WEST VIRGINIA CODE CHAPTER 20 ARTICLE 18

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§20-18-1. Short title.

This article is known and may be cited as the "West Virginia Natural Resources Police Officers Retirement System Act."

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§20-18-2. Definitions.

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

(a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the member's final average salary multiplied by the member's years of credited service: *Provided*, That members who retire after July 1, 2025, shall have an accrued benefit of two and one-half percent of the member's final average salary multiplied by the member's years of credited service: *Provided, however*, That members who retire after July 1, 2029, shall have an accrued benefit of two and three-fourths percent of the member's final average salary multiplied by the member's years of credited service. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §20-18-13 of this code.

(b) "Accumulated contributions" means the sum of all amounts deducted from the annual compensation of a member or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code, either pursuant to §20-18-8(a) or §5-10-29 of this code as a result of covered employment together with regular interest on the deducted amounts.

(c) "Active member" means a member who is active and contributing to the plan.

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

(e) "Actuarial equivalent" 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 §415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(f) "Annual compensation" means the wages paid to the member during covered employment within the meaning of §3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under §414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation, and welfare benefits. Annual compensation 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.

(g) "Annual leave service" means accrued annual leave.

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(h) "Annuity starting date" means the first day of the first calendar month following receipt of the retirement application by the board or the required beginning date, if earlier: *Provided*, That the member has ceased covered employment and reached normal retirement age.

(i) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity or other benefit payable by the plan.

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

(k) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with the Division of Natural Resources 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 the division. 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.

(l) "Covered employment" means either: (1) Employment as a Natural Resources Police Officer and the active performance of the duties required of a Natural Resources Police Officer; (2) the period of time which active duties are not performed but disability benefits are received under §20-18-21 or §20-18-22 of this code; or (3) concurrent employment by a Natural Resources Police Officer in a job or jobs in addition to his or her employment as a Natural Resources Police Officer where the secondary employment requires the Natural Resources Police Officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the Natural Resources Police Officer contributes to the fund created in §20-18-7 of this code the amount specified as the Natural Resource Police Officer's contribution in §20-18-8 of this code.

(m) "Credited service" means the sum of a member's years of service, active military duty, disability service, eligible annual and sick leave service.

(n) "Dependent child" means either:

(1) An unmarried person under age 18 who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

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

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

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(2) Any unmarried child under age 23:

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

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

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

(o) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for Federal Income Tax purposes at the time of the member's death.

(p) "Director" means Director of the Division of Natural Resources.

(q) "Disability service" means service credit received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under §20-18-21 or §20-18-22 of this code.

(r) "Division of Natural Resources" or "division" means the West Virginia Division of Natural Resources.

(s) "Effective date" means January 2, 2021.

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

(u) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under §20-18-21 or §20-18-22 of this code then "final average salary" means the average of the monthly salary determined paid to the member during that period determined as if the disability first commenced after the effective date of this article with monthly compensation equal to that average monthly compensation which the member was receiving in the plan year prior to the initial disability multiplied by 12.

(v) "Fund" means the West Virginia Natural Resources Police Officer Retirement Fund created pursuant to §20-18-7 of this code.

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(w) "Hour of service" means:

(1) Each hour for which a member is paid;

(2) Each hour for which a member is paid but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof, and without regard to whether the employment relationship has terminated. Hours under this paragraph shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under §20-18-21 or §20-18-22 of this code; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the Division of Natural Resources, irrespective of mitigation of damages. The same hours of service may not be credited both under this subdivision and subdivision (1) or (2) of this subsection. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains rather than the plan year in which the award, agreement, or payment is made.

(x) "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.

(y) "Member" means a person first hired as a Natural Resources Police Officer, as defined in subsection (aa) of this section, on or after January 2, 2021, or a Natural Resources Police Officer first hired prior to the effective date and who elects to become a member pursuant to § 20-18-6 of this code. 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 §20-18-6 of this code.

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

(aa) "Natural Resources Police Officer" means any person regularly employed in the service of the division as a law-enforcement officer on or after the effective date of this article, and who is eligible to participate in the fund. The term shall not include Emergency Natural Resources Police Officers as defined in §20-7-1(c) of this code, Special Natural Resources Police Officers as defined in §20-7-1(d) of this code, Forestry Special Natural Resources Police Officers as defined in §20-7-1(e) of this code, or Federal Law Enforcement Officer as defined in §20-7-1b of this code.

(bb) "Normal form" means a monthly annuity which is one-twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on

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the annuity starting date, the named beneficiary or beneficiaries shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(cc) "Normal retirement age" means the first to occur of the following: (1) Attainment of age 55 years and the completion of 15 or more years of service; (2) while still in covered employment, attainment of at least age 55 years, and when the sum of current age plus years of service equals or exceeds 70 years; or (3) attainment of at least age 62 years, and completion of 10 years of service: *Provided*, That any member shall in qualifying for retirement pursuant to this article have 10 or more years of service, all of which years shall be actual, contributory ones.

(dd) "Partially disabled" means a member's inability to engage in the duties of a Natural Resources Police Officer by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent June 30, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(ee) "Plan" means the West Virginia Natural Resources Police Officers Retirement System established by this article.

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

(gg) "Public Employees Retirement System" means the West Virginia Public Employees Retirement System created by §5-10-1 *et seq.* of this code.

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

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

(jj) "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

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(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.

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

(ll) "Retire" or "retirement" means a member's termination from the employ of a participating public employer and the commencement of an annuity by the plan.

(mm) "Retirement income payments" means the annual retirement income payments payable under the plan.

(nn) "Substantial gainful employment" or "gainful employment" means employment in which an individual may earn up to an amount that is determined by the United States Social Security Administration as substantial gainful activity and still receive total disability benefits.

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

(pp) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subdivision:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a Natural Resources Police Officer but also cannot, considering his or her age, education, and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

(2) "Physical or mental impairment" is an impairment that results from an anatomical,

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physiological, or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. A member's receipt of Social Security disability benefits creates a rebuttable presumption that the member is totally disabled for purposes of this plan. Substantial gainful employment rebuts the presumption of total disability.

