WEST VIRGINIA CODE CHAPTER 5 ARTICLE 10

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§5-10-1. Short title.

The short title by which this article may be referred to is "West Virginia Public Employees Retirement Act."

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§5-10-2. Definitions.

Unless a different meaning is clearly indicated by the context, the following words and phrases as used in this article have the following meanings:

(1) "Accumulated contributions" means the sum of all amounts deducted from the compensations of a member and credited to his or her individual account in the members' deposit fund, together with regular interest on the contributions;

(2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member;

(3) "Actuarial equivalent" means a benefit of equal value computed upon the basis of a mortality table and regular interest adopted by the board of trustees from time to time: Provided, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, actuarial equivalent shall be computed using the mortality tables and interest rates required to comply with those requirements;

(4) "Annuity" means an annual amount payable by the retirement system throughout the life of a person. All annuities shall be paid in equal monthly installments, rounding to the upper cent for any fraction of a cent;

(5) "Annuity reserve" means the present value of all payments to be made to a retirant or beneficiary of a retirant on account of any annuity, computed upon the basis of mortality and other tables of experience, and regular interest, adopted by the board of trustees from time to time;

(6) "Beneficiary" means any person which shall include an irrevocable special needs trust, as that term is defined in this section, for the benefit of one individual beneficiary and which trust terminates upon the death of such individual with no further annuity benefits being payable, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

(7) "Board of Trustees" or "board" means the Board of Trustees of the West Virginia Consolidated Public Retirement Board;

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

(9) "Compensation" means the remuneration paid a member by a participating public

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employer for personal services rendered by the member to the participating public employer. In the event a member's remuneration is not all paid in money, his or her participating public employer shall fix the value of the portion of the remuneration which is not paid in money: *Provided*, That members hired in a position for the first time on or after July 1, 2014, who receive nonmonetary remuneration shall not have nonmonetary remuneration included in compensation for retirement purposes and nonmonetary remuneration may not be used in calculating a member's final average salary. Any lump sum or other payments paid to members that do not constitute regular salary or wage payments are not considered compensation for the purpose of withholding contributions for the system or for the purpose of calculating a member's final average salary. These payments include, but are not limited to, attendance or performance bonuses, one-time flat fee or lump sum payments, payments paid as a result of excess budget, or employee recognition payments. The board shall have final power to decide whether the payments shall be considered compensation for purposes of this article;

(10) "Contributing service" means service rendered by a member within this state and for which the member made contributions to a public retirement system account of this state, to the extent credited him or her as provided by this article;

(11) "Credited service" means the sum of a member's prior service credit, military service credit, workers' compensation service credit, and contributing service credit standing to his or her credit as provided in this article;

(12) "Employee" means any person who serves regularly as an officer or employee, full-time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, in whole or in part, by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia National Guard whose compensation, in whole or in part, is paid by the federal government: *Provided*, That an employee of the Legislature whose term of employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is employed during regular sessions or during the interim between regular sessions in seven or more consecutive calendar years, as certified by the clerk of the house in which the employee served, is an employee, any provision to the contrary in this article notwithstanding, and is entitled to credited service in accordance with provisions of §5-10-14 of this code: *Provided, however*, That members of the legislative body of any political subdivision and commissioners of the West Virginia Claims Commission are employees receiving one year of service credit for each one-year term served and prorated service credit for any partial term served, anything contained in this article to the contrary notwithstanding: *Provided further*, That only a compensated board member of a participating public employer appointed to a board of a nonlegislative body for the first time on or after July 1, 2014, who normally is required to work 12 months per year and 1,040 hours of service per year is an employee. In any case of doubt as to who is an employee within the meaning of this article, the board of trustees shall decide the question;

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(13) "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 Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required;

(14) "Final average salary" means either of the following: *Provided*, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401 (a) (17) of the Internal Revenue Code: *Provided, however*, That the provisions of §5-10-22h of this code are not applicable to the amendments made to this subdivision during the 2011 regular session of the Legislature:

(A) The average of the highest annual compensation received by a member, including a member of the Legislature who participates in the retirement system in the year 1971 or thereafter, during any period of three consecutive years of credited service contained within the member's 15 years of credited service immediately preceding the date his or her employment with a participating public employer last terminated: *Provided*, That for persons who were first hired on or after July 1, 2015, any period of five consecutive years of contributing service contained within the member's 15 years of credited service immediately preceding the date his or her employment with a participating public employer last terminated; or

(B) If the member has less than five years of credited service, the average of the annual rate of compensation received by the member during his or her total years of credited service; and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision, of a member of the Legislature who participates in the retirement system as a member of the Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation (the total of all compensation paid under §4-2A-2, §4-2A-3, §4-2A-4, and §4-2A-5 of this code), in the year 1971, or in any year thereafter, plus any other compensation he or she receives in any year from any other participating public employer including the State of West Virginia, without any multiple in excess of one times his or her actual legislative compensation and other compensation, shall be used: *Provided*, That final average salary for any former member of the Legislature or for any member of the Legislature in the year 1971 who, in either event, was a member of the Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on November 30 in any one or more of those three years and who participated in the retirement system as a member of the Legislature in any one or more of those years means: (i) Either, notwithstanding the provisions of this subdivision preceding this proviso, $1,500 multiplied by eight, plus the highest other compensation the former member or member received in any one of the three years from any other participating public employer including the State of West Virginia; or (ii) final average salary determined in accordance with paragraph (A) or (B) of this subdivision, whichever computation produces the higher final average salary, and in determining the annual compensation under subparagraph (ii) of this paragraph, the legislative compensation of the former member shall be computed on the basis of $1,500

multiplied by eight, and the legislative compensation of the member shall be computed on the basis set forth in the provisions of this subdivision immediately preceding this paragraph or on the basis of $1,500 multiplied by eight, whichever computation as to the member produces the higher annual compensation;

(15) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, codified at Title 26 of the United States Code;

(16) "Limited credited service" means service by employees of the West Virginia Educational Broadcasting Authority, in the employment of West Virginia University, during a period when the employee made contributions to another retirement system, as required by West Virginia University, and did not make contributions to the Public Employees Retirement System: *Provided*, That while limited credited service can be used for the formula set forth in §5-10-21(e) of this code, it may not be used to increase benefits calculated under §5-10-22 of this code;

(17) "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;

(18) "Member" means any person who has accumulated contributions standing to his or her credit in the members' deposit fund;

(19) "Participating public employer" means the State of West Virginia, any board, commission, department, institution, or spending unit, and includes any agency created by rule of the Supreme Court of Appeals having full-time employees, which for the purposes of this article is considered a department of state government; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Public Employees Retirement System;

(20) "Plan year" means the same as referenced in §5-10-42 of this code;

(21) "Political subdivision" means the State of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any mental health agency participating in the Public Employees Retirement System before July 1, 1997, is considered a political subdivision solely for the purpose of permitting those employees who are members of the Public Employees Retirement System to remain members and continue to participate in the retirement system at their option after July 1, 1997: *Provided, however*, That the Regional Community Policing Institute which participated in the Public Employees Retirement System before July 1, 2000, is considered a political

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subdivision solely for the purpose of permitting those employees who are members of the Public Employees Retirement System to remain members and continue to participate in the Public Employees Retirement System after July 1, 2000;

(22) "Prior service" means service rendered prior to July 1, 1961, to the extent credited a member as provided in this article;

(23) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board of trustees adopts from time to time;

(24) "Required beginning date" means April 1 of the calendar year following the later of:

(A) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

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

(C) The applicable age is:

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

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

(iii) 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;

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

(26) "Retirement" means a member’s withdrawal from the employ of a participating public employer and the commencement of an annuity by the retirement system;

(27) "Retirement system" or "system" means the West Virginia Public Employees Retirement System created and established by this article;

(28) "Retroactive service" means: (1) Service between July 1, 1961, and the date an employer decides to become a participating member of the Public Employees Retirement System; (2) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost in accordance with 162 CSR 5.12; and (3) service of any member of a legislative body or employees of the State Legislature whose term of employment is otherwise classified as temporary for which the employee is eligible, but for which the employee did not elect to participate at that time;

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(29) "Service" means personal service rendered to a participating public employer by an employee of a participating public employer;

(30) "Special needs trust" means a trust established pursuant to §44D-8B-13 of this code for an individual beneficiary with a disability and such special needs trust is or will become irrevocable by the time the retirant names the special needs trust as the beneficiary of retirant’s annuity benefits in place of the individual beneficiary and terminates upon the death of the individual beneficiary with no further annuity benefits being payable; and

(31) "State" means the state of West Virginia.

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§5-10-3. Retirement system created and established; body corporate.

The West Virginia Public Employees Retirement System is hereby created and established to provide for the orderly retirements of employees, of the state and the other participating public employers, who become superannuated because of age or total and permanent disability, and to provide certain survivor benefits. The retirement system shall constitute a body corporate. All business of the system shall be transacted in the name of West Virginia Public Employees Retirement System.

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§5-10-3a. Article to be liberally construed; supplements federal social security; federal qualification requirements.

(a) The provisions of this article shall be liberally construed so as to provide a general retirement system for the employees of the state herein made eligible for such retirement: Provided, That nothing in this article shall be construed as permitting any governmental unit, its officers or employees to substitute the retirement plan herein authorized for federal social security now in force in West Virginia.

(b) The purpose of this article is to provide a state pension plan which supp006Cements the federal social security pension plan now in force and heretofore authorized by law for members of this retirement system.

(c) The retirement system is intended to meet the federal qualification requirements of Section 401(a) and related sections of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the retirement system to fulfill this intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article referencing or relating to such federal tax 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 it pursuant to section one, article ten-d of this chapter to assure compliance with this section.

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§5-10-4. Effective date of system.

The effective date of the West Virginia Public Employees Retirement System shall be July 1, 1961: Provided, however, That for any participating public employer which cannot make its contribution as provided by this article from its 1961-1962 current funds, the effective date as to such participating public employer shall be July 1, 1962.

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§5-10-5. Board of trustees created; powers and duties generally; composition.

The board of trustees of the West Virginia Public Employees Retirement System is hereby continued. The administration and management of the retirement system, the responsibility for making effective the provisions of this article, and the authority to make all rules and regulations therefor are hereby vested in the said board of trustees through June 30, 1991, and thereafter in the Consolidated Public Retirement Board created by article ten-d of this chapter and except as otherwise specifically provided in this article. The board shall consist of five trustees, as follows:

(a) The Auditor of the state, by virtue of his office;

(b) The treasurer of the state, by virtue of his office;

(c) The commissioner of finance and administration, by virtue of his office;

(d) A resident of the state, who is not a member, retirant or beneficiary of the retirement system, to be appointed by the Governor, by and with the advice and consent of the Senate;

(e) One member of the retirement system, who is an employee of a participating public employer other than the State of West Virginia, to be appointed by the Governor, by and with the advice and consent of the Senate.

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§5-10-6. Trustees' terms of office.

The first terms of office for the trustees provided for in subdivisions (d) and (e) of section five of this article shall expire June 30, 1965, June 30, 1964 and June 30, 1963, respectively, as the Governor shall designate at the time of the appointments. Thereafter, the terms of office for the said trustees shall be five years. Each trustee shall serve as trustee until his successor is appointed and has qualified. In order to make the preliminary arrangements for the operation of the retirement system as of its effective date, the Governor shall make the appointments provided for in section five hereof as soon as practicable after the passage of this article.

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§5-10-7. Vacancies on board.

