen-a of this article.

(d) The disability annuities of all disabled retirants shall be based upon a disability table prepared by a competent actuary approved by the retirement board. Disability annuity benefits will begin the first day of the month following the latter of: (1) Six months of absence caused by said disability; (2) date of written report by physician selected by retirement board stating member is mentally or physically incapacitated for service and that disability is total and likely to be permanent; and (3) termination of employment.

(e) Upon the death of a retirant who qualified for an annuity as the surviving spouse of an active member or because of permanent disability, the estate of the deceased or beneficiary designated for such purpose shall be paid the difference, if any, between the member's contributions with regular interest thereon, and the sum of the annuity payments. Upon the death of a spouse who was named as the member's survivor, a retirant may elect an annuity option approved by the retirement board in an amount adjusted on a fair basis to be of equal actuarial value as the annuity prospectively in effect relative to the surviving member at the time the new option is elected.

(f) All annuities shall be paid in twelve monthly payments. In computing the monthly payments, fractions of a cent shall be considered a cent. The monthly payments shall cease with the payment for the month within which the beneficiary dies, and shall begin with the payment for the month succeeding the month within which the retirant became eligible under this article for the annuity granted; in no case, however, shall a retirant receive more than four monthly payments which are retroactive after the retirement board receives his or her application for annuity. The monthly payments shall be made on the twenty-fifth day of each month, except the month of December, when the payment shall be made on December 18. If the date of payment falls on a holiday, Saturday or Sunday, then the payment shall be

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made on the preceding workday.

(g) In case the retirement board receives data affecting the approved annuity of a retirant, the annuity shall be changed in accordance with the data, the change being effective with the payment for the month within which the retirement board received the new data.

(h) Any person who has attained the age of sixty-five and who has served at least twenty-five years as a teacher or nonteacher prior to July 1, 1941, is eligible for prior service credit and for prior service pensions as prescribed in this section.

WV Legislature

§18-7A-26a. Additional benefits for certain annuitants.

Annuitants whose annuities were approved by the retirement board on or before December 18, 1962, shall, upon written application, receive in addition to such approved annuities a monthly allowance computed as follows: The annuitant's years of service shall be multiplied by $30 and this product shall then be divided by his monthly retirement allowance, as computed prior to the above-stated date, excluding any portion of said allowance which is based on voluntary deposits of the annuitant.

In addition thereto, beginning July 1, 1965, each annuitant under the provisions of this section shall receive a monthly amount equal to 76¢ multiplied by his total service credit.

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§18-7A-26b. Supplemental benefits for certain annuitants.

As an additional supplement to other retirement allowances provided, each annuitant whose annuity was approved by the retirement board prior to January 1, 1967, shall receive a monthly amount equal to 25¢ multiplied by his total service credit.

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§18-7A-26c. Supplemental benefits for certain annuitants.

As an additional supplement to other retirement allowances provided, each annuitant whose annuity was approved by the retirement board prior to January 1, 1969, shall receive a monthly amount equal to 50¢ multiplied by his total service credit.

WV Legislature

§18-7A-26d. Supplemental benefits for certain annuitants.

As an additional supplement to other retirement allowances provided, each annuitant whose annuity was approved by the retirement board prior to July 1, 1970, shall receive, upon application, an amount equal to twenty-five percent of his present retirement allowance.

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§18-7A-26e. Supplemental benefits to certain annuitants.

(a) An annuitant whose annuity was approved by the board effective after June 30, 1963, and before July 1, 1970, may receive, at his election, an annuity of two percent of his average final salary times his total service credit, plus deposits and tax sheltered annuities, but not including the supplemental benefits permitted pursuant to sections twenty-six-a, twenty-six-b, twenty-six-c and twenty-six-d of this article. Any additional benefit conferred herein shall not be retroactive, but shall be paid beginning July 1, 1971, if the option to elect the above plan is exercised by the annuitant prior to May 31, 1971.

(b) An annuitant whose annuity was approved by the board effective before July 1, 1963, and any annuitant who is eligible for, but does not elect the plan specified in subsection (a) of this section shall receive, upon application, an additional amount equal to twenty-five percent of his present retirement allowance.

(c) Any retired teacher who was an employee of the West Virginia board of Governors or the state Board of Education and who was limited in the amount he could pay into the retirement system to $216 per year from July 1, 1963, to July 1, 1970, and who retired prior to February 1, 1970, shall have the option at any time within six months from the effective date hereof, to pay into the retirement system the difference between such limitations and twice the amount he would have paid therein had he been paying the full amount provided by law for members of the retirement system other than employees of the West Virginia board of Governors or the state Board of Education. Upon completion of such above-named contributions the annuitant shall be entitled to benefits under the formula specified in subsection (a) of this section, plus deposits and tax sheltered annuities, but not including the supplemental benefits permitted pursuant to sections twenty-six-a, twenty-six-b, twenty-six-c and twenty-six-d of this article. Any additional benefit conferred herein shall not be retroactive to the time of retirement, but shall be paid beginning July 1, 1971.

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§18-7A-26f. Supplemental benefits for certain annuitants.

As an additional supplement to other retirement allowances provided, each annuitant whose retirement allowance became effective during the respective dates indicated in this section shall receive, upon application, an increased amount, payable monthly, which is the product of his present retirement allowance multiplied by the percentage increase applicable, according to the effective date of retirement and according to the plan of retirement, as provided by the schedule below.

Effective Date of Percentage of

Retirement Retirement Allowance Increase

July 1, 1941 through June 30, 1953 16.00%

July 1, 1953 through June 30, 1963 19.00%

July 1, 1963 through June 30, 1965 14.00%

July 1, 1965 through June 30, 1966 10.50%

July 1, 1966 through June 30, 1968 9.50%

July 1, 1968 through June 30, 1969 6.00%

July 1, 1969 through June 30, 1970 9.00%

Any additional benefit conferred herein shall not be retroactive to the time of retirement, but shall be paid as follows: One half of the respective retirement allowance percentage increase shall become effective July 1, 1973, and one half of the respective retirement allowance percentage increase shall become effective July 1, 1974.

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§18-7A-26g. Supplemental benefits for certain annuitants.

From an appropriation of General Revenue Funds made annually by the Legislature for this purpose and as an additional supplement to other retirement allowances, each annuitant whose retirement allowance became effective during the respective dates indicated in this section shall receive, upon application, an amount which is the product of his present retirement allowance, including all of the supplemental benefits provided in the preceding section of this article, multiplied by the percentage increase applicable, according to the effective date of retirement and according to the plan of retirement, as provided by the schedule below.