(qq) Year of service. — A member shall, except in his or her first and last years of covered employment, or within the plan year of the effective date, be credited with year of service credit, based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

Hours of Service Years of Service Credited

Less than 500 0

500 to 999 1/3

1,000 to 1,499 2/3

1,500 or more 1

During a member's first and last years of covered employment or within the plan year of the effective date, the member shall be credited with one-twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §20-18-21 or §20-18-22 of this code. Except as specifically excluded, years of service include covered employment prior to the effective date. Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to §20-18-20 or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to §20-18-20 of this code or had prior to the effective date made the repayment pursuant to §5-10-18 of this code.

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§20-18-3. Meaning of terms.

Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States, unless a different meaning is clearly required. Any reference in this article to the Internal Revenue Code means the Internal Revenue Code of 1986, as it has been amended.

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§20-18-4. Creation and administration of West Virginia Natural Resources Police Officers Retirement System; specification of actuarial assumptions.

There is hereby created the West Virginia Natural Resources Police Officers Retirement System. The purpose of this system is to provide for the orderly retirement of Natural Resources Police Officers who become superannuated because of age or permanent disability and to provide certain survivor death benefits, and it is contemplated that substantially all of the members of the retirement system shall be qualified public safety employees as defined in §20-18-2 of this code. The retirement system shall come into effect January 1, 2021: *Provided*, That if the number of members in the system are fewer than 100 on July 1, 2022, then all of the provisions of this article are void and of no force and effect, and memberships in the plan will be merged into the Public Employees Retirement System created in §5-10-1 *et seq.* of this code. The retirement system constitutes a body corporate. All business of the system shall be transacted in the name of the West Virginia Natural Resources Police Officers Retirement System. The board shall specify and adopt all actuarial assumptions for the plan at its first meeting of every calendar year or as soon thereafter as may be practicable, which assumptions shall become part of the plan.

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§20-18-5. Article to be liberally construed; supplements federal social security; federal qualification requirements.

(a) The provisions of this article shall be liberally construed to provide a general retirement system for Natural Resources Police Officers eligible to retire under the provisions of this plan. Nothing in this article may be construed to permit the state to substitute this plan for federal social security now in force in West Virginia.

(b) The board shall administer the plan in accordance with its terms and may construe the terms and determine all questions arising in connection with the administration, interpretation and application of the plan. The board may sue and be sued, contract and be contracted with and conduct all the business of the system in the name of the plan. The board may employ those persons it considers necessary or desirable to administer the plan. All start-up costs to modify the existing line of business computer system and all personnel salary, including benefits, shall be paid by the board from funds received by the board through gifts and bequests to the fund and any accretions and accumulations which may properly be paid into and become a part of the fund. The board may receive gifts and bequests for purposes of paying start-up costs as set forth in this subsection. The board may also receive gifts and additional contributions for the purpose of supplementing the plan. The board shall administer the plan for the exclusive benefit of the members and their beneficiaries subject to the specific provisions of the plan.

(c) The plan 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 plan 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 §5-10D-1 of this code to assure compliance with the requirements of this section.

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§20-18-6. Members.

(a) Any Natural Resources Police Officer first employed in covered employment after the effective date of this article shall be a member of this retirement system and does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment: *Provided*, That any Natural Resources Police Officer who has concurrent employment in an additional job or jobs which would require the Natural Resources Police Officer to be a member of the West Virginia Deputy Sheriff Retirement System, West Virginia Municipal Police Officers and Firefighters Retirement System or the West Virginia Emergency Medical Services Retirement System shall participate in only one retirement system administered by the board, and the retirement system applicable to the concurrent employment for which the employee has the earliest date of hire shall prevail. The membership of any person in the plan ceases: (1) Upon the withdrawal of accumulated contributions after the cessation of service; (2) upon retirement; or (3) at death.

(b) Any Natural Resources Police Officer employed in covered employment on July 1, 2020, shall notify in writing both the Division of Natural Resources and the board no later than September 30, 2020, of his or her desire to become a member of the plan beginning January 2, 2021: *Provided*, That any Natural Resources Police Officer hired after July 1, 2020, but before January 2, 2021, shall make this required notification to the division and the board no later than 30 days from receipt of the notice required by §20-18-11 of this code or September 30, 2020, whichever is later. Any Natural Resources Police Officer who elects to become a member of the plan ceases to be an active member in the Public Employees Retirement System and shall continue to be ineligible for future membership in any other retirement system administered by the board so long as the Natural Resources Police Officer remains employed in covered employment in this plan; any Natural Resources Police Officer who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is from time to time offered to other state employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

(c) Any Natural Resources Police Officer employed in covered employment on the effective date of this article, who has timely elected to transfer into this plan as provided in subsection (b) of this section, shall be given credited service at the time of transfer for all credited service then standing to the Natural Resources Police Officer service credit in the Public Employees Retirement System regardless of whether the credited service (as that term is defined in §5-10-2 of this code) was earned as a Natural Resources Police Officer. All the credited service standing to the transferring Natural Resources Police Officer's credit in the Public Employees Retirement Fund System at the time of transfer into this plan shall be transferred into the plan created by this article, and the transferring Natural Resources Police Officer shall be given the same credit for the purposes of this article for all service transferred from the Public Employees Retirement System, as that transferring Natural Resources Police Officer would have received from the Public Employees Retirement System as if the transfer had not occurred. In connection with each transferring Natural Resources Police Officer receiving credit for prior employment as provided in this subsection, a transfer

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from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in §20-18-10 of this code: *Provided*, That a member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (b) of this section may not, after having transferred into and become an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods of non-Natural Resources Police Officer service which were withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(d) Any Natural Resources Police Officer who was employed as a Natural Resources Police Officer between the effective date of this article and June 30, 2026, who has not commenced retirement under the Public Employees Retirement System, shall become a member upon rehire as a Natural Resources Police Officer. For purposes of this subsection, the member's years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless the Natural Resources Police Officer has not received the return of his or her accumulated contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code. The member may request in writing within two years of first becoming a member of the plan to have his or her accumulated contributions and employer contributions from all credited service, as that term is defined in §5-10-2 of this code, in the Public Employees Retirement System transferred to the plan regardless of whether the credited service was earned as a Natural Resources Police Officer. If the conditions of the subsection are met, all years of the Natural Resources Police Officer's credited service shall be counted as years of service for the purposes of this article.