In the event any trustee, provided for in subdivisions (d) and (e) of section five of this article leaves the employ of a participating public employer, or fails to attend three consecutive meetings of the board of trustees, unless in each case excused for cause by the remaining trustees attending such meeting or meetings, he shall be considered to have resigned from the board and the board shall, by resolution, declare his office of trustee vacated. If a vacancy occurs in the office of such trustee, the Governor shall, within thirty days from and after the date of the vacancy, fill the vacancy, by appointment, for the unexpired term.

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§5-10-8. Trustees' compensation and expenses.

The trustees shall serve as trustees without compensation for their service as such: Provided, That each trustee shall be reimbursed, upon approval of the board of trustees, for any necessary expenses incurred by him in carrying out his duties of trustee. No trustee shall suffer any loss of salary or wages on account of his service as trustee.

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§5-10-9. Chairman and vice chairman; executive secretary; employees; treasurer; legal advisor; actuary.

(a) The board of trustees shall elect from its own number a chairman and a vice chairman.

(b) The board of trustees shall appoint an executive secretary of the retirement system. The executive secretary shall be the chief administrative officer of the system; and shall not be a member of the board. He shall perform such duties as are required of him in this article and as the board shall from time to time delegate to him. The compensation of the executive secretary shall be fixed by the board subject to the approval of the Governor. He shall, with the approval of the board of trustees, employ such administrative, technical, and clerical employees as shall be required in the proper operation of the system.

(c) The State Treasurer shall be treasurer of the retirement system and the custodian of its funds. All bonds and other investments purchased according to the provisions of this article shall forthwith be deposited with the state Treasurer. It shall be his duty to collect the principal thereof and the interest and dividends thereon as the same become due and payable, and when so collected deposit same to the credit of the retirement system. All disbursements from the funds of the system shall be made by the state Treasurer only upon written certification duly authorized by a continuing or specific resolution adopted by the board of trustees. He shall furnish the board with a statement of the retirement system securities in his safekeeping as the board shall from time to time request.

(d) The Attorney General shall be the legal advisor to the board of trustees.

(e) The board of trustees shall appoint an actuary who shall be the technical advisor to the board regarding the operation of the retirement system on an actuarial basis.

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§5-10-10. Board meetings; quorum; vote; proceedings.

The board of trustees shall hold a meeting at least once each three months, and shall designate the time and place thereof. Three trustees shall constitute a quorum at any meeting of the board. Each trustee shall be entitled to one vote on each question before the board and at least three concurring votes shall be required for a decision by the board at any of its meetings. The board shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings of the board shall be public.

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§5-10-11. Reports required of board.

The board of trustees shall submit to the Governor for transmittal to the Legislature, on or before December 1, in each year, a report showing the fiscal affairs and transactions of the retirement system for the preceding fiscal year. The said report shall contain, but shall not be limited to, a financial balance sheet, a statement of income and disbursements, an actuarial balance sheet prepared by means of the last actuarial valuation of the system, a detailed statement of investments acquired and disposed of during the said fiscal year, and such other data as shall be deemed necessary for a proper understanding of the condition of the system. The board shall annually furnish the members and the participating public employers with a summary of the results of the operations of the system.

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§5-10-12. Officer and employee bonds.

The State Treasurer shall give a separate and additional bond in such amount as shall from time to time be fixed by the board of trustees. The said bond shall be approved by the Attorney General and shall be conditioned for the faithful performance of his duties as custodian of the moneys, securities and other investments of the retirement system. The executive secretary, and the employees of the system designated by the board, shall furnish bonds in such form, and in such amounts, as the board shall from time to time determine. The costs of such bonds shall be paid from the expense fund and such bonds shall be filed in the same office as are the bonds of state officers.

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§5-10-13. Actuarial investigations and valuations; specification of actuarial assumptions.

(a) The board of trustees shall keep, or cause to be kept, such data as shall be necessary for the preparation of mortality, service and retirement tables and for the compilation of such other data as shall be required for an actuarial valuation of the assets and liabilities of the retirement system.

(b) Beginning in one thousand nine hundred sixty-six, and in each five-year period thereafter, the actuary shall make actuarial investigations into the experiences of the members, retirants and beneficiaries of the retirement system. Based upon such investigations, the board of trustees shall adopt for the system rates of mortality, withdrawal from service, superannuation retirement and disability retirement and salary scales for final average salary.

(c) Beginning in one thousand nine hundred sixty-two, and at least once in each three-year period thereafter, the actuary shall make an actuarial valuation of the assets and liabilities of the retirement system: Provided, That until the first actuarial investigations are made, the valuations shall be based upon decrement assumptions which are, in the opinion of the actuary, applicable to the members, retirants and beneficiaries of the system.

(d) Beginning in one thousand nine hundred sixty-two, the actuary shall annually compute the annuity reserve liabilities for annuities being paid retirants and beneficiaries.

(e) The board shall specify and adopt all actuarial assumptions for the system at its first meeting of every calendar year or as soon thereafter as may be practicable, which assumptions shall become part of the terms of the system.

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§5-10-14. Service credit; retroactive provisions.

(a) The board of trustees shall credit each member with the prior service and contributing service to which he or she is entitled based upon rules adopted by the board of trustees and based upon the following:

(1) In no event may less than 10 days of service rendered by a member in any calendar month be credited as a month of service: *Provided*, That for employees of the State Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, service credit of one month shall be awarded for each 10 days employed in the interim between regular sessions, which interim days shall be cumulatively calculated so that any 10 days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit;

(2) Except for hourly employees, and those persons who first become members of the retirement system on or after July 1, 2015, 10 or more months of service credit earned in any calendar year shall be credited as a year of service: *Provided*, That no more than one year of service may be credited to any member for all service rendered by him or her in any calendar year and no days may be carried over by a member from one calendar year to another calendar year where the member has received a full-year credit for that year; and

(3) Service may be credited to a member who was employed by a political subdivision if his or her employment occurred within a period of 30 years immediately preceding the date the political subdivision became a participating public employer.

(b) The board of trustees shall grant service credit to any former and present member of the State Teachers Retirement System who has been a contributing member in the Public Employees Retirement System for more than three years, for service previously credited by the State Teachers Retirement System and shall require the transfer of the member's accumulated contributions to the system and shall also require a deposit, with reinstatement interest as set forth in the board's Rule, Refund, Reinstatement, Retroactive Service, Loan and Correction of Error Interest Factors, 162 C. S. R. 7, of any withdrawals of contributions any time prior to the member's retirement: *Provided*, That members of the State Teachers Retirement System who first became a member of the State Teachers Retirement System on or after July 1, 2022, may only transfer service credit to the Public Employees Retirement System if they first became a member of the Public Employees Retirement System on or after July 1, 2015. Repayment of withdrawals shall be as directed by the Board of Trustees.

(c) Court reporters who are acting in an official capacity, although paid by funds other than the county commission or State Auditor, may receive prior service credit for time served in that capacity.

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(d) Active members who previously worked in Comprehensive Employment and Training Act (CETA) may receive service credit for time served in that capacity: *Provided*, That in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from temporary employment with the participating employer to permanent full-time employment with the participating employer within 120 days following the termination of the member's CETA employment; (2) the board must receive evidence that establishes to a reasonable degree of certainty as determined by the board that the member previously worked in CETA; and (3) the member shall pay to the board an amount equal to the employer and employee contribution plus interest at the amount set by the board for the amount of service credit sought pursuant to this subsection: *Provided, however*, That the maximum service credit that may be obtained under the provisions of this subsection is two years: *Provided further*, That a member must apply and pay for the service credit allowed under this subsection and provide all necessary documentation by March 31, 2003: *And provided further*, That the board shall exercise due diligence to notify affected employees of the provisions of this subsection.

(e) (1) Employees of the State Legislature whose terms of employment are otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim time between regular sessions shall receive service credit for the time served in that capacity in accordance with the following: For purposes of this section, the term "regular session" means day one through day 60 of a 60-day legislative session or day one through day 30 of a 30-day legislative session. Employees of the State Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim time between regular sessions and who have been or are employed during regular sessions or during the interim time between regular sessions in seven consecutive calendar years, as certified by the clerk of the house in which the employee served, shall receive service credit of six months for all regular sessions served, as certified by the clerk of the house in which the employee served, or shall receive service credit of three months for each regular 30-day session served prior to 1971: *Provided*, That employees of the State Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions and who have been or are employed during the regular sessions in 13 consecutive calendar years as either temporary employees or full-time employees or a combination thereof, as certified by the clerk of the house in which the employee served, shall receive a service credit of 12 months for each regular session served, as certified by the clerk of the house in which the employee served: *Provided, however*, That the amendments made to this subsection during the 2002 regular session of the Legislature only apply to employees of the Legislature who are employed by the Legislature as either temporary employees or full-time employees as of January 1, 2002, or who become employed by the Legislature as temporary or full-time employees for the first time after January 1, 2002. Employees of the State Legislature whose terms of employment are otherwise classified as temporary and who are employed to perform services required by the Legislature during the interim time between regular sessions shall receive service credit of

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one month for each 10 days served during the interim between regular sessions, which interim days shall be cumulatively calculated so that any 10 days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit: *Provided further*, That no more than one year of service may be credited to any temporary legislative employee for all service rendered by that employee in any calendar year and no days may be carried over by a temporary legislative employee from one calendar year to another calendar year where the member has received a full year credit for that year. Service credit awarded for legislative employment pursuant to this section shall be used for the purpose of calculating that member's retirement annuity, pursuant to §5-10-22 of this code, and determining eligibility as it relates to credited service, notwithstanding any other provision of this section. Certification of employment for a complete legislative session and for interim days shall be determined by the clerk of the house in which the employee served, based upon employment records. Service of 55 days of a regular session constitutes an absolute presumption of service for a complete legislative session and service of 27 days of a 30-day regular session occurring prior to 1971 constitutes an absolute presumption of service for a complete legislative session. Once a legislative employee has been employed during regular sessions for seven consecutive years or has become a full-time employee of the Legislature, that employee shall receive the service credit provided in this section for all regular and interim sessions and interim days worked by that employee, as certified by the clerk of the house in which the employee served, regardless of when the session or interim legislative employment occurred: *And provided further*, That regular session legislative employment for seven consecutive years may be served in either or both houses of the Legislature.

(2) For purposes of this section, employees of the Joint Committee on Government and Finance are entitled to the same benefits as employees of the House of Delegates or the Senate: *Provided*, That for joint committee employees whose terms of employment are otherwise classified as temporary, employment in preparation for regular sessions, certified by the legislative manager as required by the Legislature for its regular sessions, shall be considered the same as employment during regular sessions to meet service credit requirements for sessions served.

(f) Any employee may purchase retroactive service credit for periods of employment in which contributions were not deducted from the employee's pay. In the purchase of service credit for employment prior to 1989 in any department, including the Legislature, which operated from the General Revenue Fund and which was not expressly excluded from budget appropriations in which blanket appropriations were made for the state's share of public employees' retirement coverage in the years prior to 1989, the employee shall pay the employee's share. Other employees shall pay the state's share and the employee's share to purchase retroactive service credit. Where an employee purchases service credit for employment which occurred after 1988, that employee shall pay for the employee's share and the employer shall pay its share for the purchase of retroactive service credit: *Provided*, That no legislative employee and no current or former member of the Legislature may be required to pay any interest or penalty upon the purchase of retroactive service credit in accordance with the provisions of this section where the employee was not eligible to

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become a member during the years for which he or she is purchasing retroactive credit or had the employee attempted to contribute to the system during the years for which he or she is purchasing retroactive service credit and the contributions would have been refused by the board: *Provided, however*, That a current legislative employee purchasing retroactive credit under this section shall do so within 24 months of beginning contributions to the retirement system as a legislative employee or no later than December 31, 2016, whichever occurs later: *Provided further*, That once a legislative employee becomes a member of the retirement system, he or she may purchase retroactive service credit for any time he or she was employed by the Legislature and did not receive service credit. Any service credit purchased shall be credited as six months for each 60-day session worked, three months for each 30-day session worked or 12 months for each 60-day session for legislative employees who have been employed during regular sessions in 13 consecutive calendar years, as certified by the clerk of the house in which the employee served, and credit for interim employment as provided in this subsection: *And provided further*, That this legislative service credit shall also be used for months of service in order to meet the 60-month requirement for the payments of a temporary legislative employee member's retirement annuity: *And provided further*, That no legislative employee may be required to pay for any service credit beyond the actual time he or she worked regardless of the service credit which is credited to him or her pursuant to this section: *And provided further*, That any legislative employee may request a recalculation of his or her credited service to comply with the provisions of this section at any time.