Effective Date Percentage of Retirement

of Retirement Allowance Increase

July 1, 1941 through June 30, 1953 13.50%

July 1, 1953 through June 30, 1963 15.25%

July 1, 1963 through June 30, 1965 12.25%

July 1, 1965 through June 30, 1966 9.00%

July 1, 1966 through June 30, 1968 8.75%

July 1, 1968 through June 30, 1969 5.50%

July 1, 1969 through June 30, 1970 8.25%

Any additional benefit conferred herein shall not be retroactive to the time of retirement, but shall be paid beginning July 1, 1975.

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§18-7A-26h. Supplemental benefits for certain annuitants.

Any annuitant who is receiving a retirement annuity of less than $7,500 annually on the effective date of this section shall receive a supplemental benefit, prospectively, under this section: Provided, That the effective date of retirement for such annuitant was prior to July 1, 1979, and he had ten years or more of credited service at the time of such retirement. For the purposes of this section, "effective date of retirement" means the last day of actual employment, or the last day carried on the payroll of the employer, whichever is later, together with a meeting fully of all eligibility requirements for retirement prior to the aforesaid effective date. Any annuitant retired pursuant to the disability provisions of this article shall be considered to have had ten years or more credited service at the time of such retirement.

Each such annuitant shall receive as his supplemental benefit an increased annual amount which is the product of the sum of $18 multiplied by his years of credited service: Provided, That the total annuity of any annuitant affected by the provisions of this section, together with any of the other provisions of this article, shall not exceed $7,500 annually.

Any annuitant receiving the supplemental benefit provided for herein for the annuity payment period just prior to July 1, 1985, or any annuitant made newly eligible for receipt of such supplemental benefit on such date, shall receive a nineteen percent increase in the amount of such supplemental benefit prior received or newly calculated, effective on and after July 1, 1985, and irrespective of the maximum total annuity proviso, and limitation of $7,500 annually. In any fiscal year in which pay increases are granted by the Legislature to active teachers, there may also be given an increase in retirement benefits for retired teachers, if funding is available for this purpose.

For the purpose of calculating the supplemental benefit provided in this section, fractional parts of a service credit year are to be disregarded unless in excess of one half of a credited service year, in which event the same shall constitute a full year of service credit.

On or after July 1, 1982, for the purpose of computation for determination of eligibility and for the amount of any supplemental benefit hereunder, separate computation shall be made of a retirant's own benefit and that which may be receivable as beneficiary of another, under the provisions of this article, with each such benefit being eligible for the supplemental benefit herein provided.

WV Legislature

§18-7A-26i. Supplemental benefits for retired teachers.

Beginning on January 1, 1991, any annuitant who is receiving a retirement annuity on the effective date of this section shall receive a supplemental benefit, prospectively, if the effective date of retirement for such annuitant was prior to July 1, 1981, and such annuitant is not receiving supplemental benefits pursuant to section twenty-six-h of this article. For the purposes of this section, "effective date of retirement" means the last day of actual employment or the last day carried on the payroll of the employer, whichever is later, together with fully meeting all of the eligibility requirements for retirement prior to the aforesaid effective date.

Each such eligible annuitant shall receive as his or her supplemental benefit an increased annual amount which is the product of the sum of $18 multiplied by his or her years of credited service.

For the purpose of calculating the supplemental benefit provided in this section, fractional parts of a service credit year are to be disregarded unless in excess of one half of a credited service year, in which event a full year of service credit shall be given.

For the purpose of computation for determination of eligibility and for the amount of any supplemental benefit hereunder, separate computation shall be made of a retirant's own benefit and that which may be receivable as beneficiary of another, under the provisions of this article, with each such benefit being eligible for the supplemental benefit herein provided.

Prior to January 1, 1991, the executive secretary of the board shall provide to the Legislature information as to the number of annuitants who retired before July 1, 1981, the amounts of the annuities they receive, the amount of funds necessary to provide cost of living increases to such annuitants, and such other detail and related information as the Joint Committee on Government and Finance may direct.

WV Legislature

§18-7A-26j. Supplemental benefits for certain teachers who retired prior to July 1, 1981.

As an additional supplement to other retirement allowances provided, each annuitant whose annuity was approved by the retirement board prior to July 1, 1981, and such annuitant is not receiving supplemental benefits pursuant to section twenty-six-i of this article, shall receive a monthly amount equal to $1.25 multiplied by his or her total service credit.

WV Legislature

§18-7A-26k. Supplemental benefits for certain teachers who retired between July 1, 1981, and July 1, 1982.

As an additional supplement to other retirement allowances provided, each annuitant who retired between July 1, 1981, and July 1, 1982, shall receive a monthly amount equal to $2 multiplied by his or her total service credit.

WV Legislature

§18-7A-26l. Supplemental benefits for certain teachers who retired prior to July 1, 1982.

As an additional supplement to other retirement allowances provided, each annuitant whose annuity was approved by the retirement board prior to July 1, 1982, and whose benefits were increased in the year 1990, pursuant to the provisions of section twenty-six-i of this article, shall receive a monthly amount equal to 50¢ multiplied by his or her total service credit.

WV Legislature

§18-7A-26m. Supplemental benefits for certain teachers.

(a) As an additional supplement to other retirement allowances provided, each annuitant whose annuity was approved by the retirement board prior to January 1, 1971, and who is receiving a monthly pension of $300 or less, shall receive a monthly amount equal to $1 multiplied by his or her total service credit.

(b) As an additional supplement to other retirement allowances provided, each annuitant whose annuity was approved on or after July 1, 1982, and before July 1, 1984, shall receive a monthly amount equal to $2 multiplied by his or her total service credit.

WV Legislature

§18-7A-26n. Supplemental benefits for certain teachers who retired on or after July 1, 1984, but prior to July 1, 1986.

As an additional supplement to other retirement allowances provided, each annuitant who retired on or after July 1, 1984, and before July 1, 1986, shall receive a monthly amount equal to $2 multiplied by his or her total service credit.

WV Legislature

§18-7A-26o. Supplemental benefits for certain teachers who retired prior to July 1, 1986.

As an additional supplement to other retirement allowances provided, each annuitant who retired before July 1, 1986, and who is receiving a monthly pension of $300 or less, shall receive a monthly total amount equal to $1 multiplied by his or her total service credit.

WV Legislature

§18-7A-26p. Supplemental benefits for certain teachers who retired on or after July 1, 1986, but prior to April 1, 1988.

As an additional supplement to other retirement allowances provided, each annuitant who retired on or after July 1, 1986, and before April 1, 1988, shall receive a monthly amount equal to $2 multiplied by his or her total service credit.

WV Legislature

§18-7A-26q. Supplemental benefits for certain teachers who retired prior to April 1, 1988.

As an additional supplement to other retirement allowances provided, each annuitant who retired before April 1, one thousand nine hundred eighty-eight, and who is receiving a monthly pension of $300 or less, shall receive a monthly total amount equal to $1 multiplied by his or her total service credit.