(e) Any certified law enforcement officer who has law enforcement service with a participating public employer in the Public Employees Retirement System who is first employed in covered employment between the effective date of this article and June 30, 2026, and who has not commenced retirement under the Public Employees Retirement System, shall be a member of this retirement system. For purposes of this subsection, the member's years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless the Natural Resources Police Officer has not received the return of his or her accumulated contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code. The member may request in writing within two years of first becoming a member of the plan to have up to a maximum of three years of his or her accumulated contributions and employer contributions from credited service, as that term is defined in §5-10-2 of this code, earned while performing service as a certified law enforcement officer in the Public Employees Retirement System transferred to the plan. If the member has more than three years of credited service as a certified law enforcement officer in the Public Employees Retirement System, the accumulated contributions and employer contributions of the first thirty-six months of credited service with full salary as a certified law enforcement officer shall be transferred. If the conditions of the subsection are met, the maximum three years of credited service in the Public Employees Retirement System as a certified law enforcement officer shall be counted as years of service for the purposes of this article.

(f) Any Natural Resources Police Officer who was employed as a Natural Resources Police

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Officer prior to the effective date of this article and who was rehired as a Natural Resource Police Officer on or after July 1, 2026, and who has not commenced retirement under the Public Employees Retirement System, shall become a member upon rehire as a Natural Resources Police Officer. For purposes of this subsection, the member's years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless the Natural Resources Police Officer has not received the return of his or her accumulated contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code. The member may request in writing within one year of first becoming a member of the plan to have his or her accumulated contributions and employer contributions from covered employment in the Public Employees Retirement System transferred to the plan. If the conditions of the subsection are met, all years of the Natural Resources Police Officer's covered employment shall be counted as years of service for the purposes of this article.

(g) Once made, the election provided in this section is irrevocable. All Natural Resources Police Officers first employed after the effective date and Natural Resources Police Officers electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by §20-18-8 of this code.

(h) Notwithstanding any other provisions of this article to the contrary, any individual who is a leased employee is not eligible to participate in the plan. For purposes of this plan, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or 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. Additionally, any individual who is an Emergency Natural Resources Police Officer as defined in §20-7-1(c) of this code, Special Natural Resources Police Officer as defined in §20-7-1(d) of this code, Forestry Special Natural Resources Police Officer as defined in §20-7-1(e) of this code, or Federal Law Enforcement Officer as defined in §20-7-1b of this code, is not eligible to participate in the plan.

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§20-18-7. Creation of fund; investments.

(a) There is hereby created the "West Virginia Natural Resources Police Officer Retirement Fund" for the benefit of the members of the retirement system created pursuant to this article and the dependents of any deceased or retired member of the system.

(b) All moneys paid into and accumulated in the fund, except such amounts as are designated by the board for payment of benefits as provided in this article, shall be held in trust and invested in the consolidated pensions fund as administered by the state Investment Management Board as provided by law.

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§20-18-8. Members' contributions; employer contributions.

(a) There shall be deducted from the monthly salary of each member and paid into the fund an amount equal to nine and one-half percent of his or her monthly salary.

(b) An amount equal to an additional percentage of the monthly salary of each member shall be paid to the fund by the employer as annually reviewed and actuarially set by the board.
(c) If the board finds that the benefits provided by this article can be actuarially funded with a lesser contribution, then the board shall reduce the required member or employer contributions or both. The sums withheld each pay date shall be paid to the fund no later than 15 days following the end of the pay date.

(d) Any active member who has concurrent employment in an additional job or jobs and the additional employment requires the Natural Resources Police Officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this code shall make an additional contribution to the fund of nine and one-half percent of his or her monthly salary earned from any additional employment which requires the Natural Resources Police Officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this code. An additional employer contribution shall be paid to the fund by the concurrent employer for which the member is employed in an amount determined by the board. If the board finds that the benefits provided by this article can be funded with a lesser contribution, then the board shall reduce the required member, or employer contributions or both. The sums withheld each calendar month shall be paid to the fund no later than 15 days following the end of the calendar month.

(e) Beginning the plan year commencing July 1, 2026, the division shall make a one-time payment of $4,250,000 to the fund, in addition to the contribution requirement in subsection (b) above, the payment shall be made no later than July 31st of that year. If the board finds that an amount lower than the one-time payment will achieve 100% or greater funding in the plan year, the board may reduce the payment amount and notify the division accordingly.

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§20-18-9. Correction of errors; underpayments; overpayments.

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

(b) *Underpayments to the plan*. — Any error resulting in an underpayment to the plan may be corrected by the member or retirant remitting the required employee contribution or underpayment and the division 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 is the responsibility of the division. The division may remit total payment and the employee reimburse the division 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 plan will result in the plan paying a retirant an additional amount, this additional payment may be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

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

(d) *Overpayments to the plan by an employee*. — When mistaken or excess employee contributions or overpayments have been made to the retirement system, the board has 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, the board may require the division to pay the individual the amounts as wages, with the board crediting the division with a corresponding amount to offset against its future contributions to the plan. If the division has no future liability for employer contributions to the plan, the board shall refund said amount directly to the division: *Provided*, That the wages paid to the individual shall not be 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 board for returning employee overpayments.

(e) *Overpayments from the plan*. — If any error results in any member, retirant, beneficiary,

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the division or other individual receiving from the system more than he or she 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, the division or other person who received the overpayment from the plan shall repay the amount of any overpayment to the plan 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 overpayment shall be offset against the benefit payment owed in a manner consistent with the board's error correction policy. Interest shall not accumulate on any corrective payment made to the plan pursuant to this subsection.