(g) (1) Notwithstanding any provision to the contrary, the seven consecutive calendar years requirement and the 13 consecutive calendar years requirement and the service credit requirements set forth in this section shall be applied retroactively to all periods of legislative employment prior to the passage of this section, including any periods of legislative employment occurring before the seven consecutive and 13 consecutive calendar years referenced in this section: *Provided*, That the employee has not retired prior to the effective date of the amendments made to this section in the 2002 regular session of the Legislature.

(2) The requirement of seven consecutive years and the requirement of 13 consecutive years apply retroactively to all legislative employment prior to the effective date of the 2006 amendments to this section.

(h) The board of trustees shall grant service credit to any former or present member of the State Police Death, Disability and Retirement Fund who has been a contributing member of this system for more than three years for service previously credited by the State Police Death, Disability and Retirement Fund if the member transfers all of his or her contributions to the State Police Death, Disability and Retirement Fund to the system created in this article, including repayment of any amounts withdrawn any time from the State Police Death, Disability and Retirement Fund by the member seeking the transfer allowed in this subsection: *Provided*, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the Public Employees

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Retirement System during the period of his or her membership in the State Police Death, Disability and Retirement Fund, excluding contributions on lump sum payment for annual leave, plus interest at a rate determined by the board.

(i) The provisions of §5-10-22h of this code are not applicable to the amendments made to this section during the 2006 regular session.

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§5-10-15. Military service credit; qualified military service.

(a)(1) The Legislature recognizes the men and women of this state who have served in the armed forces of the United States during times of war, conflict and danger. It is the intent of this subsection to confer military service credit upon persons who are eligible at any time for public employees retirement benefits for any time served in active duty in the armed forces of the United States, regardless of whether the person was a public employee at the time of entering the military service.

(2) In addition to any benefit provided by federal law, any member of the retirement system who has previously served in or enters the active service of the armed forces of the United States, including active duty in the National Guard performed pursuant to Title 10 or Title 32 of the United States Code, shall receive credited service for the time spent in the armed forces of the United States, not to exceed five years, if the member:

(A) Has been honorably discharged from the armed forces; and

(B) Substantiates by appropriate documentation or evidence his or her active military service.

If a member of the retirement system enters the active service of the armed forces of the United States, the member's contributions to the retirement system are suspended during the period of the active service and until the member's return to the employ of a participating public employer, and any credit balance remaining in the member's deposit fund shall accumulate regular interest: *Provided*, That notwithstanding any provision in this article to the contrary, if an employee of a participating political subdivision serving on active duty in the military has accumulated credited service prior to the last entry into military service, in an amount that, added to the time in active military service while an employee equals nine or more years, and the member is unable to resume employment with a participating employer upon completion of duty due to death during or as a result of active service, all time spent in active military service, up to and including a total of five years, is considered to be credited service and death benefits are vested in the member: *Provided, however*, That the active service during the time the member is an employee must be as a result of an order or call to duty, and not as a result of volunteering for assignment or volunteering to extend the time in service beyond the time required by order or call.

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

(1) A member who first becomes an employee of a participating public employer on or after July 1, 2015, may purchase up to 60 months of military service credit for time served in active military duty prior to first becoming an employee of a participating public employer if all of the following conditions are met:

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(A) The member has completed at least 12 consecutive months of contributory service upon first becoming an employee of a participating public employer;

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

(C) The employee pays to the retirement system the actuarial reserve purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system: *Provided*, That any employee who ceases employment with a participating public employer before completing the required actuarial reserve purchase amount in full shall not be eligible to purchase the military service.

(2) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first becomes an employee of a participating public employer on or after July 1, 2015, but who does not remain employed and contributing to the retirement system for at least 12 consecutive months after his or her initial employment, shall be considered to have met the requirement of paragraph (A), subdivision (1) of this subsection the first time he or she becomes an employee of a participating public employer and completes at least 12 consecutive months of contributing service. Such a member shall be considered to have met the requirement of paragraph (C), subdivision (1) of this subsection if he or she pays to the retirement system the actuarial reserve purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member the first time he or she becomes an employee of a participating public employer and completes at least 12 consecutive months of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(3) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first becomes an employee of a participating public employer on or after July 1, 2015, as an elected official, shall be considered to have met the requirement of paragraph (A), subdivision (1) of this subsection after remaining employed for the first 12 consecutive months of his or her term and first becoming an employee, regardless of whether a salary is paid to the employee for each such month. An elected official who does not elect to begin participating in the retirement system upon first becoming an employee of a participating public employer as an elected official is not eligible to purchase military service credit pursuant to subdivision (1) of this subsection.

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

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service credit purchased pursuant to this subdivision:

(A) The member was an employee of a participating public employer, terminated employment and experienced a break in contributing service in the retirement system of one or more months, performed active military service while not an employee of the participating public employer and not contributing to the retirement system, then again becomes an employee of a participating public employer and completes at least 12 consecutive months of contributory service;

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

(C) The member pays to the retirement system the actuarial reserve lump sum purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member after he or she again becomes an employee of a participating public employer immediately following the period of active military duty and break in service and completes at least 12 consecutive months of contributory service and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(5) Notwithstanding paragraph (A), subdivision (4) of this subsection, a member who otherwise meets the requirements of said paragraph, but who does not remain employed and contributing to the retirement system for at least 12 consecutive months when he or she first becomes an employee of a participating public employer after the period of active military duty and break in service, shall be considered to have met the requirement of paragraph (A), subdivision (4) of this subsection the first time he or she again becomes an employee of a participating public employer and completes at least 12 consecutive months of contributing service. Such a member shall be considered to have met the requirement of paragraph (C), subdivision (4) of this subsection if he or she pays to the retirement system the actuarial reserve lump sum purchase amount within 48 months after the date on which employer and employee contributions are first received by the retirement system for the member for the first time he or she again becomes an employee of a participating public employer and completes at least 12 consecutive months of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(6) Notwithstanding paragraph (A), subdivision (4) of this subsection, a member who becomes an employee of a participating public employer after such a period of active military duty and break in service as an elected official shall be considered to have met the requirement of paragraph (A), subdivision (4) of this subsection after remaining employed for the first 12 consecutive months of his or her term after again becoming an employee, regardless of whether a salary is paid to the employee for each such month. Such an individual must elect to begin participating in the retirement system immediately upon again becoming an employee of a participating public employer after the period of active military duty and break in service.

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

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

(B) "Actuarial reserve purchase amount" means the purchase annuity rate multiplied by the purchase accrued benefit, calculated as of the calculation month, plus annual interest accruing at 7.5 percent from the calculation month through the purchase month, compounded monthly: *Provided*, That if the employee elects to pay the full purchase amount on an installment or partial payment basis, the actuarial reserve purchase amount will include the lump sum payment plus additional interest accruing at 7.5 percent until the purchase amount is paid in full.

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

(D) "Calculation month" means the month immediately following the month in which the member completes the 12 consecutive months of contributory service with a participating public employer required by this subsection, as applicable.

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

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

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

(H) "Purchase average monthly salary" means the average monthly salary of the member during the months two through 12 of the 12 consecutive month period required by this subsection of this section, as applicable.

(I) "Purchase military service" means the amount of military service being purchased by the employee in months up to the 60-month maximum, calculated in accordance with subdivision (9) of this subsection.

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

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the final payment of the actuarial reserve purchase amount into the plan trust fund in full payment of the service credit being purchased.

(8) A member may purchase military service credit for a period of active military duty pursuant to this subsection only if the member received an honorable discharge for such period. Anything other than an honorable discharge, including, but not limited to, a general or under honorable conditions discharge, an entry-level separation discharge, an other than honorable conditions discharge or a dishonorable discharge, shall disqualify the member from receiving military service credit for the period of service.

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

(10) To receive credit, a member must submit a request to purchase military service credit to the board, on such form or in such other manner as shall be required by the board, within the 12 consecutive month period required by this subsection, as applicable. The board shall then calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the member within the 48-month period required by this subsection, as applicable. A member purchasing military service credit pursuant to this subsection must do so in a single, lump sum payment: *Provided*, That the board may accept partial, installment or other similar payments if the employee executes a contract with the board specifying the amount of military service to be purchased and the payments required: *Provided, however*, That any failure to pay the contract amount in accordance with this section shall be treated as an overpayment or excess contribution subject to §5-10-44 of this code and no military service shall be credited.

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

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

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

(c) No period of military service may be used to obtain credit in more than one retirement system administered by the board and once used in any system, a period of military service

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may not be used again in any other system.

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

(e) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board has final power to determine the period. Notwithstanding the provisions of §5-10-3a of this code, the provisions of this section are not subject to liberal construction. The board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in §5-10D-1 of this code, may propose rules to administer this section for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code.

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§5-10-15a. Retirement credited service through member's use, as option, of accrued annual or sick leave days.

(a) Any member accruing annual leave or sick leave days may, after June 27, 1988, elect to use the days at the time of retirement to acquire additional credited service in this retirement system. Except as provided in subsection (b) of this section, 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 twenty workdays and with any remainder of ten workdays or more to constitute a full month of additional credit and any remainder of less than ten workdays to be dropped and not used, notwithstanding any provisions of the code to the contrary, including section twelve, article sixteen of this chapter. Such credited service shall be allowed and not deemed to controvert the requirement of no more than twelve months credited service in any year's period.

(b) For those persons who first become members of the retirement system on or after July 1, 2015, accrued annual or sick days may not be applied to acquire additional credited service.

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§5-10-15b. Credit for public employment in another state.

(a) Any member of the retirement system who has previously been employed in public employment in any other state of the United States is entitled to receive credited service for the time of public employment in that state, not to exceed five years, if the member substantiates by appropriate documentation or evidence his or her public employment in another state and makes contributions as required: Provided, That the member is not entitled to receive the credited service if the employee is vested or entitled to be vested in a retirement system of the state in which the employment credit was earned and the member is entitled to service credit in that retirement system for the employment period for which the applicant seeks credited service in West Virginia: Provided, however, That the service credit from the other state may not be used to meet West Virginia's eligibility requirements for retirement or vesting.

Members entitled to out-of-state service credit under the provisions of this section shall make additional contribution to the retirement system equal to the actuarial equivalent of the amount which would have been contributed, together with earnings thereon, by the member and the employer, had the member been covered during the period of the retroactive service credit.

(b) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board of Trustees has the final power to determine this period.

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§5-10-15c. Military service credit for members of the West Virginia National Guard.

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

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

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

(B) The employee has completed at least twelve consecutive months of contributory service to the retirement system on or after January 2015; and

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

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

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

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

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

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

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

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

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

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

(B) The employee has completed at least twelve consecutive months of contributory service to the retirement system in the prior odd year; and

(C) The employee pays to the retirement system the actuarial reserve purchase amount

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within three months from the date of the cost letter provided by the board and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system: Provided, That any employee who ceases employment with a participating public employer before completing the required actuarial reserve purchase amount in full shall not be eligible to purchase the military service credit.