WV Legislature

§18-7A-26r. Minimum benefit for certain retired members; legislative declaration; state interest and public purpose.

The Legislature hereby finds and declares that an important state interest exists in providing a minimum retirement annuity for certain retired members who are credited with twenty or more years of total service; that such program constitutes a public purpose; and that the exclusion of total service for certain employees of institutions of higher education is a reasonable and equitable exclusion for purposes of determining eligibility for such minimum benefits.

If the retirement annuity of a retired member (or if applicable, a spouse thereof) with at least twenty years of total service is less than $500 per month (including any supplemental or additional benefits provided by this article), then the monthly retirement annuity for any such retired member shall be increased to $500 per month: Provided, That any year of service while an employee of an institution of higher education shall not be taken into account for purposes of this section if his or her salary is capped under the retirement system at $4,800 per year pursuant to section fourteen-a of this article.

The payment of any minimum benefit under this section shall be in lieu of, and not in addition to, the payments of any retirement annuity or supplemental or additional benefits otherwise provided by this article: Provided, That the minimum benefit provided herein shall be subject to any limitations thereon under §415 of the Internal Revenue Code of 1986, as the same may be amended, and section twenty-eight-a of this article.

Any minimum benefit conferred herein shall not be retroactive to the time of retirement and shall apply only to members who have retired prior to the effective date of this section, or, if applicable, to beneficiaries receiving benefits under the retirement system prior to the effective date.

The minimum benefit provided herein shall be subject to a recommendation by the Governor for such minimum benefit through the delivery of an executive message to the Legislature and an appropriation by the Legislature for such minimum benefit, such appropriation to be made over a continuous six-year period following the effective date of this section.

WV Legislature

§18-7A-26s. One-time supplement for certain annuitants effective July 1, 2001.

(a) A one-time supplement to retirement benefits shall be provided to retirees of this system who have: (i) Reached the specified age threshold; and (ii) have been in retirement status for the specified number of years, as follows:

(1) For retirees who, as of July 1, 2001, are at least sixty-five years of age and who have been an annuitant for at least five consecutive years, this one-time supplement shall equal five percent of his or her annuity benefit as of the effective date of this section;

(2) For retirees who, as of July 1, 2001, are at least seventy years of age and who have been an annuitant for at least five consecutive years, this one-time supplement shall equal ten percent of his or her annuity benefit as of the effective date of this section; and

(3) For any person who, as of July 1, 2001, is at least sixty-five years of age and who retired under the early retirement incentive provided in section thirty-five-b of this article, this one-time supplement shall equal three percent of his or her annuity benefit as of the effective date of this section and subdivisions (1) and (2) of this subsection do not apply.

(b) The one-time supplement provided for in this section applies only to members who have retired prior to or as of the effective date of this section or, if applicable, to beneficiaries receiving benefits under the retirement system prior to or as of the effective date of this section: Provided, That the supplement provided herein is subject to any applicable limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended.

WV Legislature

§18-7A-26t. One-time supplement for certain annuitants effective July 1, 2006.

(a) A one-time supplement to retirement benefits of three percent shall be provided to all retirees that are age seventy or older and have been annuitants for at least five consecutive years as of July 1, 2006, and beneficiaries of deceased members who would have been at least seventy years of age or older and have been annuitants for at least five consecutive years as of July 1, 2006.

(b) The one-time supplement provided in this section applies only to members who have retired at least five years prior to July 1, 2006, or, if applicable, to beneficiaries of deceased members who have been receiving benefits under the retirement system at least five years prior to July 1, 2006: Provided, That the supplement provided herein is subject to any applicable limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended.

WV Legislature

§18-7A-26u. One-time bonus payment for certain annuitants effective July 1, 2008.

(a) As an additional bonus payment to other retirement allowances provided, a one-time bonus payment to retirement benefits shall be paid to retirants of the retirement system as provided in subsection (b) of this section. The one-time bonus payment shall equal $600 and shall be paid on July 25, 2008.

(b) The one-time bonus payment provided in this section applies to any retirant with at least twenty years of service as a contributing member who currently receives an annual retirement annuity of not more than $7,200. This one-time bonus payment is subject to any applicable limitations under section 415 of the Internal Revenue Code of 1986, as amended.

(c) The one-time bonus payment provided by this section shall be payable pro rata to any beneficiaries of a qualifying retirant who currently receive an annuity or other benefit payable by the retirement system.

WV Legislature

§18-7A-26v. One-time bonus payment for certain annuitants effective July 1, 2011.

(a) As an additional bonus payment to other retirement allowances provided, a one-time bonus payment to retirement benefits shall be paid to retirants of the retirement system as provided in subsection (b) of this section. The one-time bonus payment shall equal $1,200 and shall be paid on July 27, 2011.

(b) The one-time bonus payment provided in this section applies to any retirant with at least twenty years of service as a contributing member who currently receives an annual retirement annuity of not more than $7,200. This one-time bonus payment is subject to any applicable limitations under section 415 of the Internal Revenue Code of 1986, as amended.

(c) The one-time bonus payment provided by this section shall be payable pro rata to any beneficiaries of a qualifying retirant who currently receive an annuity or other benefit payable by the retirement system.

WV Legislature

§18-7A-26w. Minimum benefit for certain retired members.

(a) If the retirement annuity of a retirant (or applicable beneficiary thereof) with at least 25 years of total service is less than $750 per month (including any supplemental or additional benefits provided by this article), then the monthly retirement annuity for the retirant shall be increased to $750 per month: Provided, That any year of service while an employee of an institution of higher education may not be taken into account for purposes of this section if his or her salary was capped under the retirement system at $4,800 per year pursuant to §18-7A-14a of this code.

(b) Notwithstanding the provisions of subsection (a) of this section to the contrary, if the retirement annuity of a beneficiary of a retirant who chose option B – 50% joint and survivor annuity as provided in §162-4-5.1.3 and who had at least 25 years of credited service as of the effective date of this section is less than $375 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for the beneficiary shall be increased to $375 per month: Provided, That any year of service while an employee of an institution of higher education may not be taken into account for purposes of this section if his or her salary was capped under the retirement system at $4,800 per year pursuant to §18-7A-14a of this code.

(c) The payment of any minimum benefit under this section is in lieu of, and not in addition to, the payments of any retirement annuity or supplemental or additional benefits otherwise provided by this article: Provided, That the minimum benefit provided in this section is subject to any limitations thereon under §415 of the Internal Revenue Code of 1986, as the same may be amended, and §18-7A-28a of this code.

(d) Any minimum benefit conferred in this section is not retroactive to the time of retirement and applies only to members who have retired prior to the effective date of this section, or, if applicable, to beneficiaries receiving benefits under the retirement system prior to the effective date.

WV Legislature

§18-7A-26x. One-time bonus payment for certain annuitants.