(f) *Underpayments from the plan*. — If any error results in any member, retirant, beneficiary, the division or other individual receiving from the plan less than he or she 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 plan pursuant to this subsection.

(g) *Eligibility errors*. — If the board finds that an individual is not eligible to participate, the board shall notify the individual and the division of the determination and terminate his or her participation in the plan. Any erroneous payments to the retirement system shall be returned to the division and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the plan to such individual shall be returned to the plan 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 has not been participating in the plan, but was eligible to and required to be participating in the plan, the board shall as soon as practicable notify the individual and the division of the determination, and the individual shall prospectively commence participation in the plan as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the plan 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, including interest.

(h) *Correction of errors occurring prior to transfer from Public Employee Retirement System*. — If any errors requiring correction occurred prior to establishment of the plan created pursuant to this article or prior to the transfer of funds from the Public Employee Retirement System, into the plan, or both, the employer and member contributions, if any, required to be calculated in order to effect correction shall be based on the rates in effect for the retirement system under which such employer or member contributions would have

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been made had the error not occurred. For purposes of this subsection, “retirement system” means either the Public Employees Retirement System or the plan. The board shall have full discretion when applying this subsection (h), consistent with the general principles of subsection (a) of this section. The intent of any correction is to place the affected individual, division and board in the position in which each would have been had the error not occurred.

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§20-18-10. Transfer from Public Employees Retirement System.

(a) The Consolidated Public Retirement Board shall, within 90 days of the effective date transfer assets from the Public Employees Retirement System trust fund into the West Virginia Natural Resources Police Officers Retirement trust fund.

(b) The amount of assets to be transferred for each transferring Natural Resources Police Officer shall be computed as of January 1, 2021, using the actuarial valuation assumptions in effect for July 1, 2020, actuarial valuation of Public Employees Retirement System, and updated with seven and one-half percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring Natural Resources Police Officer in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred the board shall:

(1) Compute the market value of the Public Employees Retirement System assets;

(2) Compute the accrued liability for all Public Employees Retirement System retirees, beneficiaries, disabled retirees and terminated inactive members;

(3) Reduce the market value of Public Employees Retirement System assets by the accrued liability determined in subdivision (2) of this subsection;

(4) Compute the entry age method accrued liability for all active Public Employees Retirement System members;

(5) Compute the share of accrued liability as determined pursuant to subdivision (4) of this subsection, that is attributable to those Natural Resources Police Officers in Public Employees Retirement System who have elected to transfer to the plan;

(6) Compute the percentage of active's accrued liability computed to the Natural Resources Police Officers by dividing subdivision (5) by subdivision (4) of this subsection;

(7) Determine the asset share to be transferred from Public Employees Retirement System to the plan by multiplying subdivision (3) times subdivision (6) of this subsection.

(c) Once a Natural Resources Police Officer has elected to transfer from the Public Employees Retirement System, transfer of that amount as calculated in accordance with the provisions of subsection (b) of this section by the Public Employees Retirement System shall operate as a complete bar to any further liability to the Natural Resource Police Officer transferring from the Public Employees Retirement System, and constitutes an agreement whereby the transferring Natural Resources Police Officer forever indemnifies and holds harmless the Public Employees Retirement System from providing him or her any form of retirement benefit whatsoever until such time as that Natural Resources Police Officer obtains other employment which would make him or her eligible to reenter the Public Employees Retirement System with no credit whatsoever for the amounts transferred to the

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Natural Resources Police Officer retirement system.

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§20-18-11. Notice requirements.

(a) The Division of Natural Resources shall prepare a written notice no later than August 1, 2020, to be delivered to each Natural Resources Police Officer actively employed by the division: *Provided*, That the division shall also deliver this notice on the first day of employment to any Natural Resources Police Officer hired after July 1, 2020, but before January 2, 2021. This notice shall clearly and accurately explain the benefits, financial implications and consequences to a Natural Resources Police Officer of electing to participate in the retirement plan created in this article, including the consequences and financial implications in regard to the benefits under the public employees insurance plan as set forth in §5-16-1 *et seq.* of this code. This notice shall be distributed to each Natural Resources Police Officer and the West Virginia Division of Natural Resources shall obtain a signed receipt from each Natural Resources Police Officer acknowledging that the Natural Resources Police Officer was provided a copy of the notice required in this subsection. If a Natural Resources Police Officer makes the election provided for in §20-18-6 of this code, he or she shall be considered to have made a voluntary, informed decision in regard to the election to participate in the retirement system created in this article.

(b) Nothing in this section may be construed to alter, affect or change any of the rights and benefits of any Natural Resources Police Officer who has insurance coverage under §5-16-1 *et seq.* of this code as a result of being a spouse or dependent of a participant who is the primary insured under §5-16-1 *et seq.* of this code.

(c) Nothing contained in this section may be construed to affect or pertain to any life insurance coverage under §5-16-1 *et seq*. of this code.

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§20-18-12. Retirement; commencement of benefits.

A member may retire and commence to receive retirement income payments on the first day of the calendar month following the board's receipt of the member's voluntary written application for retirement or the required beginning date, if earlier. Before receiving retirement income payments, the member shall have ceased covered employment and reached normal retirement age. The retirement income payments shall be in an amount as provided under §20-18-18 of this code: *Provided*, That retirement income payments under this plan shall be subject to the provisions of this article. Upon receipt of a request for estimation of benefits, the board shall promptly provide the member with an explanation of his or her optional forms of retirement benefits and the estimated gross monthly annuity. Upon receipt of properly executed retirement application forms from the member, the board shall process the member's request and commence payments as soon as administratively feasible.

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§20-18-13. 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 may 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 to 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, shall 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 may not 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 50 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. 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 Treasury

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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 62:

(1) Except as provided in paragraphs (2) and (3) of this subdivision, if the member's retirement benefits become payable before age 62, 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 62.