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

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

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

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

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

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

(8) Military service credit purchased pursuant to this subsection may not be considered

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contributing service credit or contributory service for purposes of this article.

(c) For purposes of this section:

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

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

(3) “Calculation month” means the month immediately following the month in which the employee completes the first twelve consecutive months of contributory service with a participating public employer on or after January 2015 for computations under subsection (a) of this section, or the month immediately following the month in which the employee completes twelve consecutive months of contributory service with a participating public employer in the preceding odd calendar year for computations under subsection (b) of this section.

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

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

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

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

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

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

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

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(7) “Purchase average monthly salary” means the average monthly salary of the employee during months two through twelve of the twelve consecutive month period required by the appropriate subsection.

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

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

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

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

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

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

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§5-10-16. When and how political subdivision becomes participating public employer.

The state of West Virginia shall become a participating public employer effective July 1, 1961. Any other political subdivision may by a three-fifths vote of its governing body, or by a majority vote of its electors, elect to become a participating public employer and thereby include its employees in the membership of the retirement system. It shall be the duty of the clerk or secretary of each such political subdivision electing to become a participating public employer to certify the determination of the political subdivision to the board of trustees within ten days from and after the vote of the governing body or the canvass of votes upon such action.

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§5-10-17. Retirement system membership.

The membership of the retirement system consists of the following persons:

(a) All employees, as defined in §5-10-2 of this code, who are in the employ of a political subdivision the day preceding the date it becomes a participating public employer and who continue in the employ of the participating public employer on and after that date shall become members of the retirement system; and all persons who become employees of a participating public employer on or after that date shall thereupon become members of the system; except as provided in subdivisions (b), (c) and (d) of this section.

(b) The membership of the Public Employees Retirement System may not include any person who is an active contributing member of, or who has been retired by, any of the state teachers retirement systems, the Judges Retirement System, any retirement system of the West Virginia State Police, the Deputy Sheriff Retirement System, the Natural Resources Police Officer Retirement System or any municipal retirement system for either, or both, police or firefighter; and the Bureau of Employment Programs, by the Commissioner of the Bureau, may elect whether its employees will accept coverage under this article or be covered under the authorization of a separate enactment: *Provided,* That the exclusions of membership do not apply to any member of the State Legislature, the Clerk of the House of Delegates, the Clerk of the State Senate or to any member of the legislative body of any political subdivision provided he or she once becomes a contributing member of the retirement system: *Provided, however,* That any retired member of the State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System, the Deputy Sheriff Retirement System, the Natural Resources Police Officer Retirement System and any retired member of any municipal retirement system for either, or both, police or firefighter may on and after the effective date of this section become a member of the retirement system as provided in this article, without receiving credit for prior service as a municipal police officer or firefighter or as a member of the State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System, the Deputy Sheriff Retirement System, or the Natural Resources Police Officer Retirement System: *Provided further,* That any retired member of the State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System, the Deputy Sheriff Retirement System, the Natural Resources Police Officer Retirement System and any retired member of any municipal retirement system for either, or both, police or firefighters, who begins participation in the retirement system established in this article on or after July 1, 2005, may not receive a combined retirement benefit in excess of 105 percent of the member's highest annual salary earned while either a member of the retirement system established in this article or while a member of the other retirement system or systems from which he or she previously retired when adding the retirement benefit from the retirement system created in this article to the retirement benefit received by that member from the other retirement system or systems set forth herein from which he or she previously retired: *And provided further,* That the membership of the retirement system does not include any person who becomes employed by the Prestera Center for Mental Health Services, Valley Comprehensive Mental Health Center, Westbrook Health Services or Eastern Panhandle

Mental Health Center on or after July 1,1997: *And provided further,* That membership of the retirement system does not include any person who becomes a member of the federal Railroad Retirement Act on or after July 1, 2000.

(c) Any member of the State Legislature, the Clerk of the House of Delegates, the Clerk of the State Senate, and any employee of the State Legislature whose employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is employed during regular sessions or during the interim between sessions in seven consecutive calendar years, as certified by the Clerk of the House in which the employee served, or any member of the legislative body of any other political subdivision shall become a member of the retirement system provided he or she notifies the retirement system in writing of his or her intention to be a member of the system and files a membership enrollment form as prescribed by the Board of Trustees, and each person, upon filing his or her written notice to participate in the retirement system, shall by that act authorize the Clerk of the House of Delegates or the Clerk of the State Senate or such person or legislative agency as the legislative body of any other political subdivision shall designate to deduct the member's contribution, as provided in §5-10-29(b) of this code, and after the deductions have been made from the member's compensation, the deductions shall be forwarded to the retirement system.

(d) Any employee, as defined in §5-10-2 of this code, who has concurrent employment in an additional job or jobs which would require the employee to be a member of the West Virginia Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and Firefighters Retirement System, the Natural Resources Police Officer Retirement System or the West Virginia Emergency Medical Services Retirement System shall abide by the concurrent employment statutory provisions of said retirement system and shall participate in only one retirement system administered by the board.

(e) If question arises regarding the membership status of any employee, the Board of Trustees has the final power to decide the question.

(f) Any individual who is a leased employee is not eligible to participate in the system. For the purposes of this article, the term "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final authority to decide the question.

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§5-10-18. Termination of membership; reentry.

(a) When a member of the retirement system retires, withdraws his or her accumulated contributions, or dies, he or she ceases to be a member. When a member leaves the employ of a participating public employer for any reason other than retirement or death, and withdraws his or her accumulated contributions from the system, he or she ceases to be a member and forfeits service credited to him or her at that time. If he or she becomes reemployed by a participating public employer he or she shall be reinstated as a member of the retirement system and his or her credited service last forfeited by him or her shall be restored to his or her credit: Provided, That he or she must be reemployed for a period of one year or longer to have the service restored: Provided, however, That he or she returns to the members' deposit fund the amount, if any, he or she withdrew from the fund, together with reinstatement interest as set forth in the Board's Rule, Refund, Reinstatement, Retroactive Service, Loan And Employer Error Interest Factors, 162 C. S. R. 7, on the withdrawn amount from the date of withdrawal to the date of repayment, and that the repayment begins within two years of the return to employment and that the full amount is repaid within five years of the return to employment. Any failure to repay the full amount in accordance with this section shall be treated as an overpayment or excess contribution subject to section forty-four of this article.

(b) The Prestera Center for Mental Health Services, Valley Comprehensive Mental Health Center, Westbrook Health Services and Eastern Panhandle Mental Health Center, and their successors in interest, shall provide for their employees a pension plan in lieu of the Public Employees Retirement System during the existence of the named mental health centers and their successors in interest.

(c) The administrative bodies of the Prestera Center for Mental Health Services, Valley Comprehensive Mental Health Center, Westbrook Health Services and Eastern Panhandle Mental Health Center shall, on or before May 1, 1997, give written notice to each employee who is a member of the Public Employees Retirement System of the option to withdraw from or remain in the system. The notice shall include a copy of this section and a statement explaining the member's options regarding membership. The notice shall include a statement in plain language giving a full explanation and actuarial projection figures in support of the explanation regarding the individual member's current account balance, vested and nonvested, and his or her projected return upon remaining in the Public Employees Retirement System until retirement, disability or death, in comparison with the projected return upon withdrawing from the Public Employees Retirement System and joining a private pension plan provided by the Community Mental Health Center and remaining in the private pension plan until retirement, disability or death. The administrative bodies shall keep in their respective records a permanent record of each employee's signature confirming receipt of the notice.

(d) Effective March 1, 2003, and ending December 31, 2004, any member may purchase credited service previously forfeited by him or her and the credited service shall be restored to his or her credit: Provided, That he or she returns to the members' deposit fund the

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amount, if any, he or she withdrew from the fund, together with interest on the withdrawn amount from the date of withdrawal to the date of repayment at a rate to be determined by the board. The repayment under this section may be made by lump sum or repaid over a period of time not to exceed sixty months. Where the member elects to repay the required amount other than by lump sum, the member is required to pay interest at the rate determined by the board until all sums are fully repaid.

(e) Effective July 1,2005, and ending December 31, 2006, any emergency services personnel may purchase service credit for the time period beginning January 1, 1990, and ending December 31, 1995: Provided, That the person was employed as an emergency service person in this state for that time period: Provided, however, That any person obtaining service credit under this subsection is required to pay the employee's share and the employer's share upon his or her actual salary for the years in question plus interest at the assumed actuarial rate of return for the plan year being repurchased.

(f) Jobs for West Virginia's graduates and their successors in interest shall provide a pension plan in lieu of the Public Employees Retirement System for employees hired on or after July 1, 2005.

(g) Wetzel County Hospital and their successors in interest shall provide a pension plan in lieu of the Public Employees Retirement System for employees hired on or after July 1, 2005.

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§5-10-19. Employers to file information as to employees' service and reemployment of retirants.

(a) Each participating public employer shall file with the board of trustees, in such form as the board shall from time to time prescribe, a detailed statement of all service rendered to participating public employers by each of its employees and by any retirant who retired under section twenty-two-c of this article and who is working for the employer on a contract basis, as defined in section twenty-two-c of this article, and such other information as the board shall require in the operation of the retirement system: *Provided*, That for any retirants becoming reemployed by a participating public employer pursuant to the provisions of §5-10-48 of this code, the retirement board may also require of retirants and participating public employers such reports, forms and verifications as it deems necessary to ensure that a bona fide separation from service upon retirement has occurred.

(b) Prior to any retirant subsequently becoming employed on a permanent full-time, permanent part-time, per diem, leased employee, temporary full-time or temporary part-time basis by a participating public employer, the employer 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 employer shall notify the board, in writing, of the retirant's subsequent employment.

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§5-10-20. Voluntary retirement.

(a) Except as provided in subsection (b) of this section, any member who has attained or attains age sixty years and has five or more years of credited service in force, at least one year of which he or she was a contributing member of the retirement system, may retire upon his or her written application filed with the board of trustees setting forth at what time, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof the member desires to be retired: Provided, That on and after June 1, 1986, any person who becomes a new member of this retirement system shall, in qualifying for retirement hereunder, have five or more years of service, all of which years shall be actual, contributory ones. Upon retirement, the member shall receive an annuity provided for in section twenty-two of this article.

(b) Any person who first becomes a member of the retirement system on or after July 1, 2015, may retire upon written application as provided in subsection (a) of this section upon attaining the age of sixty-two with ten or more years of service, all of which must be actual, contributing years.

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§5-10-21. Deferred retirement and early retirement.

(a) Except as provided in section twenty-one-a of this article, any member who first becomes a member of the retirement system before July 1, 2015, and who has five or more years of credited service in force, of which at least three years are contributing service, and who leaves the employ of a participating public employer prior to his or her attaining age sixty years for any reason except his or her disability retirement or death, is entitled to an annuity computed according to section twenty-two of this article, as that section was in force as of the date of his or her separation from the employ of a participating public employer: Provided, That he or she does not withdraw his or her accumulated contributions from the members' deposit fund: Provided, however, That on and after July 1, 2002, any person who becomes a new member of this retirement system shall, in qualifying for retirement under this section, have five or more years of service, all of which years shall be actual, contributory ones. His or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty-two years.

(b) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section and has ten or more years of credited service in force and who has attained age fifty-five as of the date of his or her separation, may, prior to the effective date of his or her retirement, but not thereafter, elect to receive the actuarial equivalent of his or her deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his or her date of separation and his or her attainment of age sixty-two years and payable throughout his or her life.

(c) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section and has twenty or more years of credited service in force may elect to receive the actuarial equivalent of his or her deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his or her fifty-fifth birthday and his or her attainment of age sixty-two years and payable throughout his or her life.