(a) As an additional bonus payment to other retirement allowances provided, a one-time bonus payment to retirement benefits shall be paid to retirants of the retirement system as provided in subsection (b) of this section. The one-time bonus payment shall equal $1,500 and shall be paid on or before December 31, 2023.

(b) The one-time bonus payment provided in this section applies to any retirant age 70 as of July 1, 2023, who has at least 20 years of service as of July 1, 2023, and whose monthly annuity is less than $1,000. This one-time bonus payment is subject to any applicable limitations under Section 415 of the Internal Revenue Code of 1986, as amended.

(c) The one-time bonus payment provided by this section shall be payable pro rata to any beneficiary of a qualifying retirant who currently receives an annuity or other benefit payable by the retirement system.

WV Legislature

§18-7A-26y. Minimum benefit for certain retired members.

(a) If the retirement annuity of a retirant (or applicable beneficiary thereof) at least 70 years of age with at least 25 years of total service as of July 1, 2023, is less than $1,000 per month (including any supplemental or additional benefits provided by this article), then the monthly retirement annuity for the retirant, beginning on or before December 31, 2023, shall be increased to $1,000 per month: *Provided*, That any year of service while an employee of an institution of higher education may not be taken into account for purposes of this section if his or her salary was capped under the retirement system at $4,800 per year pursuant to §18-7A-14a of this code.

(b) Notwithstanding any provision of subsection (a) of this section to the contrary, if the retirement annuity of a beneficiary at least 70 years of age as of July 1, 2023, of a retirant who chose option B – 50 percent joint and survivor annuity under the retirement system and who had at least 25 years of total service is less than $500 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for the beneficiary shall be increased to $500 per month beginning on or before December 31, 2023: *Provided*, That any year of service while an employee of an institution of higher education may not be taken into account for purposes of this section if his or her salary was capped under the retirement system at $4,800 per year pursuant to §18-7A-14a of this code.

(c) The payment of any minimum benefit under this section is in lieu of, and not in addition to, the payments of any retirement annuity or supplemental or additional benefits otherwise provided by this article: *Provided*, That the minimum benefit provided in this section is subject to any limitations thereon under Section 415 of the Internal Revenue Code of 1986, as the same may be amended, and §18-7A-28a of this code.

(d) Any minimum benefit conferred in this section is not retroactive to the time of retirement and applies only to members who have retired prior to the effective date of this section, or, if applicable, to beneficiaries receiving benefits under the retirement system prior to the effective date.

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§18-7A-27. Regular interest.

Regular interest shall be added to all sums, except for prior service, due and payable to beneficiaries under this article.

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§18-7A-28. Options to beneficiaries; change of certain options because of divorce or annulment; limitation on recalculated monthly benefits.

The retirement board is hereby authorized to offer plans, optional with the beneficiary, for the payment of allowances due such beneficiary for retirement, withdrawal or prior service pensions under the retirement system. No plans shall be offered, however, which are not approved by competent actuaries.

When a beneficiary and his or her spouse have been approved for a retirement plan which provides for them a joint life annuity, and their marriage is subsequently dissolved, the board shall permit such beneficiary to convert to the maximum life annuity plan approved by the board: Provided, That the beneficiary shall furnish to the board proof of entry of a final decree of divorce or annulment: Provided, however, That a beneficiary who qualifies for the change of retirement plans afforded by this section shall be permitted only one such change: Provided further, That the recalculated monthly benefits, independently of increases granted by law after the beneficiary's retirement, shall not exceed the monthly benefits which would have been applicable under the maximum life annuity plan at the time the beneficiary retired; and with such recalculation to be effective on the first day of the month following submission to the board by the beneficiary of proof of entry of a final decree of divorce or annulment.

Upon remarriage, a retirant may name the new spouse as an annuitant for any of the survivorship retirement benefit options offered by the provisions of this section: Provided, That the beneficiary shall furnish to the retirement board satisfactory proof of the marriage: Provided, however, That the retirant certifies under penalty of perjury that no qualified domestic relations order that would restrict such a designation is in effect: Provided further, That no cause or action against the board may then arise or be maintained on the basis of having permitted the retirant to name a new spouse as annuitant for any of the survivorship retirement benefit options. The value of the new survivorship annuity shall be the actuarial equivalent of the retirant's benefit prospectively in effect at the time the new annuity is elected.

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§18-7A-28a. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section to the extent applicable to governmental plans (hereafter sometimes referred to as the "415 limitation(s)" or "415 dollar limitation(s)"), so that the annual benefit payable under this system to a member shall not exceed those limitations. Any annual benefit payable under this system shall be reduced or limited if necessary to an amount which does not exceed those limitations. The extent to which any annuity or other annual benefit payable under this retirement system shall be reduced, as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced, shall be proportional on a percentage basis to the reductions made in such other plans administered by the board and required to be so taken into consideration under Section 415, unless a disproportionate reduction is determined by the board to maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities or other annual benefit required by this section. For purposes of the 415 limitations, the "limitation year" shall be the calendar year. The 415 limitations are incorporated herein by reference, except to the extent the following provisions may modify the default provisions thereunder:

(a) The annual adjustment to the 415 dollar limitations made by Section 415(d) of the Internal Revenue Code and the regulations thereunder shall apply for each limitation year. The annual adjustments to the dollar limitations under Section 415(d) of the Internal Revenue Code which become effective: (i) After a retirant's severance from employment with the employer; or (ii) after the annuity starting date in the case of a retirant who has already commenced receiving benefits, will apply with respect to a retirant's annual benefit in any limitation year. A retirant's annual benefit payable in any limitation year from this retirement system shall in no event be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(b) For purposes of this section, the "annual benefit" means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit, using factors prescribed in the 415 limitation regulations, before applying the 415 limitations. No actuarial adjustment to the benefit shall be made for: (1) Survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form; (2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits and post-retirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise

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satisfy the limitations of this article, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this article applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code. For this purpose an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(c) Adjustment for benefit forms not subject to Section 417(e)(3). -- The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is either: (1) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse); or (2) an annuity that decreases during the life of the member merely because of: (i) The death of the survivor annuitant (but only if the reduction is not below fifty percent of the benefit payable before the death of the survivor annuitant); or (ii) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Section 411(a)(9) of the Internal Revenue Code). The actuarially equivalent straight life annuity is equal to the greater of: (I) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member's form of benefit; and (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date.