(2) The limitation reduction provided in paragraph (1) of this subdivision may not apply if the member commencing retirement benefits before age 62 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 15 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, fire-fighting 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 is not applicable to preretirement disability benefits or preretirement death benefits.

(4) For purposes of adjusting the 415 dollar limitation for benefit commencement before age 62 or after age 65 (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 62; or (ii) after age 65 and before the annuity starting date.

(f) *Adjustment when member has less than 10 years of participation.* — If a member has less than 10 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 10. This adjustment is not applicable to preretirement disability benefits or preretirement death benefits.

(g) The application of the provisions of this section may not cause the maximum annual 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 these 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 subsection and benefits accrued for a member after January 1, 2009, shall satisfy the requirements of Section 415, taking into account all applicable requirements of the final 415 Treasury Regulations.

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§20-18-14. 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 plan. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the plan 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 federal 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 plan 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 plan which satisfies the MDIB regulations. Benefit payments under this section may 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 plan 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 §20-18-2 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 may 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 §20-18-2 of this code; or

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

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§20-18-15. Direct rollovers.

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 plan, 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 10 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; (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 may 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 of 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*, That in the case of an eligible rollover distribution after December 31, 2007, to a designated beneficiary (other than a surviving spouse) as that 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 with respect 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 plan to the eligible retirement plan.

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§20-18-16. 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 and 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 such 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

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 §20-18-13 of this code.

(b) This section does not permit 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 may 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) This section does not permit the purchase of service credit or repayment of withdrawn or refunded contributions except as otherwise permitted in this article.

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§20-18-17. Conversion of annual and sick leave authorized for health or retirement benefits.

(a) Any member, who was a member of the Public Employee Retirement System prior to July 1, 2015, and who elected to become a member of this plan pursuant to §20-18-6 of this code and who has accrued annual leave or sick leave days with the division may elect to use the days at the time of retirement to acquire additional credited service in this retirement system. The accrued days shall be applied on the basis of two workdays credit granted for each one day of such accrued annual or sick leave days, with each month of retirement service credit to equal 20 workdays and with any remainder of 10 workdays or more to constitute a full month of additional credit and any remainder of less than 10 workdays to be dropped and not used. Additional service credited pursuant to the provisions of this section shall be allowed and not deemed to controvert the requirement of no more than 12 months credited service in any year's period.

(b) Nothing in this article may be construed to change a member's eligibility to use accrued annual or sick leave days for extended insurance coverage as authorized pursuant to the provisions of §5-16-13 of this code. Any use of accrued annual or sick leave days for extended insurance coverage shall be as authorized by the provisions of §5-16-13 of this code.

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§20-18-18. Retirement benefits.

This section provides for a member's accrued benefit payable starting at the member's annuity starting date which follows the completion of a written application for the commencement of benefits. The member shall receive the accrued retirement benefit in the normal form or in an actuarial equivalent amount in an optional form as provided under §20-18-19 of this code, subject to reduction, if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and §20-18-13 of this code. The first day of the calendar month following the calendar month of birth shall be used in lieu of any birth date that does not fall on the first day of a calendar month.

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

(b) Retirement benefits shall be paid monthly in an amount equal to one twelfth of the retirement income payments elected and at those times established by the board.

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§20-18-19. Annuity options.

(a) Prior to the effective date of retirement, but not thereafter, except as provided in subsection (c) of this section, a member may elect to receive retirement income payments in the normal form, or the actuarial equivalent of the normal form from the following options:

(1) *Joint and Survivor Annuity.* — A life annuity payable during the joint lifetime of the retirant and his or her beneficiary who is a natural person with an insurable interest in the retirant's life. Upon the death of the retirant, the benefit shall continue as a life annuity to the survivor in an amount equal to 50 percent, 66 and two-thirds percent, 75 percent, or 100 percent of the amount paid while both were living as selected by the member. If the beneficiary dies first, the monthly amount of benefits may not be reduced, but shall be paid at the amount that was in effect before the death of the beneficiary. If the retiring member is married, the spouse shall sign a waiver of benefit rights if the beneficiary is to be other than the spouse.

(2) *Ten Years Certain and Life Annuity.* — A life annuity payable during the retirant's lifetime but in any event for a minimum of 10 years. If the retirant's dies before the expiration of 10 years, the remaining payments shall be made to a designated beneficiary, if any, or otherwise to the member's estate.

(3) *Level Income Annuity.* — A life annuity payable monthly in an increased amount "A" from the time of retirement until the member is Social Security retirement age, and then a lesser amount "B" payable for the retirant's lifetime thereafter, with these amounts computed actuarially to satisfy the following two conditions:

(A) *Actuarial equivalence.* — The actuarial present value at the date of retirement of the retirant's annuity if taken in the normal form must equal the actuarial present value of the term life annuity in amount "A" plus the actual present value of the deferred life annuity in amount "B"; and

(B) *Level income.* — The amount "A" equals the amount "B" plus the amount of the retirant's estimated monthly Social Security primary insurance amount that would commence at the date amount "B" becomes payable. For this calculation, the primary insurance amount is estimated when the member applies for retirement, using Social Security law then in effect, using assumptions established by the board.

(b) If a retirant who has elected the options set forth in subdivision (1), subsection (a) of this section, whose beneficiary dies prior to the retirant's death, the retirant may name an alternative beneficiary. If an alternative beneficiary is named within 18 months following the death of the prior beneficiary, the benefit shall be adjusted to be the actuarial equivalent of the benefit the retirant is receiving just after the death of the retirant's named beneficiary. If the election is not made until 18 months after the death of the prior beneficiary, the amount shall be reduced so that it is only 90 percent of the actuarial equivalent of the benefit the retirant is receiving just after the death of the retirant's named beneficiary.