(d) Notwithstanding any of the other provisions of this section or of this article, except sections twenty-seven-a and twenty-seven-b of this article, and pursuant to rules promulgated by the board, and except for a person who first becomes a member of the retirement system on or after July 1, 2015, any member who has thirty or more years of credited service in force, at least three of which are contributing service, and who elects to take early retirement, which for the purposes of this subsection means retirement prior to age sixty, whether an active employee or a separated employee at the time of application, is entitled to the full computation of annuity according to section twenty-two of this article, as that section was in force as of the date of retirement application, but with the reduced actuarial equivalent of the annuity the member would have received if his or her benefit had commenced at age sixty when he or she would have been entitled to full computation of benefit without any reduction.

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(e) Notwithstanding any of the other provisions of this section or of this article, except sections twenty-seven-a and twenty-seven-b of this article, and except for a person who first becomes a member of the retirement system on or after July 1, 2015, any member of the retirement system may retire with full pension rights, without reduction of benefits, if he or she is at least fifty-five years of age and the sum of his or her age plus years of contributing service and limited credited service, as defined in section two of this article, equals or exceeds eighty: Provided, That on and after July 1, 2011, any person who becomes a new member of this retirement system shall, in qualifying for retirement under this subsection, have five or more years of service, all of which years shall be actual, contributory ones. The member's annuity shall begin the first day of the calendar month immediately following the calendar month in which his or her application for the annuity is filed with the board.

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§5-10-21a. Deferred retirement and early retirement for new members as of July 1, 2015.

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

(b) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section and has twenty or more years of contributing service in force is entitled to an annuity computed as in subsection (a) of this section: Provided, That his or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty-three.

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

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

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trustees on or after his or her attaining age fifty-seven.

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

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§5-10-22. Retirement annuity.

(a) Upon a member's retirement, as provided in this article, he or she shall receive a straight life annuity equal to one and five-tenths percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her credited service in force at the time of his or her retirement, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section twenty-seven-a of this article: Provided, That the final average salary used in this calculation does not include any lump sum payment for unused, accrued leave of any kind or character. The credited service used for this calculation may not include any period of limited credited service: Provided, however, That after March 1, 1970, all members retired and all members retiring shall receive a straight life annuity equal to two percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her credited service, exclusive of limited credited service in force at the time of his or her retirement, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section twenty-seven-a of this article. In either event, upon his or her retirement he or she has the right to elect an option provided in section twenty-four of this article. All annuity payments shall commence effective the first day of the month following the month in which a member retires or a member dies leaving a beneficiary entitled to benefits and shall continue to the end of the month in which the retirant or beneficiary dies, and the annuity payments may not be prorated for any portion of a month in which a member retires or retirant or beneficiary dies. Any member receiving an annuity based in part upon limited credited service is not eligible for the supplements provided in sections twenty-two-a through twenty-two-d, inclusive, of this article.

(b) The annuity of any member of the Legislature who participates in the retirement system as a member of the Legislature and who retires under this article or of any former member of the Legislature who has retired under this article (including any former member of the Legislature who has retired under this article and whose annuity was readjusted as of March 1, 1970, under the former provisions of this section) shall be increased from time to time during the period of his or her retirement when and if the legislative compensation paid under section two, article two-a, chapter four of this code, to a member of the Legislature shall be increased to the point where a higher annuity would be payable to the retirant if he or she were retiring as of the effective date of the latest increase in legislative compensation, but on the basis of his or her years of credited service to the date of his or her actual retirement.

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§5-10-22a. Supplemental benefits for certain annuitants.

As an additional supplement to other retirement allowances provided, each annuitant who on July 1, 1974, is receiving a retirement annuity less than $4,200 annually, and whose retirement allowance became effective during the respective dates indicated in this section shall receive, upon application, an increased amount, payable monthly, which is the product of his present retirement allowance multiplied by the percentage increase applicable, according to the effective date of retirement and according to the plan of retirement, as provided by the schedule below.

Effective Date of Percentage of

Retirement Allowance Increase

July 1, 1961 through June 30, 1962 .....24.00

July 1, 1962 through June 30, 1963 .....22.00

July 1, 1963 through June 30, 1964 .....20.00

July 1, 1964 through June 30, 1965 .....18.00

July 1, 1965 through June 30, 1966 .....16.00

July 1, 1966 through June 30, 1967 .....14.00

July 1, 1967 through June 30, 1968 .....12.00

July 1, 1968 through June 30, 1969 .....10.00

July 1, 1969 through June 30, 1970 .....8.00

July 1, 1970 through June 30, 1971 .....6.00

July 1, 1971 through June 30, 1972 .....4.00

July 1, 1972 through June 30, 1973 .....2.00

Any additional benefit conferred herein shall not be retroactive to the time of retirement but shall become effective July 1, 1974.

In no event, however, when the amount of an annuity is affected by this section, shall the total of the additional benefit herein provided and other retirement allowances provided elsewhere in this article exceed the sum of $4,200 annually.

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§5-10-22b. Supplemental benefits for certain annuitants.

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

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

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

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

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

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§5-10-22c. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

The Legislature hereby finds and declares that a compelling state interest exists in providing a temporary early retirement incentives program for encouraging the early, voluntary retirement of those public employees who were current, active contributing members of this retirement system on April 1, 1988, in the reduction of the number of such employees and in reduction of governmental costs therefor; that such program constitutes a public purpose; and that the special classifications and differentiations provided in respect of such program are reasonable and equitable ones for the accomplishment of such purpose and program as enacted in Enrolled Committee Substitute for H.B. No. 4672, regular session, 1988, and as clarified and supplemented herein, retroactive to such beginning date, aforesaid. The Legislature further finds that maintaining an actuarially sound retirement fund is a necessity and that the reemployment of persons who retire under this section in any manner, including reemployment on a contract basis, is contrary to the intent of the early retirement program and severely threatens the fiscal integrity of the retirement fund.

(a) For the purposes of this section: (1) "Contract" means any personal service agreement, not involving the sale of commodities, that cannot be performed within sixty days or that exceeds $2,500 in any twelve-month period. The term "contract" does not include any agreement obtained by a retirant through a bidding process and which is for the furnishing of any commodity to a government agency and that term does not include any person who retired under this section who works as a contract employee for the Legislature when such employment commences after December 31, 1999: Provided, That such employment may not exceed one hundred ten days; (2) "governmental entity" means the State of West Virginia; a Constitutional branch or office of the state government, or any subdivision thereof; a county, city or town in the state; a county board of education; a separate corporation or instrumentality established pursuant to a state statute; any other entity currently permitted to participate in any state public retirement system or the Public Employees Insurance Agency; or any officer or official of any entity listed above who is acting in his or her official capacity; (3) "part-time elected or appointed office" means any elected or appointed office that pays annual compensation of less than $2,500 or requires less than sixty days of service in any twelve-month period; (4) "substitute teacher" means a teacher, public school librarian, registered professional nurse employed by the county board of education or any other person employed for counseling or instructional purposes in a public school in this state who is temporarily fulfilling the duties of an existing real person employed in a specific position who is temporarily absent from that specified position.

(b) Beginning on April 1, 1988, and continuing through December 31, 1988 (or as extended by eligibility qualification requirement, as hereinafter specified), eligible members, being those active, contributing members actually and currently employed on such beginning date,

retiring pursuant to this section, and from any state, county or municipal position, covered under the two divisions of this retirement system (the state division and the public employer, nonstate division) including those so employed on said beginning date and leaving the system during the incentive period and who are eligible for taking deferred retirement (but not disability retirees) may elect to participate in this incentive program and may elect any one of the three following incentive options:

(1) Retirement incentive option one:

For the purpose of computing the member's annuity, the normal final average salary shall be computed and one-eighth thereof shall be added thereto in arriving at the true final average salary for use in actual computation of retirement benefit.

(2) Retirement incentive option two:

A member may elect a lump sum payment, in addition to his or her regular retirement annuity, equal to ten percent of his or her final average salary not to exceed $5,000, and in the case of a deferred retirement electing this option, such lump sum payment shall be receivable and deferred to the time of receipt of such deferred retirement annuity.

(3) Retirement incentive option three:

A person shall be credited with an additional two years of contributing service and an additional two years of age. The years credited under this option shall in no way add to a member's final average salary factor of computation.

Active, contributing members who desire to retire under this section but who are unable to retire by December 31, 1988, and make use of the incentive retirement program because an element of eligibility for retirement, such as age or other element, will not be met until a date after December 31, 1988, and before July 1, 1989, shall be permitted to postpone actual retirement until the date of fulfilling such element of eligibility and shall retire on such date, before the temporary retirement incentive program ends on June 30, 1989, with proper credit to be granted for such extended period: Provided, That they shall have made application for retirement, including choice of their respective option, and given notice to their respective employer by December 31, 1988, although postponing actual retirement, as aforesaid.

(c) Any member participating in this retirement incentive program is not eligible to accept further employment or accept, directly or indirectly, work on a contract basis from any governmental entity: Provided, That nothing in this section shall affect any contract entered into prior to the effective date of this section: Provided, however, That the executive director may approve, upon written request and for good cause shown, an exception allowing a retirant to perform work on a contract basis. The executive director shall report all approved exceptions to the board of trustees: Provided further, That a person may retire under this section and thereafter serve in an elective office: And provided further, That he or she shall

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not receive an incentive option under this section during the term of service in said office, but shall receive his or her annuity calculated on regular basis, as if originally taken not under this section but on such regular basis. At the end of such term and cessation of service in such office during which the member shall rejoin and reenter the retirement system and pay contributions therefor, such regular annuity shall be recalculated and an increased annuity due to such additional employment shall be granted and computed on regular basis and in similar manner as under section forty-eight of this article. In respect of an appointive office, as distinguished from an elective office, any person retiring under this section and thereafter serving in such appointive office shall not receive an incentive option under this section during the term of service in said office, but the same shall be suspended during such period: And provided further, That at the end of such term and cessation of service in such appointive office the incentive option provided for under this section shall be resumed: And provided further, That any person elected or appointed to office by the state or any of its political subdivisions who waives whatever salary, wage or per diem compensation he or she may be entitled to by virtue of service in such office and who does not receive any income therefrom except such reimbursement of out-of-pocket costs and expenses as may be permitted by the statutes governing such office shall continue to receive an incentive option under this section. Such service shall not be counted as contributed or credited service for purposes of computing retirement benefits.

If such elected or appointed office is a part-time elected or appointed office, a person electing retirement under this section may serve in such elected or appointed office without a loss of the benefits provided under this section.

Prior to the initiation or renewal of any contract entered into pursuant to the provisions of this section or the acceptance of any elective or appointive office by a person who has elected to retire under the early retirement provisions of this article, such person shall complete a disclosure and waiver statement executed under oath and acknowledged by a notary public. The board shall promulgate rules, pursuant to chapter twenty-nine-a, of this code regarding the form and contents of the disclosure and waiver statement. The disclosure and waiver statement shall be forwarded to the appropriate state public retirement system administrator who shall take action to ensure that the early retirement incentive benefits are reduced in accordance with the provisions of this section. The administrator shall then certify such action in writing to the appropriate governmental entity.

In any event, an eligible member may retire under this section and thereafter continue to receive his or her incentive annuity and be employed as a substitute teacher or as adjunct faculty.

Any such incentive retirants, under this section, may not thereafter receive such annuity and enter or reenter any governmental retirement system established or authorized to be established by the state, notwithstanding any provision of the code to the contrary, unless required by Constitutional provision or as hereby specifically permitted to those retiring and thereafter serving in elective office, as aforesaid.