(d) Adjustment for benefit forms subject to Section 417(e)(3). -- The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is other than a benefit form described in subdivision (c) of this section. In this case, the actuarially equivalent straight life annuity shall be determined as follows: The actuarially equivalent straight life annuity is equal to the greatest of: (1) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the interest rate specified in this retirement system and the mortality table (or other tabular factor) specified in this retirement system for adjusting benefits in the same form; (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five and a half percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date; and (3) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate defined in Treasury Regulation §1.417(e)-1(d)(3) and the applicable mortality table defined in

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Treasury Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

(e) Benefits payable prior to age sixty-two. --

(1) Except as provided in paragraphs (2) and (3) of this subdivision, if the member's retirement benefits become payable before age sixty-two, the 415 dollar limitation prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that the limitation (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) which is equivalent to an annual benefit in the amount of the applicable dollar limitation of Section 415(b)(1)(A) of the Internal Revenue Code (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) beginning at age sixty-two.

(2) The limitation reduction provided in paragraph (1) of this subdivision shall not apply if the member commencing retirement benefits before age sixty-two is a qualified participant. A qualified participant for this purpose is a participant in a defined benefit plan maintained by a state, or any political subdivision of a state, with respect to whom the service taken into account in determining the amount of the benefit under the defined benefit plan includes at least fifteen years of service: (i) As a full-time employee of any police or fire department organized and operated by the state or political subdivision maintaining the defined benefit plan to provide police protection, firefighting services or emergency medical services for any area within the jurisdiction of such state or political subdivision; or (ii) as a member of the Armed Forces of the United States.

(3) The limitation reduction provided in paragraph (1) of this subdivision shall not be applicable to preretirement disability benefits or preretirement death benefits.

(4) For purposes of adjusting the 415 dollar limitation for benefit commencement before age sixty-two or after age sixty-five (if the plan provides for such adjustment), no adjustment is made to reflect the probability of a member's death: (i) After the annuity starting date and before age sixty-two; or (ii) after age sixty-five and before the annuity starting date.

(f) Adjustment when member has less than ten years of participation. -- In the case of a member who has less than ten years of participation in the retirement system (within the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the 415 dollar limitation (as adjusted pursuant to Section 415(d) of the Internal Revenue Code and subdivision (e) of this section) shall be reduced by multiplying the otherwise applicable limitation by a fraction, the numerator of which is the number of years of participation in the plan (or one, if greater), and the denominator of which is ten. This adjustment shall not be applicable to preretirement disability benefits or preretirement death benefits.

(g) The application of the provisions of this section shall not cause the maximum annual

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benefit provided to a member to be less than the member's accrued benefit as of December 31, 2008 (the end of the limitation year that is immediately prior to the effective date of the final regulations for this retirement system as defined in Treasury Regulation §1.415(a)-1(g)(2)), under provisions of the retirement system that were both adopted and in effect before April 5, 2007, provided that such provisions satisfied the applicable requirements of statutory provisions, regulations and other published guidance relating to Section 415 of the Internal Revenue Code in effect as of December 31, 2008, as described in Treasury Regulation §1.415(a)-1(g)(4). If additional benefits are accrued for a member under this retirement system after January 1, 2009, then the sum of the benefits described under the first sentence of this subdivision and benefits accrued for a member after January 1, 2009, must satisfy the requirements of Section 415, taking into account all applicable requirements of the final 415 Treasury Regulations.

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§18-7A-28b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this retirement system. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with §401(a)(9) of the Internal Revenue Code and the regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of §401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of §1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under §401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under §401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this retirement system which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not

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greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §18-7A-3 of this code; or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §18-7A-3 of this code; or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

WV Legislature

§18-7A-28c. Direct rollovers.

(a) Except where otherwise stated, this section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (A) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (B) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; (C) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; and (D) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. For distributions after December 31, 2001, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or (for taxable years beginning before January 1, 2007) to a qualified trust which is part of a defined contribution plan described in Section 401(a) or (for taxable years beginning after December 31, 2006) to a qualified trust or to an annuity contract described in Section 403(a) or (b) of the Internal Revenue Code that agrees to separately account for amounts transferred (including interest or earnings thereon), including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not so includable, or (for taxable years beginning after December 31, 2007) to a Roth IRA described in Section 408A the Internal Revenue Code.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified plan described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution prior to January 1, 2002, to the surviving spouse, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity. For distributions after December 31, 2001, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts

transferred into the plan from this system. For distributions after December 31, 2007, an eligible retirement plan also means a Roth IRA described in Section 408A of the Internal Revenue Code: Provided, however, That in the case of an eligible rollover distribution after December 31, 2007, to a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue Code.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, as applicable to governmental plans, are distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2007, "distributee" also includes a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code.

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

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

WV Legislature

§18-7A-28d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

(a) This section applies to rollovers and transfers as specified in this section made on or after January 1, 2002. Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the retirement system shall accept the following rollovers and plan transfers on behalf of a member solely for the purpose of purchasing permissive service credit, in whole or in part, as otherwise provided in this article or for the repayment of withdrawn or refunded contributions, in whole or in part, with respect to a previous forfeiture of service credit as otherwise provided in this article: (i) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (ii) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: Provided, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with the policies, practices and procedures established by the board from time to time. For purposes of this article, the following definitions and limitations apply:

(1) "Permissive service credit" means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code: Provided, That no more than five years of "nonqualified service credit", as defined in Section 415(n)(3)(C) of the Internal Revenue Code, may be included in the permissive service credit allowed to be purchased (other than by means of a rollover or plan transfer), and no nonqualified service credit may be included in any such purchase (other than by means of a rollover or plan transfer) before the member has at least five years of participation in the retirement system.

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

(3) Any contribution (other than by means of a rollover or plan transfer) to purchase permissive service credit under any provision of this article must satisfy the special limitation rules described in Section 415(n) of the Internal Revenue Code, and shall be

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automatically reduced, limited or required to be paid over multiple years if necessary to ensure such compliance. To the extent any such purchased permissive service credit is qualified military service within the meaning of Section 414(u) of the Internal Revenue Code, the limitations of Section 415 of the Internal Revenue Code shall be applied to such purchase as described in Section 414(u)(1)(B) of the Internal Revenue Code.

(4) For purposes of Section 415(b) of the Internal Revenue Code, the annual benefit attributable to any rollover contribution accepted pursuant to this section shall be determined in accordance with Treasury Regulation §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity payments attributable to any rollover contribution provided under the retirement system over the annual benefit so determined shall be taken into account when applying the accrued benefit limitations of Section 415(b) of the Internal Revenue Code and section twenty-eight-a of this article.

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

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

WV Legislature

§18-7A-28e. Limitations on benefit increases.

(a) The state shall not increase any existing benefits or create any new benefits for any retirees or beneficiaries currently receiving monthly benefit payments from the retirement system, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, in an amount that would exceed more than one percent of the accrued actuarial liability of the system as of the last day of the preceding fiscal year as determined in the annual actuarial valuation for each plan completed for the Consolidated Public Retirement Board as of the first day of the following fiscal year.