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(c) (1) If a retirant who has elected an option set forth in subdivision (1), subsection (a) of this section, designated his or her spouse as beneficiary, upon divorce or annulment, the retirant may elect to change the retirement benefit options offered by those subdivisions to a life annuity in an amount adjusted on a fair basis to be of equal actuarial value of the annuity prospectively in effect relative to the retirant at the time the option is elected: *Provided*, That the retirant furnishes to the board satisfactory proof of entry of a final decree of divorce or annulment: *Provided, however,* That the retirant certifies under penalty of perjury that no qualified domestic relations order, final decree of divorce or other court order that would restrict the election is in effect: *Provided further*, That no cause of action against the board arises or may be maintained on the basis of having permitted the retirant to change the retirement benefit option pursuant to the provisions of this subdivision.

(2) Upon remarriage, a retirant may name the new spouse as an annuitant for any of the retirement benefit options offered by subdivision (1), subsection (a) of this section: *Provided*, That the retirant shall furnish to the board proof of marriage: *Provided, however*, That the retirant certifies under penalty of perjury that no qualified domestic relations order, final decree of divorce or other court order that would restrict the designation is in effect: *Provided further*, That no cause of action against the board arises or may 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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§20-18-20. Refunds to certain members upon discharge or resignation; deferred retirement; preretirement death; forfeitures.

(a) Any member who terminates covered employment and is not eligible to receive disability or retirement income benefits under this article is, by written request filed with the board, entitled to receive from the fund the member's accumulated contributions. Except as provided in subsection (b) of this section, upon withdrawal the member shall forfeit his or her accrued benefit and cease to be a member.

(b) Any member of this plan who ceases employment in covered employment and active participation in this plan, and who thereafter becomes reemployed in covered employment may not receive any credited service for any prior withdrawn accumulated contributions from either this plan or the Public Employees Retirement System relating to the prior covered employment unless following his or her return to covered employment and active participation in this plan, the member redeposits in this plan the amount of the withdrawn accumulated contributions submitted on salary earned while a Natural Resources Police Officer, together with interest on the accumulated contributions at the rate determined by the board from the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same credit on account of his or her former service in covered employment as if no refund had been made. The repayment authorized by this subsection shall be made in a lump sum within 60 months of the Natural Resources Police Officer's reemployment in covered employment or if later, within 60 months of the effective date of this article.

(c) A member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to §20-18-6(b) of this code may not, after having transferred into and become an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods of non-Natural Resources Police Officer service which were withdrawn from the Public Employees Retirement System plan prior to his or her elective transfer into this plan.

(d) Any member of this plan who: (1) Was employed as a Natural Resource Police Officer prior to the effective date of this article; and (2) was not employed as a Natural Resource Police Officer on the effective date of this article; and (3) thereafter becomes reemployed in covered employment, may not receive any credited service for any previously withdrawn accumulated contributions from either this plan or the Public Employees Retirement System relating to the prior covered employment unless, following his or her return to covered employment and active participation in this plan, the member redeposits in this plan the amount of the withdrawn accumulated contributions submitted on salary earned while a Natural Resources Police Officer, together with interest on the accumulated contributions at the rate determined by the board from the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same credit for his or her former service in covered employment as if no refund had been made. The repayment required by this subsection shall be made in a lump sum within 60 months of the Natural Resource Police Officers reemployment in covered employment.

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(e) If a member dies from any cause other than those specified in §20-18-25 of this code and does not have 10 or more years of contributory service, the member's accumulated contributions may be paid to a named beneficiary or beneficiaries. If no beneficiary is named, then the accumulated contributions shall be paid to the estate of the deceased member.

(f) Every member who completes 120 months of covered employment is eligible, upon cessation of covered employment, to either withdraw his or her accumulated contributions in accordance with subsection (a) of this section, or to choose not to withdraw his or her accumulated contribution and to receive retirement income payments upon attaining normal retirement age.

(g) Notwithstanding any other provision of this article, forfeitures under the plan may not be applied to increase the benefits any member would otherwise receive under the plan.

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§20-18-21. Award and benefits for disability – Duty related.

(a) Any member who after the effective date of this article and during covered employment: (1) Has been or becomes either totally or partially disabled by injury, illness, or disease; and (2) the disability is a result of an occupational risk or hazard inherent in or peculiar to the services required of members; or (3) the disability was incurred while performing law-enforcement functions during either scheduled work hours or at any other time; and (4) in the opinion of two physicians based on a medical examination, one of whom shall be named by the board and one by the member, the member is by reason of the disability unable to perform adequately the duties required of a Natural Resources Police Officer, is entitled to receive and shall be paid from the fund in monthly installments the compensation under either subsection (b) or (c) of this section.

(b) If the member is totally disabled, the member shall receive 90 percent of his or her average full monthly compensation for the 12-month contributory period preceding the member's disability award, or the shorter period if the member has not worked 12 months.

(c) If the member is partially disabled, the member shall receive 45 percent of his or her average full monthly compensation for the 12-month contributory period preceding the member's disability award, or the shorter period if the member has not worked 12 months.

(d) If the member remains partially disabled until attaining 60 years of age, the member shall then receive the retirement benefit provided in §20-18-18 and §20-18-19 of this code with the accrued benefit being computed with the multiplier in effect as of his or her effective date of retirement.

(e) The disability benefit payments will begin the first day of the month following termination of employment and receipt of the disability retirement application by the Consolidated Public Retirement Board.

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§20-18-22. Award and benefits for disability – Due to other causes.

(a) Any member with 10 or more years of contributing service and who after the effective date of this article and during covered employment: (1) Has been or becomes totally or partially disabled from any cause other than those set forth in §20-18-21 of this code and not due to vicious habits, intemperance, or willful misconduct on his or her part; and (2) in the opinion of two physicians based on a medical examination, one of whom shall be named by the board and one by the member, he or she is by reason of the disability unable to perform adequately the duties required of a Natural Resources Police Officer, is entitled to receive and shall be paid from the fund in monthly installments the compensation set forth in either subsection (b) or (c) of this section.

(b) If the member is totally disabled, he or she shall receive 66 and two-thirds percent of his or her average full monthly compensation for the 12-month contributory period preceding the disability award, or the shorter period, if the member has not worked 12 months.

(c) If the member is partially disabled, he or she shall receive 33 and one-third percent of his or her average full monthly compensation for the 12-month contributory period preceding the disability award, or the shorter period, if the member has not worked 12 months.