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The additional annuity allowed for temporary early retirement under these options, in respect of state division retirants of this system, is intended to be paid from the retirement incentive account hereby created as a special account in the State Treasury and from the funds therein established with moneys required to be transferred by heads of spending units from the unused portion of salary and fringe benefits in their budgets accruing in respect of such positions vacated and subsequently canceled under this temporary early retirement program. Salary and fringe benefit moneys actually saved in a particular fiscal year shall constitute the fund source for payment of such additional annuity, the funds of the retirement system to be used for payment of the base annuity under the early retirement incentive program: Provided, That such additional annuity shall be paid from the unused portion of both salary and fringe benefits and with any remainder of any fringe benefit moneys, as such, to remain with the spending unit and any remainder of salary, as such, to be directed as additional funding to the Teachers Retirement System and as a part of the assets thereof. No such additional annuity shall be disallowed even though initial receipts may not be sufficient, with funds of the system to be applied for such purpose, as for the base annuity. With respect to public employer division retirants (nonstate division retirants of the system), such incentive annuity shall be paid from the nonstate division funds of the system.

(d) The executive secretary of the retirement system shall provide forms for applicants. Such forms shall include a detailed description of the incentive plan options.

The executive secretary of the retirement system shall file a report to the Legislature no later than February 15, 1989, and quarterly thereafter, detailing the number of retirees who have elected to accept early retirement incentive options, the dollar cost to date by option selected, and the projected annual cost through the year 2000.

(e) Within every spending unit, department, board, corporation, commission, or any other agency or entity wherein two or multiples of two members elect to retire either under the temporary early retirement incentives set forth above, or under regular, voluntary retirement, and countable on an agency-wide or entity-wide basis, no more than one of such vacated positions may be filled, with the second position being abolished upon the effective day of the member's retirement. The vacant position abolishment requirement shall not apply to elective positions or appointed public officers whose positions are established by state Constitutional or statutory provision. The retirant's employing entity shall decide as to which of the vacated positions made available through special early retirement or through regular, voluntary retirement are to be abolished and the head of such spending unit shall immediately notify the State Auditor, the Legislative Auditor, and the commissioner of the department of finance and administration of the decisions and shall then apply and/or transfer the remaining salary and fringe benefits as aforesaid: Provided, That this vacant position abolishment provision shall not apply to any county or municipal position except those under the authority of a county board of education, nor to any position or positions, whether designated by spending unit, department, agency, commission, entity or otherwise, which the Governor in respect of the executive branch, or the chief justice of the Supreme Court of Appeals in respect of the judicial branch, or the President of the Senate or Speaker

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of the House of Delegates, in respect of the legislative branch, may exempt or amend, under such abolishment provision, upon his or her respective recommendation that such exemption or amendment is necessary to provide for continuity of governmental operation or to preserve the health, welfare or safety of the people of West Virginia, and with the prior concurrence of the Joint Committee on Government and Finance in such recommendation, after the chairmen thereof shall cause such committee to meet.

(f) Special rule of eighty. –- Any active, contributing member of the retirement system as of April 1, 1988, who selects one of the incentive options in this section, may retire under the special early retirement provisions with full pension rights, without reduction of benefits if the sum of such member's age plus years of contributing service equals or exceeds eighty: Provided, That such person has at least twenty years of contributing service; up to two years of which may be military service, or prior service, or any combination thereof not exceeding an aggregate of two years.

(g) Termination of temporary retirement incentives program. -- The right to elect, choose, select or use any of the options, special rule of eighty, or other benefits set forth in this section shall terminate on June 30, 1989.

(h) The board shall promulgate rules and regulations in accordance with the provisions of article three, chapter twenty-nine of this code regarding the calculation of the amount of incentive option that may be forfeited pursuant to the provisions of subsection (b) of this section.

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§5-10-22d. Supplemental benefits for certain annuitants.

Beginning on January 1, 1991, as an additional supplement to other retirement allowances provided, any annuitant who is receiving a retirement annuity on the effective date of this section shall receive a supplemental benefit, prospectively, if the effective date of retirement for such annuitant was prior to January 1, 1981. Each such annuitant shall receive as his or her supplemental benefit an increased annual amount which is the product of the sum of $6 multiplied by his or her years of credited service. Nothing in this or any other section of this code shall be construed to require any appropriation of state General Revenue Funds for the payment of any benefit provided for in this section.

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§5-10-22e. Supplemental benefits for retirees effective July 1, 1994; calculation of benefits and conditions of payment.

(a) A supplement to retirement benefits provided shall be paid prospectively to all eligible annuitants who have been retired prior to December 31, 1992, which supplement shall become effective on July 1, 1994. The calculation of such supplement for each annuitant shall be based upon the number of full increments as set forth in subsections (b) through (k) of this section that the annuitant has maintained his or her retired status since the original date of the commencement of his or her retirement, and shall equal the sum of the applicable percentages credited for such increments as set forth in the applicable subsections of this section. Any such supplement shall be paid in pro rata monthly installments.

(b) The total amount of the supplement due to qualified annuitants who retired during the period commencing on April 1, 1988, and ending on December 31, 1992, shall be three percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974: Provided, That annuitants who retired during the period set forth in this subsection shall be required to elect between receiving the supplemental benefit provided in this section or any incentives provided in section twenty-two-c of this article or any other supplements provided in this article: Provided, however, That the Consolidated Public Retirement Board shall provide written notification to members eligible for the benefit provided in this subsection of the availability and terms of the benefit provided in this subsection and members electing to select this benefit in lieu of any other incentive the member has or is receiving shall submit an application for the benefit on the form prescribed by the board.

(c) The total amount of the supplement due to qualified annuitants who retired during the period commencing on July 1, 1985, and ending on March 31, 1988, shall be five percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974, plus the amount of the percentage supplement provided in subsection (b) of this section.

(d) The total amount of the supplement due to qualified annuitants who retired during the period commencing on July 1, 1982, and ending on June 30, 1985, shall be five percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974, plus the amount of the percentage supplements provided in subsections (b) and (c) of this section.

(e) The total amount of the supplement due to qualified annuitants who retired during the period commencing on July 1, 1979, and ending on June 30, 1982, shall be sixteen percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974, plus the amount of the percentage supplements provided in subsections (b), (c) and (d) of this section.

(f) The total amount of the supplement due to qualified annuitants who retired during the

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period commencing on July 1, 1976, and ending on June 30, 1979, shall be sixteen percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974, plus the amount of the percentage supplements provided in subsections (b), (c), (d) and (e) of this section.

(g) The total amount of the supplement due to qualified annuitants who retired during the period commencing on July 1, 1973, and ending on June 30, 1976, shall be sixteen percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974, plus the amount of the percentage supplements provided in subsections (b), (c), (d), (e) and (f) of this section.

(h) The total amount of the supplement due to qualified annuitants who retired during the period commencing on July 1, 1970, and ending on June 30, 1973, shall be twenty-four percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974, plus the amount of the percentage supplements provided in subsections (b), (c), (d), (e), (f) and (g) of this section.

(i) The total amount of the supplement due to qualified annuitants who retired during the period commencing on July 1, 1967, and ending on June 30, 1970, shall be twenty-four percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974, plus the amount of the percentage supplements provided in subsections (b), (c), (d), (e), (f), (g) and (h) of this section.

(j) The total amount of the supplement due to qualified annuitants who retired during the period commencing on July 1, 1964, and ending on June 30, 1967, shall be twenty-four percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974, plus the amount of the percentage supplements provided in subsections (b), (c), (d), (e), (f), (g), (h) and (i) of this section.

(k) The total amount of the supplement due to qualified annuitants who retired during the period commencing on July 1, 1961, and ending on June 30, 1964, shall be twenty-four percent of their retirement benefit including any supplemental benefits provided on or before July 1, 1974, plus the amount of the percentage supplements provided in subsections (b), (c), (d), (e), (f), (g), (h), (i) and (j) of this section.

(l) For each annuitant, a preliminary supplement shall be computed on the basis of the original annual benefit including any supplemental benefits provided on or before July 1, 1974, received by the original retiree as provided by subsections (b) through (k) of this section, inclusive. This preliminary supplement shall be calculated only on amounts up to, but not exceeding, the first $5,400 of the original annual retirement benefit paid including any supplement provided on or before July 1, 1974.

(m) Each annuitant shall receive as that annuitant's supplement under this section an amount equal to the preliminary supplement or a supplement as calculated in subsections (n) and (o) of this section as appropriate.

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(n) Each survivor beneficiary shall receive as that survivor beneficiary's supplement under this section an amount equal to that pro rata share of that survivor beneficiary's preliminary supplement, as defined above, as such survivor beneficiary's benefit, without regard to any supplements, constitutes as a pro rata share of the original benefit of the original retiree: Provided, That for any person who becomes a survivor beneficiary, after July 1, 1994, the benefit provided under this section shall be recomputed under the provisions of this subsection.

(o) Each disabled retiree shall receive as that disabled retiree's supplement under this section that pro rata share of that disabled retiree's preliminary supplement, as defined above, as such disabled retiree's current benefit, without regard to any supplements, constitutes as a pro rata share of that disabled retiree's original benefit: Provided, That any disabled retiree scheduled under the terms of the retirement system to have a benefit recomputed at some time subsequent to the effective date of this section will, at the time of that recomputation, also have the supplemental benefit recomputed under the terms of the preceding sentence.

(p) Any supplemental benefit computed under this section shall only be paid in lieu of, and not in addition to, the payment of any prior supplemental benefit amounts or incentives provided by law after July 1, 1994, which are currently being paid: Provided, That any annuitant receiving a supplemental benefit greater than that provided in this section shall continue to receive the current supplemental benefits.

(q) The supplement provided in this section shall be recalculated on a pro rata basis of the preliminary supplement whenever the original annuity amount is adjusted due to the death or disability of an annuitant or any other event.

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§5-10-22f. Minimum benefit for certain retirants; legislative declaration; state interest and public purpose.

The Legislature hereby finds and declares that an important state interest exists in providing a minimum retirement annuity for certain retirants (or their beneficiaries) who are credited with twenty or more years of credited service; that such program constitutes a public purpose; and that the exclusions of credited service while an elected public official or while a temporary legislative employee are reasonable and equitable exclusions for purposes of determining eligibility for such minimum benefits. For purposes of this section:

(1) "Elected public official" means any member of the Legislature or any member of the legislative body of any political subdivision; and

(2) "Temporary legislative employee" means any employee of the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof whose employment is classified as temporary and who is employed to perform services required by the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof, as the case may be, for regular sessions, extraordinary sessions and/or interim meetings of the Legislature.

If the retirement annuity of a retirant (or, if applicable, his or her beneficiary) with at least twenty years of credited service as of the effective date of this section is less than $500 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for any such retired member (or if applicable, his or her beneficiary) shall be increased to $500 per month: Provided, That any year of credited service while an elected public official or a temporary legislative employee shall not be taken into account for purposes of this section.

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

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

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§5-10-22g. One-time supplement for certain annuitants effective July 1, 2001.

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

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

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

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

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

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§5-10-22h. Limitations on benefit increases.

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

(b) If any increase of existing benefits or creation of new benefits for any retirees or beneficiaries currently receiving monthly benefit payments under the system, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, causes any additional unfunded actuarial accrued liability in the system as calculated in the annual actuarial valuation for the plan during any fiscal year, the additional unfunded actuarial accrued liability of that pension system shall be fully amortized over no more than the six consecutive fiscal years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. The Consolidated Public Retirement Board shall include the six year amortization in the determination of the adequacy of the employer contribution percentage for the system.