(b) If any increase of existing benefits or creation of new benefits for any retirees or beneficiaries currently receiving monthly benefit payments under the retirement system, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, causes any additional unfunded actuarial accrued liability in any of the West Virginia state sponsored pension systems as calculated in the annual actuarial valuation for each plan during any fiscal year, additional unfunded actuarial accrued liability of that pension system shall be fully amortized over no more than the six consecutive fiscal years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. Following the receipt of the certification of additional actuarial accrued liability, the Governor shall submit the amount of the amortization payment each year for the retirement system as part of the annual budget submission or in an executive message to the Legislature.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the computation of annuities or benefits for active members due to retirement, death or disability as provided for in the retirement system shall not be amended in such a manner as to increase any existing benefits or to provide for new benefits.

(d) The provisions of this section terminate effective July 1, 2034: Provided, That if bonds are issued pursuant to article eight, chapter twelve of this code, the provisions of this section shall not terminate while any of the bonds are outstanding.

WV Legislature

§18-7A-29. Fraud; penalties.

Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the retirement system in any attempt to defraud such system shall be guilty of a misdemeanor, and, upon conviction, be punished by a fine not exceeding $1,000, or imprisonment in jail not exceeding one year or both.

WV Legislature

§18-7A-30. Exemption from taxation, garnishment and other process; exception for qualified domestic relations order.

The moneys in the various funds and the right of a member to a retirement allowance, to the return of contributions, or to any benefit under the provisions of this article, are hereby exempt from municipal tax; shall not be subject to execution, garnishment, attachment or any other process whatsoever except that any benefits or contributions under this system shall be subject to "qualified domestic relations orders" as that term is defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans; and shall be unassignable except as is provided in this article.

WV Legislature

§18-7A-31. Unexpended funds under prior appropriations.

Any unexpended funds for teachers' retirement benefits, which were appropriated from general revenue prior to the enactment of this article, shall be credited and transferred to the reserve fund of the retirement system.

WV Legislature

§18-7A-32. Inconsistent acts repealed.

All previous acts and parts of acts inconsistent with this article are hereby repealed.

WV Legislature

§18-7A-33. Constitutionality.

If any part of this article is declared unconstitutional, it shall not affect any portion which remains, but the remaining portions of the article shall be in full force and effect as if the portions declared unconstitutional had never been a part of the article.

WV Legislature

§18-7A-34. Loans to members.

(a) An actively contributing member of the retirement system upon written application may borrow from his or her individual account in the Teachers Retirement System, subject to these restrictions:

(1) Loans shall be made in multiples of $10, the minimal loan being $100 and the maximum being $8,000: Provided, That the maximum amount of any loan when added to the outstanding balance of all other loans granted under this section shall not exceed the lesser of the following: (A) $8,000 reduced by the excess, if any, of the highest outstanding balance of loans during the one-year period ending on the day before the date on which the loan is made, over the outstanding balance of loans to the member on the date on which the loan is made; or (B) fifty percent of the member's contributions to his or her individual account in the Teachers Retirement System: Provided, however, That if the total amount of loaned money outstanding exceeds $40 million, the maximum shall not exceed $3,000 until the retirement board determines that loans outstanding have been reduced to an extent that additional loan amounts are again authorized: Provided further, That the amount of any loan made pursuant to article seven-d of this chapter is not included for the purposes of determining if the $40 million threshold has been exceeded.

(2) Interest charged on the amount of the loan shall be six percent per annum, or a higher rate as set by the board: Provided, That interest charged shall be commercially reasonable in accordance with the provisions of Section 72(p)(2) of the Internal Revenue Code, and the federal regulations issued thereunder. If repayable in installments, the interest shall not exceed the annual rate so established upon the principal amount of the loan, for the entire period of the loan, and the charge shall be added to the principal amount of the loan. The minimal interest charge shall be for six months.

(3) No member is eligible for more than one outstanding loan at any time: Provided, That the foregoing provision does not apply to any loan made pursuant to article seven-d of this chapter. Upon full payment of a loan, a member may apply for a subsequent loan after sixty days beginning the first day of the month following receipt of final payment.

(4) If a refund of accumulated contributions is payable to the borrower or his or her beneficiary before he or she repays the loan with interest, the balance due with interest to date shall be deducted from the refund. A member with an unpaid loan balance who wishes to retire or becomes eligible to receive disability benefits under any provision of this article may have the loan repaid in full by accepting retirement income or disability payments reduced by deducting from the actuarial reserve for the accrued benefit the amount of the unpaid balance plus accrued interest, if any, and then converting the remaining of the reserve to a monthly pension or disability benefit payable in the form of the annuity desired by the member.

(5) From his or her monthly salary as a teacher or a nonteacher the member shall pay the loan and interest by deductions which will pay the loan and interest in substantially level

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payments in not more than sixty nor less than six months. Upon notice of loan granted and payment due, the employer is responsible for making the salary deductions and reporting them to the retirement board. At the option of the board, loan deductions may be collected as prescribed herein for the collection of members' contribution, or may be collected through issuance of warrant by employer. If the borrower is no longer employed as a teacher or nonteaching member, the borrower must make monthly loan payments directly to the Consolidated Public Retirement Board and the board must accept the payments.

(6) The entire unpaid balance of any loan, and interest due thereon, shall, at the option of the board, become due and payable without further notice or demand upon the occurrence with respect to the borrowing member of any of the following events of default: (A) Any payment of principal and accrued interest on a loan remains unpaid after it becomes due and payable under the terms of the loan or after the grace period established in the discretion of the board; (B) the borrowing member attempts to make an assignment for the benefit of creditors of his or her refund or benefit under the retirement system; or (C) any other event of default set forth in rules promulgated by the board in accordance with the authority granted pursuant to section one, article ten-d, chapter five of this code: Provided, That any refund or offset of an unpaid loan balance shall be made only at the time the member is entitled to receive a distribution under the retirement system.

(7) Loans shall be evidenced by such form of obligations and shall be made upon such additional terms as to default, prepayment, security, and otherwise as the board determines.

(8) Notwithstanding anything herein to the contrary, the loan program authorized by this section shall comply with the provisions of Section 72(p)(2) and Section 401 of the Internal Revenue Code, and the federal regulations issued thereunder, and accordingly, the retirement board is authorized to: (A) Apply and construe the provisions of this section and administer the plan loan program in such a manner as to comply with the provisions of Section 72(p)(2) and Section 401 of the Internal Revenue Code and the federal regulations issued thereunder; (B) adopt plan loan policies or procedures consistent with these federal law provisions; and (C) take such actions as it considers necessary or appropriate to administer the plan loan program created hereunder in accordance with these federal law provisions. The retirement board is further authorized in connection with the plan loan program to take any actions that may at any time be required by the Internal Revenue Service regarding compliance with the requirements of Section 72(p)(2) or Section 401 of the Internal Revenue Code, and the federal regulations issued thereunder, notwithstanding any provision in this article to the contrary.