(d) If the member remains disabled until attaining 60 years of age, then the member shall receive the retirement benefit provided in §20-18-18 and §20-18-19 of this code with the accrued benefit being computed with the multiplier in effect as of his or her effective date of retirement.

(e) The board shall propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq*. of this code concerning member disability payments so as to ensure that the payments do not exceed 100 percent of the average current salary for the position last held by the member.

(f) The disability benefit payments will begin the first day of the month following termination of employment and receipt of the disability retirement application by the Consolidated Public Retirement Board.

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§20-18-23. Awards and benefits for disability — Physical examinations; termination of disability.

(a) The board may require any member who has applied for or any retirant who is receiving disability benefits under this article to submit to a physical examination, mental examination or both, by a physician or physicians selected or approved by the board and may cause all costs incident to the examination and approved by the board to be paid from the fund. The costs may include hospital, laboratory, X ray, medical, and physicians' fees. A report of the findings of any physician shall be submitted in writing to the board for its consideration. If, from the report, independent information, or from the report and any hearing on the report, the board is of the opinion and finds that: (1) The member has become reemployed as a law-enforcement officer; (2) two physicians who have examined the member have found that considering the opportunities for law enforcement in West Virginia, the member could be so employed as a Natural Resources Police Officer; or (3) other facts exist to demonstrate that the member is no longer totally disabled or partially disabled as the case may be, then the disability benefits shall cease. If the member was totally disabled and is found to have recovered, the board shall determine whether the member continues to be partially disabled. If the board finds that the member is no longer totally disabled but is partially disabled, then the member shall continue to receive partial disability benefits in accordance with this article. Benefits shall cease once the member has been found to be no longer either totally or partially disabled: *Provided*, That the board shall require recertification for each partial or total disability at regular intervals.

(b) If from the report, or from the report and hearing on the report, the board is of the opinion and finds that the disabled retirant has recovered from the disability to the extent that he or she is able to perform adequately the duties of a law-enforcement officer, the board shall within five working days provide written notice of the finding to the Director of the Division of Natural Resources, who shall reinstate the retirant to active duty as a member of the department at his or her rank or classification and assigned to his or her area of assignment prior to the disability retirement within 45 days of the finding, unless the retirant declines to be reinstated.

(c) A disability retirant who is returned to active duty as a Natural Resources Police Officer for the West Virginia Division of Natural Resources shall again become a member of the retirement system in which he or she was enrolled and the retirant's credited service shall be restored.

(d) If a retirant refuses to submit to a medical examination or submit a statement by his or her physician certifying continued disability in any period, his or her disability annuity may be discontinued by the board until the retirant complies. If the refusal continues for one year, all the retirant's rights in and to the annuity may be revoked by the board.

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§20-18-24. Prior disability.

Any Natural Resources Police Officer who became totally disabled as a result of illness or injury incurred in the line of duty prior to the effective date of this article may not be a member of the Natural Resources Police Officer Retirement System.

WV Legislature

§20-18-25. Awards and benefits to surviving spouse – when member dies in performance of duty, etc.

(a) The surviving spouse of any member who dies by reason of injury, illness, or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members, while the member was or is engaged in the performance of his or her duties as a Natural Resources Police Officer, or the surviving spouse of a member who dies from any cause while receiving benefits pursuant to §20-18-21 of this code, is entitled to receive and shall be paid from the fund benefits as follows: To the surviving spouse annually, in equal monthly installments during his or her lifetime an amount equal to the greater of: (i) Two thirds of the annual compensation received by the deceased member during the last 12 full months of contributory service; or (ii) if the member dies after meeting normal retirement age requirements, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a 100 percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(b) Benefits for a surviving spouse received under this section, §20-18-27, and §20-18-28 of this code, are in lieu of receipt of any other benefits under this article for the spouse, or any other person, or under the provisions of any other state retirement system based upon the member's covered employment.

WV Legislature

§20-18-26. Awards and benefits to surviving spouse – when member dies from nonservice-connected causes.

(a) In any case where a member who has been a contributing member for at least 10 years dies prior to retirement from any cause other than those specified in §20-18-25 of this code, and not due to vicious habits, intemperance, or willful misconduct on his or her part, the fund shall pay annually in equal monthly installments to the surviving spouse during his or her lifetime, a sum equal to the greater of: (i) One half of the annual compensation received by the deceased member during the last 12 full months of contributory service; or (ii) if the member dies after meeting normal retirement age requirements, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a 100 percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(b) In any case where a retirant who had been a contributing member for at least 10 years, had not obtained the age of 60, and was receiving benefits pursuant to §20-18-22 of this code dies and leaves a surviving spouse, the fund shall pay annually in equal monthly installments to the surviving spouse during his or her lifetime a sum equal to the greater of: (i) One half of the annual compensation received by the deceased member during the last 12 full months of contributory service; or (ii) if the retirant dies after meeting normal retirement age requirements, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a 100 percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(c) Benefits for a surviving spouse received under §20-18-27 and §20-18-28 of this code, are in lieu of receipt of any other benefits under this article for the spouse or any other person or under the provisions of any other state retirement system based upon the member's covered employment.

WV Legislature

§20-18-27. Additional death benefits and scholarships - Dependent children.

(a) In addition to the spouse death benefits in §20-18-25 and §20-18-26 of this code, the surviving spouse is entitled to receive and there shall be paid to the spouse $100 monthly for each dependent child.

(b) If the surviving spouse dies while receiving death benefits provided in §20-18-25 or §20-18-26 of this code, or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to one fourth of the surviving spouse's entitlement under either §20-18-25 or §20-18-26 of this code. If there is neither a surviving spouse nor a dependent child, the fund shall pay in equal monthly installments to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: *Provided*, That when there is only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive: *Provided, however*, That if there is no surviving spouse, dependent child nor dependent parent of the deceased member the accumulated contributions shall be paid to a named beneficiary or beneficiaries: *Provided further*, That if there is no surviving spouse, dependent child, nor dependent parent of the deceased member, nor any named beneficiary or beneficiaries then the accumulated contributions shall be paid to the estate of the deceased member.