(c) The state will not increase any existing benefits or create any new benefits for active members due to retirement, death or disability of the system unless the actuarial accrued liability of the plan is at least eighty-five percent funded as of the last day of the prior fiscal year as determined in the actuarial valuation for the plan completed for the Consolidated Public Retirement Board as of the first day of the following fiscal year as of the date the improvement is adopted by the Legislature. Any additional unfunded actuarial accrued liability due to any improvement in active members benefits shall be fully amortized over not more than ten years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. The Consolidated Public Retirement Board shall include the ten year amortization in the determination of the adequacy of the employer contribution percentage for the system.

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§5-10-22i. One-time supplement for certain annuitants effective July 1, 2006.

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

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

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§5-10-22j. One-time bonus payment for certain annuitants effective July 1, 2008.

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

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

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

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§5-10-22k. One-time bonus payment for certain annuitants effective July 1, 2011.

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

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

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

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§5-10-22l. Minimum benefit for certain retirants.

(a) For purposes of this section:

(1) "Elected public official" means any member of the Legislature or any member of the legislative body of any political subdivision; and

(2) "Temporary legislative employee" means any employee of the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof, including the Joint Committee on Government and Finance, whose employment is classified as temporary and who is employed to perform services required by the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof, as the case may be, for regular sessions, extraordinary sessions and/or interim meetings of the Legislature.

(b) If the retirement annuity of a retirant (or, if applicable, his or her beneficiary) with at least 25 years of credited service as of the effective date of this section is less than $750 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for the retirant (or if applicable, his or her beneficiary) shall be increased to $750 per month: Provided, That any year of credited service while an elected public official or a temporary legislative employee may not be taken into account for purposes of this section.

(c) Notwithstanding the provisions of subsection (b) of this section to the contrary, if the retirement annuity of a beneficiary of a retirant who chose option B – modified joint and survivor annuity as provided in §5-10-24 of this code, and who had at least 25 years of credited service as of the effective date of this section is less than $375 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for the beneficiary shall be increased to $375 per month: Provided, That any year of credited service while an elected public official or a temporary legislative employee may not be taken into account for purposes of this section.

(d) The payment of any minimum benefit under this section is in lieu of, and not in addition to, the payments of any retirement benefit or supplemental benefit or incentives otherwise provided by law: Provided, That the minimum benefit provided in this section is subject to any limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended, and §5-10-27a of this code.

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

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§5-10-22m. One-time bonus payment for certain annuitants.

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

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

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

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§5-10-22n. Minimum benefit for certain annuitants.

(a) For purposes of this section:

(1) "Elected public official" means any member of the Legislature or any member of the legislative body of any political subdivision; and

(2) "Temporary legislative employee" means any employee of the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof, including the Joint Committee on Government and Finance, whose employment is classified as temporary and who is employed to perform services required by the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof, as the case may be, for regular sessions, extraordinary sessions and/or interim meetings of the Legislature.

(b) If the retirement annuity of a retirant (or, if applicable, his or her beneficiary) at least 70 years of age as of July 1, 2023, with at least 25 years of total service as of July 1, 2023, is less than $1,000 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for the retirant (or if applicable, his or her beneficiary) beginning on or before December 31, 2023, shall be increased to $1,000 per month: *Provided*, That any year of total service while an elected public official or a temporary legislative employee may not be taken into account for purposes of this section.

(c) Notwithstanding any provision of subsection (b) of this section to the contrary, if the retirement annuity of a beneficiary at least 70 years of age as of July 1, 2023, of a retirant who chose option B – 50 percent joint and survivor annuity as provided in §5-10-24 of this code and who had at least 25 years of total service is less than $500 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for the beneficiary shall be increased to $500 per month beginning on or before December 31, 2023: *Provided*, That any year of total service while an elected public official or a temporary legislative employee may not be taken into account for purposes of this section.

(d) The payment of any minimum benefit under this section is in lieu of, and not in addition to, the payments of any retirement benefit or supplemental benefit or incentives otherwise provided by law: *Provided*, That the minimum benefit provided in this section is subject to any limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended, and §5-10-27a of this code.

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

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§5-10-23. Terminal payment following retirement.

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

(b) In the event that all claims to benefits payable to, or on behalf of, a retired member expire, and the accumulated contributions exceed the accumulated net benefit payments paid to or on behalf of the retired member, the balance in the retired member's account shall be paid to the person or persons as the retired member has nominated by written designation duly executed and filed with the board of trustees. If there is no designated person or persons surviving the retired member following the expiration of claims, the excess of the accumulated contributions over the accumulated net benefit, if any, shall be paid to the retired member's estate.

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§5-10-24. Annuity options.

(a) Prior to the effective date of his or her retirement, but not thereafter except upon the death of a spouse, a member may elect to receive his or her annuity as a straight life annuity payable throughout his or her life, or he or she may elect to receive the actuarial equivalent, at the time, of his or her straight life annuity in a reduced annuity payable throughout his or her life, and nominate a beneficiary, in accordance with option A or B set forth below:

Option A - *Joint and survivor annuity*. — Upon the death of a retirant who elected option A, his or her reduced annuity shall be continued throughout the life of and paid to the beneficiary, having an insurable interest in the retirant's life, whom the retirant nominated by written designation duly executed and filed with the board of trustees prior to the effective date of his or her retirement; or

Option B - *Modified joint and survivor annuity*. — Upon the death of a retirant who elected option B, one half of his or her reduced annuity shall be continued throughout the life of and paid to the beneficiary, having an insurable interest in the retirant's life, whom the retirant nominated by written designation duly executed and filed with the board of trustees prior to the effective date of his or her retirement.

(b) Upon the death of a spouse, a retirant may elect any of the retirement options offered by the provisions of this section in an amount adjusted on a fair basis to be of equal actuarial value as the annuity prospectively in effect relative to the retirant at the time the new option is elected.

(c) Upon divorce, a retirant may elect to change any of the retirement benefit options offered by the provisions of this section 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 may then arise or be maintained on the basis of having permitted the retirant to name a new spouse as annuitant for any of the survivorship retirement benefit options.

(d) Upon remarriage, a retirant may name the new spouse as an annuitant for any of the retirement benefit options offered by the provisions 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 may then arise or be maintained on the basis of having permitted the retirant to name a new spouse as annuitant for any of the survivorship retirement benefit options. The value of the new survivorship annuity shall be the actuarial equivalent of the retirant's benefit prospectively in effect at the time the new annuity is

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elected.

(e) In the event a retirant has named a beneficiary pursuant to subsection (a) of this section, such retirant may change such beneficiary designation from the named beneficiary to an irrevocable special needs trust, as that term is defined in §5-10-2 of this code, if the irrevocable special needs trust is for the benefit of the same beneficiary. No further annuity payments shall be payable or paid from and after the later of the death of the retirant or the death of the beneficiary of the irrevocable special needs trust.

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§5-10-25. Disability retirement.

(a) Upon the application of a member of the retirement system, or his or her present or past employing authority, any member who is in the employ of a participating public employer or was in the employ of a participating public employer on a date which is twelve months or less from the date upon which the member became incapacitated, who has ten or more years of credited service of which three years is contributing service, and who becomes totally and permanently incapacitated for employment, by reason of a personal injury or disease, may be retired by the board if after a medical examination of the member made by or under the direction of a medical committee consisting of two physicians, one of whom shall be named by the board, and one by the member, the medical committee reports, in writing, to the board that the member is physically or mentally totally incapacitated for employment, that the incapacity will probably be permanent, and that the member should be retired. In the event the two above-mentioned examining physicians do not agree in their findings, then the board may, at its discretion, appoint a third physician to examine the member and, based upon the third physician's report in writing, the board may retire the member. A member who was not in the employ of a participating public employer on a date which is twelve months or less from the date upon which the member became incapacitated may receive disability retirement under the provisions of this subsection if, in the opinion of the medical committee, the incapacity occurred during the time that the member was employed by a participating public employer and the incapacity otherwise qualifies the member for retirement under this subsection.

(b) A member with less than ten years of credited service shall have the service requirement provided in subsection (a) above (including the requirement of three years contributing service) waived in the event: (1) The board finds his or her total and permanent disability to be the natural and proximate result of a personal injury or disease arising out of and in the course of his or her actual performance of duty in the employ of a participating public employer; and (2) he or she is receiving or has received workers' compensation benefits on account of the physical or mental disability.

(c) For any member retiring and any member retired, as of March 1, 1970, he or she shall receive a straight life annuity computed according to section twenty-two hereof and he or she shall have the right to elect an option provided in section twenty-four hereof: Provided, That his or her straight life annuity payable to his or her attainment of age sixty-five years may not be less than fifty percent of his or her final average salary; and his or her straight life annuity payable from and after his or her attainment of age sixty-five years may not be less than twenty percent of his or her final average salary: Provided, however, That his or her annuity shall be subject to section twenty-six hereof.

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§5-10-26. Reexamination of disability retirants; reemployment; adjustment of annuity for earnings.

(a) At least once each year during the first five years following the retirement of a member on account of disability, as provided in section twenty-five of this article, and at least once in each three-year period thereafter, the board may require a disability retirant, who has not attained age sixty years, to undergo a medical examination to be made by or under the direction of a physician designated by the board, or to submit a statement signed by the disability retirant's physician certifying continued disability, or both, and a copy of the disability retirants's annual statement of earnings. If the retirant refuses to submit to the medical examination or provide the certification or statement 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. If, upon medical examination of a disability retirant, the physician reports to the board that the retirant is physically able and capable of resuming employment with a participating public employer, the retirant shall be returned to the employ of the participating public employer from whose employment he or she retired and his or her disability annuity shall terminate: Provided, That the board concurs in the physician's report.

(b) A disability retirant who is returned to the employ of a participating public employer shall again become a member of the retirement system and the retirant's credited service in force at the time of his or her retirement shall be restored.

(c) If a review of the disability retirant's annual statement of earnings or other financial information as required by the board determines that the disability retirant's earned income for the preceding year exceeds the substantial gainful activity amount as defined by the United States Social Security Administration, the disability retirant's annuity shall be terminated by the board, upon recommendation of the board's disability review committee, on the first day of the month following the board's action. Any person who wishes to reapply for disability retirement and whose disability retirement annuity has been terminated by the board may do so within ninety days of the effective date of termination by requesting an examination at the applicant's expense by an appropriate medical professional chosen by the board.

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§5-10-27. Preretirement death annuities.

(a) (1) Except as otherwise provided in this section, in the event any member who has ten or more years of credited service or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty- one of this article, may at any time prior to the effective date of his or her retirement, by written declaration duly executed and filed with the board of trustees, in the same manner as if he or she were then retiring from the employ of a participating public employer, elect option A provided in section twenty-four of this article and nominate a beneficiary whom the board finds to have had an insurable interest in the life of the member. Prior to the effective date of his or her retirement, a member may revoke his or her election of option A and nomination of beneficiary and he or she may again prior to his or her retirement elect option A and nominate a beneficiary as provided in this subsection. Upon the death of a member who has an option A election in force, his or her beneficiary, if living, shall immediately receive an annuity computed in the same manner in all respects as if the same member had retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty years, and elected the said option A. If at the time of his or her retirement a member has an option A election in force, his or her election of option A and nomination of beneficiary shall thereafter continue in force. As an alternative to annuity option A, a member or former member may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses.

(2) In the event any member or former member, who first became a member of the Public Employees Retirement System after the effective date of amendments made to this section during the 2006 regular legislative session and who has ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: Dies without leaving a surviving spouse; but leaves surviving him or her a child who is financially dependent on the member by virtue of a permanent mental or physical disability upon evidence satisfactory to the board; and has named the disabled child as sole beneficiary, the disabled child shall immediately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her disabled child as beneficiary. A member or former member with ten or more years of credited service, who does not leave surviving him or her a spouse or a disabled child, may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses.