(b) Notwithstanding anything in this article to the contrary, the loan program authorized by this section shall not be available to any teacher or nonteacher who becomes a member of the Teachers Retirement System on or after July 1, 2005: Provided, That a member is eligible for a loan under article seven-d of this chapter to pay all or part of the Actuarial Reserve, or if available in accordance with the provisions of subsection (d), section six, article seven-d of this chapter, the one and one-half percent contribution for service in the Teachers' Defined Contribution System for the purpose of receiving additional service credit in the state

Teachers Retirement System pursuant to section six, article seven-d, of this chapter.

(c) A member who ceases service with an unpaid loan balance will no longer be a member when the unpaid loan balance, plus accrued interest, equals or exceeds the member's accumulated contributions.

WV Legislature

§18-7A-35. Coverage for nonteaching employees; prior service credit.

(a) Nonteaching employees shall mean all persons, except teachers, regularly employed for full-time service by the following educational agencies: (a) Any county board of education, (b) the state Board of Education, (c) the West Virginia board of regents, and (d) the Teachers' Retirement Board.

(b) Such nonteaching employees shall be entitled to all the rights, privileges and benefits provided for teachers by this article, upon the same terms and conditions as are herein prescribed for teachers. Any member who was employed as a regular full-time employee in a nonteaching capacity by a Board of Education, school principal or school administrator, prior to the time he became eligible for membership in the state Teachers Retirement System, shall be granted prior service credit for such service upon making application to the retirement board and providing satisfactory evidence of such service.

(c) Except as provided in section thirteen-b of this article, employees of the cooperative extension service and its predecessors in title, (agriculture extension division, West Virginia extension agency, and West Virginia University cooperative extension service) shall be entitled to all the rights, privileges and benefits provided for teachers by this article, upon the same terms and conditions as are herein prescribed for teachers. Any member of the extension service or its predecessors in title, who was employed for thirty hours or more per week, prior to the time he became eligible for membership in the state Teachers Retirement System, shall be granted service credit for such service upon making application to the retirement board and providing satisfactory evidence of such service. When the prior service is credited, each member of the retirement system so credited shall contribute an amount equal to the amount he would have contributed had he been a member of the retirement system during the period credited.

WV Legislature

§18-7A-35a. Prior service credit for former members of the state Teachers Retirement System employed in a nonteaching capacity.

Any former member of the state Teachers Retirement System who was employed as a regular full-time employee in a nonteaching capacity by a Board of Education, school principal or school administrator, prior to the time he became eligible for membership in the state Teachers Retirement System, shall be eligible for prior service credit for such service. Upon making application to the retirement board and providing satisfactory evidence, prior service credit shall be granted and his retirement allowance shall be recomputed and adjusted to include such prior service credit. Any increased retirement allowance resulting from the provisions of this section shall not be retroactive.

WV Legislature

§18-7A-35b. Temporary early retirement incentives program; legislative declarations and findings; termination date.

Under the prior enactment of this section, the Legislature found and declared that a compelling state interest existed in providing a temporary, early retirement incentives program for encouraging the early, voluntary retirement of those public employees who were current, active, contributing members of this retirement system on April 1, 1988, in the reduction of the number of the employees and in reduction of governmental costs for the employees. The Legislature further found that maintaining an actuarily sound retirement fund is essential and that the reemployment in any manner, including reemployment on a contract basis, by the state of any person who retired under this section is contrary to the intent of the early retirement program and severely threatens the fiscal integrity of the retirement fund. The early retirement program under the prior enactment of this section, offered employees three retirement incentive options. Any person who retired under the provisions of the prior enactment of this section are subject to the restrictions contained in this section.

(a) For the purposes of this section: (1) "Contract" means any personal service agreement, not involving the sale of commodities, that cannot be performed within sixty days or for which the total compensation exceeds $7,500 in any twelve-month period. The term "contract" does not include any agreement obtained by a retirant through a bidding process and which is for the furnishing of any commodity to a government agency; (2) "governmental entity" means the State of West Virginia; a Constitutional branch or office of the state government, or any subdivision of state government; a county, city or town in the state; a county board of education; a separate corporation or instrumentality established pursuant to a state statute; any other entity currently permitted to participate in any state public retirement system or the Public Employees Insurance Agency; or any officer or official of any entity listed in this subsection who is acting in his or her official capacity; (3) "substitute teacher" means a teacher, public school librarian, registered professional nurse employed by the county board of education or any other person employed for counselling or instructional purposes in a public school in this state who is temporarily fulfilling the duties of an existing person employed in a specific position who is temporarily absent from that specific position; and (4) "part-time elected or appointed office" means any elected or appointed office that compensates its members in an amount less than $2,500 or requires less than sixty days of service in any twelve-month period.

(b) Any member who participated in the retirement incentive program under the prior enactment of this section is not eligible to accept further employment or accept, directly or indirectly, work on a contract basis from a governmental entity: Provided, That the executive director may approve, upon written request for good cause shown, an exception allowing a retirant to perform work on a contract basis: Provided, however, That a person may retire under this section and thereafter serve in an elective office: Provided further, That he or she shall not receive the incentive option he or she elected under the prior enactment of this section during the term of service in that office for which the total compensation exceeds

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$7,500, but shall receive his or her annuity calculated on regular basis, as if originally taken not under the prior enactment of this section but on a regular basis. At the end of the term and cessation of service in the office, the incentive option resumes. In respect of an appointive office, as distinguished from an elective office, any person retiring under this section and thereafter serving in the appointive office for which the total compensation exceeds $7,500 shall not receive the incentive option he or she elected under the prior enactment of this section during the term of service in that office, but the incentive option resumes during that period: And provided further, That at the end of the term and cessation of service in the appointive office the incentive option provided for under the prior enactment of this section resumes: And provided further, That any person elected or appointed to office by the state or any of its political subdivisions who waives whatever salary, wage or per diem compensation he or she may be entitled to by virtue of service in that office and who does not receive any income from service in that office except the reimbursement of out-of-pocket costs and expenses that are permitted by the statutes governing the office shall continue to receive the incentive option he or she elected under this section. The service may not be counted as contributed or credited service for purposes of computing retirement benefits.

(c) If the elected or appointed office is a part-time elected or appointed office, a person electing retirement under this section may serve in the elective or appointive office with no loss of the benefits provided under the prior enactment of this section.

(d) Prior to the initiation or renewal of any contract for which the total compensation exceeds $7,500 and entered into pursuant to this section or the acceptance of any elective or appointive office for which the total compensation exceeds $7,500, a person who has elected to retire under the early retirement provisions of the prior enactment of this section shall complete a disclosure and waiver statement executed under oath and acknowledged by a notary public. The board shall propose rules for promulgation, pursuant to article three, chapter twenty-nine-a of this code, regarding the form and contents of the waiver and disclosure statement. The disclosure and waiver statement shall be forwarded to the appropriate state public retirement system administrator who shall take action to ensure that the early retirement incentive option benefit is reduced in accordance with the provisions of this section. The administrator shall then certify that action in writing to the appropriate governmental entity.