(c) Any person qualifying as a dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $7,500 per year, shall be paid from the fund to any higher education institution in this state, career-technical education provider in this state, or other entity in this state approved by the board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the board on an approved form and under such rules as the board may provide, and maintains scholastic eligibility as defined by the institution or the board. The board may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq*. of this code which define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section. Scholarship benefits awarded pursuant to this subsection are not subject to division or payable to an alternate payee by any Qualified Domestic Relations Order.

WV Legislature

§20-18-28. Burial benefit.

Any member who dies as a result of any service related illness or injury after the effective date is entitled to a lump sum burial benefit of $5,000. If the member is married, the burial benefit shall be paid to the member's spouse. If the member is not married, the burial benefit shall be paid to the member's estate for the purposes of paying burial expenses, settling the member's final affairs, or both. Any unspent balance shall be distributed as a part of the member's estate. Burial benefits awarded pursuant to this section are not subject to division or payable to an alternate payee by any Qualified Domestic Relations Order.

WV Legislature

§20-18-29. Double death benefits prohibited.

A surviving spouse is not entitled to receive simultaneous death benefits under this article as a result of the death of two or more members to whom the spouse was married. Any spouse who becomes eligible for a subsequent death benefit under this article while receiving a death benefit under this article shall receive the higher benefit, but not both.

WV Legislature

§20-18-30. Return to covered employment by retired member.

(a) Subject to the provisions of subsection (b) of this section, the annuity of any member who retires under the provisions of this article and who resumes service in covered employment shall be suspended while the member continues in covered employment. If there has been a bona fide separation from service upon retirement, the monthly annuity payment for the month in which the service resumes shall be prorated to the date of commencement of service, and the member shall again become a contributing member during resumption of service. At the conclusion of resumed service in covered employment the member shall have his or her annuity recalculated to take into account the entirety of service in covered employment.

(b) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by the division 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 under the retirement system. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or the division fails to comply with subsection (c) 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. The board may take any actions necessary or appropriate in accordance with the provisions of §20-18-9 to recover such annuity payments so that an in-service distribution is not deemed to have been made.

(c) Prior to any retirant subsequently becoming employed by the division, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis, the division shall notify the board and the retirant, in writing, if and when any such potential employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of such employment, the division shall notify the board, in writing, of the retirant's subsequent employment. The retirement board may also require of retirants and the participating public employer such reports, forms and verifications as it deems necessary to ensure that a bona fide separation from service upon retirement has occurred.

WV Legislature

§20-18-31. Exemption from garnishment and other process; exception for certain qualified domestic relations orders.

The moneys in the fund and the right of a member, spouse or other beneficiary to benefits under this article, to the return of contributions, or to any retirement, death, or disability payments under the provisions of this article are not subject to execution, garnishment, attachment, or any other process whatsoever with the exception that the benefits or contributions under the 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 are unassignable except as is provided in this article.

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§20-18-32. Fraud; penalties; and repayment.

Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement system in any attempt to defraud that system is guilty of a misdemeanor and, upon conviction, shall be fined not to exceed $1,000 or confined in jail not to exceed one year, or both fined and confined. Any increased benefit received by any person as a result of the falsification or fraud shall be returned to the fund upon demand by the board.

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§20-18-33. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.

(a) Any member who has previously served on active military duty is entitled to receive additional years of service for the purpose of determining his or her years of credited service for a period equal to the active military duty not to exceed five years, subject to the following:

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

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

(3) That he or she is receiving no benefits from any other retirement system for his or her active military duty.

(b) In addition, any member who while in covered employment was commissioned, enlisted or inducted into the armed forces of the United States or, being a member of the reserve officers' corps, was called to active duty in the armed forces between September 1, 1940, and the close of hostilities in World War II, or between the June 27, 1950, and the close of the armed conflict in Korea on July 27, 1953, between August 1, 1964, and the close of the armed conflict in Vietnam, or during any other period of armed conflict by the United States whether sanctioned by a declaration of war by Congress or by executive or other order of the President, is entitled to and shall receive credited service, for a period equal to the full time that he or she has or, pursuant to that commission, enlistment, induction or call, shall have served with the armed forces subject to the following:

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

(2) That within 90 days after honorable discharge from the armed forces, he or she presented himself or herself to the West Virginia Division of Natural Resources and offered to resume service as a Natural Resources Police Officer; and

(3) That he or she has made no voluntary act, whether by reenlistment, waiver of discharge, acceptance of commission or otherwise, to extend or participate in extension of the period of service with the armed forces beyond the period of service for which he or she was originally commissioned, enlisted, inducted or called.

(c) The total amount of service allowable under subsections (a) and (b) of this section may not exceed five years.

(d) Any service credit allowed under this section may be credited one time only for each Natural Resources Police Officer, regardless of any changes in job title or responsibilities.

(e) Notwithstanding the preceding provisions of this section, contributions, benefits, and

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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.

WV Legislature

§20-18-34. Pro rata reduction of annuities.

Any provision in this article to the contrary notwithstanding, if at the end of any fiscal year the total of the annuities paid from the retirement fund during the said fiscal year is more than 10 percent of the sum of the balances in the fund at the end of the said fiscal year, the said annuities payable in the next ensuing fiscal year shall be reduced, pro rata, so that the sum of the annuities so reduced shall not exceed 10 percent of the sum of the said balances in the fund. The said pro rata reduction shall be applied to all annuities payable in the said ensuing fiscal year.

WV Legislature

§20-18-35. Liability of participating public employer for delinquent retirement contributions; liability of participating public employer's successor for delinquent retirement contributions; lien for delinquent contributions; collection by suit.

The requirements for this section shall be the same as the requirements of §5-10D-11 of this code.

WV Legislature

§20-18-36. 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

§20-18-37. Severability.

If any part of this article is declared unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this article, or the article in its entirety.

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