(e) In any event, an eligible member who retired under the prior enactment of this section may continue to receive his or her incentive annuity and be employed as a substitute teacher, as adjunct faculty, as a school service personnel substitute, or as a part-time member of the faculty of southern West Virginia community college or West Virginia northern community college: Provided, That the board of directors determines that the part-time employment is in accordance with policies to be adopted by the board regarding adjunct faculty. For purposes of this section, a "part-time member of the faculty" means an individual employed solely to provide instruction for not more than twelve college credits per semester.

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(f) Any incentive retirants, under the prior enactment of this section, may not receive an annuity and enter or reenter any governmental retirement system established or authorized to be established by the state, notwithstanding any provision of the code to the contrary, unless required by Constitutional provision.

(g) The additional annuity allowed for temporary early retirement is intended to be paid from the retirement incentive account created as a special account in the State Treasury and from the funds in the special account established with moneys required to be applied or transferred by heads of spending units from the unused portion of salary and fringe benefits in their budgets accruing in respect to the positions vacated and subsequently canceled under this temporary early retirement program. Salary and fringe benefit moneys actually saved in a particular fiscal year constitute the fund source. No additional annuity shall be disallowed even though initial receipts may not be sufficient, with funds of the system to be applied for the purpose, as for the base annuity.

(h) The executive secretary of the retirement system shall file a quarterly report to the Legislature detailing the number of retirees who have elected to accept early retirement incentive options, the dollar cost to date by option selected, and the projected annual cost through the year 2000.

(i) Termination of temporary retirement incentives program. -- The right to retire under this section terminated on June 30, 1989.

WV Legislature

§18-7A-35c. Termination of benefits; procedure.

Whenever the board determines that (1) any person has knowingly made any false statement or falsified or permitted to be falsified any record or records of the retirement system in an attempt to defraud the system, or (2) any person who resumes employment with any governmental entity or accepts, directly or indirectly, work on a contract basis from any governmental entity, except as provided for under this article, the board shall terminate any benefit that a person is receiving, has received, or is entitled to receive under the early retirement provisions of this article. Further, if any person taking early retirement under this article desires to revoke his or her early retirement incentive, he or she shall be allowed to do so if he or she is entitled to regular retirement pursuant to this article: Provided, That such revocation shall be retroactive to the date of last employment and any incentive annuity already received by the retiree be repaid to the retirement system. Any person who revokes his or her early retirement incentive shall be thereafter carried upon the records of the retirement system as a regular retiree and shall not be entitled to any enhanced benefit by reason of the early retirement options contained in this article: Provided, however, That any person who opted to retire pursuant to the early retirement provisions of this article who would not have been and is not eligible for regular retirement but for the early retirement incentive options must upon returning to the employment of a participating employer, reapply for admission to a retirement system and repay all pension benefits paid to that person since the date his previous employment ceased. Any termination of benefits may be appealed pursuant to the state administrative procedures act in chapter twenty-nine-a of this code. The board shall promulgate rules regarding the procedure for termination of benefits and the repayment of any benefit, in accordance with the provisions of article three, chapter twenty-nine-a of this code.

WV Legislature

§18-7A-36. Joint study of state retirement systems; report to Joint Committee on Government and Finance by specified date of study conclusions.

[Repealed.]

WV Legislature

§18-7A-37. Benefits not forfeited if system terminates.

If the retirement system is terminated or contributions are completely discontinued, the rights of all members to benefits accrued or contributions made to the date of such termination or discontinuance, to the extent then funded, are not forfeited.

WV Legislature

§18-7A-38. Maximum number of days a retired teacher may accept employment; calculating days worked for retirants engaged in substitute teaching.

(a) The Legislature finds that:

(1) The Consolidated Public Retirement Board has determined that retired substitute teachers should not perform substitute teaching without limit;

(2) The Consolidated Public Retirement Board has established, by rule, a maximum number of days in which a retired teacher may accept employment prior to having his or her retirement benefit reduced; and

(3) There have been inconsistencies in the manner in which county boards calculate the maximum number of days established by rule.

(b) The Consolidated Public Retirement Board may not set forth in rule a maximum number of days in which a retired teacher may accept employment prior to having his or her retirement benefit reduced that is less than one hundred forty days.

(c) For the purpose of calculating whether a retired substitute teacher has exceeded the maximum number of days in which a substitute teacher may accept employment without incurring a reduction in his or her retirement benefit, the number of days worked shall be determined by:

(1) Totaling the number of hours worked; and

(2) Dividing by the standard number of hours that a full-time teacher works per day.

WV Legislature

§18-7A-39. Employee Pension and Health Care Benefits Fund.

(a) There is hereby created in the state Treasury a special revenue account designated as the "Employee Pension and Health Care Benefits Fund" to be administered by the Department of Administration. Funds in this account may be invested in the manner permitted by the provisions of article six, chapter twelve of this code, with all interest income credited to this Fund.

(b) Effective July 1, 2005, any savings realized from the reduction in employer contributions for current retirement benefits, being the difference between the required employer contributions that would have been required into the Teachers Defined Contribution System as in effect immediately prior to July 1, 2005 and the required employer contribution for normal cost into the state Teachers Retirement System on and after July 1, 2005, shall be deposited into the Employee Pension and Health Care Benefits Fund. The Consolidated Public Retirement Board shall determine the annual amount of the savings based on the annual actuarial valuation for the plan prepared as of July 1, following the end of each fiscal year and certify the amount to the Governor by the thirty-first day of January of that fiscal year. The Governor shall submit the amount of the savings as part of the annual budget submission or in an executive message to the Legislature.

(c) Moneys in the Employee Pension and Health Care Benefits Fund are to be used and expended to pay for the cost of unfunded health care benefits or unfunded pension benefits, or to be transferred into the Pension Liability Redemption Fund created in section eight, article eight, chapter twelve of this code as appropriated by the Legislature.

WV Legislature

§18-7A-40. Higher education employees.

Nothing in this article or article seven-b of this chapter shall be construed:

(1) To be in conflict with section four-a, article twenty-three, chapter eighteen of this code; or

(2) To affect the membership of higher education employees who are currently members of either the state Teachers Retirement System created in this article or the Teachers' Defined Contribution Retirement System created in article seven-b of this chapter: Provided, That any higher education employees who are currently members of the Teachers' Defined Contribution Retirement System may become members of the Teachers Retirement System upon meeting the requirements of article seven-d of this chapter.

WV Legislature