(b)(1) In the event any member who has ten or more years of credited service, or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: Dies; and leaves a surviving spouse, the surviving spouse shall immediately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death,

notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her surviving spouse as beneficiary. However, the surviving spouse shall have the right to waive the annuity provided in this section: Provided, That he or she executes a valid and notarized waiver on a form provided by the board and that the member or former member attests to the waiver. If the waiver is presented to and accepted by the board, the member or former member, may nominate a beneficiary who has an insurable interest in the member's or former member's life. As an alternative to annuity option A, the member or former member may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses in the event a waiver, as provided in this section, has been presented to and accepted by the board.

(2) Whenever any member or former member who first became a member of the retirement system after the effective date of the amendments to this section made during the 2006 regular legislative session and who has ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article, dies and leaves a surviving spouse, the surviving spouse shall immediately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her surviving spouse as beneficiary. However, the surviving spouse shall have the right to waive the annuity provided in this section: Provided, That he or she executes a valid and notarized waiver on a form provided by the board and that the member or former member attests to the waiver. If the waiver is presented to and accepted by the board, the member or former member may: (1) Elect to have the preretirement death benefit paid in a lump sum amount, rather than annuity option A provided in section twenty-four of this article, as a return of accumulated contributions to any beneficiary or beneficiaries he or she chooses; or (2) may name his or her surviving child, who is financially dependent on the member by virtue of a permanent mental or physical disability, as his or her sole beneficiary to receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained the age of sixty or sixty-two as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her disabled child as beneficiary.

(c) In the event any member who has ten or more years of credited service or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: (1) Dies without leaving surviving him or her a spouse; but (2) leaves surviving him or her an infant child or children; and (3) does not have a beneficiary nominated as provided in subsection (a) of this section, the infant child or children are entitled to an annuity to be calculated as follows: The annuity reserve shall be calculated as though the member had retired as of the date of his or her decease and elected a straight life annuity and the amount of the annuity reserve shall be paid in equal monthly

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installments to the member's infant child or children until the child or children attain age twenty-one or sooner marry or become emancipated; however, in no event shall any child or children receive more than $250 per month each. The annuity payments shall be computed as of the date of the death of the member and the amount of the annuity shall remain constant during the period of payment. The annual amount of the annuities payable by this section shall not exceed sixty percent of the deceased member's final average salary.

(d) In the event any member or former member does not have ten or more years of credited service, no preretirement death annuity may be authorized, owed or awarded under this section, except as provided in subdivision (4), subsection (a), section fifteen of this article as amended during the 2005 regular session of the Legislature.

(e) Any person qualified as a surviving dependent child under this section, who is the surviving dependent child of a law- enforcement officer who loses his or her life in the performance of duty, 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 those institutions so long as the recipient makes application to the board on an approved form and under rules as provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may by appropriate rules 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.

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§5-10-27a. 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 promulgated thereunder to the extent applicable to governmental plans (hereafter sometimes referred to as the "415 limitation(s)" or "415 dollar limitation(s)"), so that the annual benefit payable under this system to a member shall not exceed those limitations. Any annual benefit payable under this system shall be reduced or limited if necessary to an amount which does not exceed those limitations. The extent to which any annuity or other annual benefit payable under this retirement system shall be reduced, as compared 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, will apply with respect to a retirant's annual benefit in any limitation year. A retirant's annual benefit payable in any limitation year from this retirement system shall in no event be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

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

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

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

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

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

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

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

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

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

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

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

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

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

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§5-10-27b. 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 code. This provision applies to plan years beginning after December 31, 1986. Notwithstanding anything in this code 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 retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under §401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section shall not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under § 401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this retirement system which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

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

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

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

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

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

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

(A) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §5-10-2 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 shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

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

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

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §5-10-2 of this code; or

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

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§5-10-27c. Direct rollovers.

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

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; and (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. For distributions after December 31, 2001, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or (for taxable years beginning before January 1, 2007) to a qualified trust which is part of a defined contribution plan described in Section 401(a) or (for taxable years beginning after December 31, 2006) to a qualified trust or to an annuity contract described in Section 403(a) or (b) of the Internal Revenue Code that agrees to separately account for amounts transferred (including interest or earnings thereon), including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not so includable, or (for taxable years beginning after December 31, 2007) to a Roth IRA described in Section 408A 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 1, 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 such term is defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue Code.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code 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 retirement system to an eligible retirement plan.

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

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§5-10-27d. Rollovers and transfers to purchase service credit or

Repay withdrawn contributions.

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

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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 section twenty-seven-a of this article.

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

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

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§5-10-28. Unified accounting; funds.

For financing and accounting purposes, the West Virginia Public Employees Retirement System shall consist of only one division, including, in combination, the participating state employees and participating public employees who are not state employees. Unified accounting of the retirement system transactions shall be maintained for all the assets of the system. The retirement system funds shall be: (1) The members deposit fund; (2) the employers accumulation fund; (3) the retirement reserve fund; (4) the income fund; and (5) the expense fund. All references in this code to the members deposit fund, the employers accumulation fund, the retirement reserve fund, the income fund and the expense fund mean the Public Employees Retirement Fund. Nothing contained in this section or any prior provision of law shall be interpreted to mean that any assets of the system, regardless of their origin or date of receipt, are to be in any manner segregated or insulated for the purposes of either paying benefits due or determining or establishing accounting or actuarial methodologies or functions utilized by the retirement system. The amendments to this section adopted during the third extraordinary session of the 1990 legislative session shall not be construed to limit the powers of the board relating to contributions to or benefits of the Public Employees Retirement System and any and all powers residing in the board previously administering the Public Employees Retirement System shall be preserved.

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§5-10-29. Members' deposit fund; members' contributions; forfeitures.

(a) The members' deposit fund is hereby created. It shall be the fund in which shall be accumulated, at regular interest, the contributions deducted from the compensation of members, and from which refunds of accumulated contributions shall be paid and transfers made as provided in this section.

(b) The contributions of a member to the retirement system (including any member of the Legislature, except as otherwise provided in subsection (g) of this section) shall be a sum of not less than three and five-tenths percent of his or her annual compensation but not more than four and five-tenths percent of his or her annual compensation, as determined by the board of trustees: Provided, That for persons who first become members of the retirement system on or after July 1, 2015, the contributions to the system shall be six percent of his or her annual compensation beginning July 1, 2015. The said contributions shall be made notwithstanding that the minimum salary or wages provided by law for any member shall be thereby changed. Each member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of a member's compensation less said deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered by him or her to a participating public employer, except as to benefits provided by this article.

(c) The officer or officers responsible for making up the payrolls for payroll units of the state government and for each of the other participating public employers shall cause the contributions, provided in subsection (b) of this section, to be deducted from the compensations of each member in the employ of the participating public employer, on each and every payroll, for each and every payroll period, from the date the member enters the retirement system to the date his or her membership terminates. When deducted, each of said amounts shall be paid by the participating public employer to the retirement system; said payments to be made in such manner and form, and in such frequency, and shall be accompanied by such supporting data, as the board of trustees shall from time to time prescribe. When paid to the retirement system, each of said amounts shall be credited to the members' deposit fund account of the member from whose compensations said contributions were deducted.

(d) In addition to the contributions deducted from the compensations of a member, as heretofore provided, a member shall deposit in the members' deposit fund, by a single contribution or by an increased rate of contribution as approved by the board of trustees, the amounts he or she may have withdrawn therefrom and not repaid thereto, together with regular interest from the date of withdrawal to the date of repayment. In no case shall a member be given credit for service rendered prior to the date he or she withdrew his or her contributions or accumulated contributions, as the case may be, until he or she returns to the members' deposit fund all amounts due the said fund by him or her.

(e) Upon the retirement of a member, or if a survivor annuity becomes payable on account of his or her death, in either event his or her accumulated contributions standing to his or her

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credit in the members' deposit fund shall be transferred to the retirement reserve fund.

(f) In the event an employee's membership in the retirement system terminates and no annuity becomes or will become payable on his or her account, any accumulated contributions standing to his or her credit in the members' deposit fund, unclaimed by the said employee, or his or her legal representative, within three years from and after the date his or her membership terminated, shall be transferred to the income fund.

(g) Any member of the Legislature who is a member of the retirement system and with respect to whom the term "final average salary" includes a multiple of eight, pursuant to the provisions of subdivision (13), section two of this article, shall contribute to the retirement system on the basis of his or her legislative compensation the sum of $540 each year he or she participates in the retirement system as a member of the Legislature.

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

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§5-10-30. Refund of accumulated contributions.

(a) In the event a member leaves the employ of a participating public employer prior to the date the member becomes entitled to retire with an annuity payable by the retirement system, the member shall be paid, upon the member's written application filed with the board of trustees, the member's accumulated contributions, if the member's separation from the employ of a participating public employer occurs subsequent to a period of two years of contributing service. If the member's said separation from the employ of a participating public employer occurs prior to two years of contributing service, the member shall be paid the member's accumulated contributions less the total regular interest credited to the member's individual account.

(b) In the event a member dies and does not leave a beneficiary entitled to an annuity payable by the retirement system, the member's accumulated contributions at the time of the member's death shall be paid to such person or persons as he or she shall have nominated by written designation duly executed and filed with the board of trustees. If there be no such designated person or persons surviving the said member, the member's said accumulated contributions shall be paid to the member's estate.

(c) In the event a member dies and a refund of the member's contributions is due to be made to an infant child or children by reason of being the person or persons nominated by written designation duly executed and filed with the retirement system, and the amount of said refund is less than $1,000, then, and in said event, the board of trustees may make said refund, upon written application, to the closest relative or natural guardian for the use of said infant child or children. The board of trustees may, at its discretion, require that said relative or natural guardian post bond with the retirement system to insure that said money will be used for the benefit of said infant child or children. In any event, before said refund is made to said relative or natural guardian of the said infant or infants, said relative or natural guardian shall give the retirement system an indemnifying release of said sums so paid over.

(d) In the event a member leaves the employ of a participating public employer and is entitled to retire with an annuity payable by the retirement system, but will be subject to an annuity reduction at any time due to the 105 percent provision contained in §5-10-17(b) of this code, the member may be paid, upon the member's written application filed with the board of trustees, their accumulated contributions.

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§5-10-31. Employers Accumulation Fund; employers contributions.

(a) The Employers Accumulation Fund is hereby continued. It is the fund in which shall be accumulated the contributions made by the participating public employers to the retirement system, and from which transfers shall be made as provided in this section.

(b) Based upon the provisions of section thirteen of this article, the participating public employers' contributions to the retirement system, as determined by the Consolidated Public Retirement Board, shall be a percent of the members' total annual compensation related to benefits under this retirement system. In determining the amount, the board shall give consideration to setting the amount at a sum equal to an amount which, if paid annually by the participating public employers, will be sufficient to provide for the total normal cost of the benefits expected to become payable to all members and to amortize any unfunded liability found by application of the actuarial funding method chosen for that purpose by the Consolidated Public Retirement Board, over a period of years determined actuarially appropriate.

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§5-10-31a. Retroactive contributions to the retirement system for retroactive service credit granted; one year period for application.

Those public employers who are participating in the West Virginia Public Employees Retirement System and elected to participate after July 1, 1961, and those employers who are eligible but who have not elected to participate, may elect to cover their employees retroactive for the period of their prior employment by such employer to July 1, 1961, under the following terms and rules and regulations to be promulgated by the board of trustees of the retirement system:

(a) The participating employer, in order to provide the benefits set forth herein, shall pay an additional contribution to the retirement system as shall be the actuarial equivalent of the amount which would have been contributed, together with earnings thereon, by the employer had the employee who is to receive retroactive credit been covered during the period of the retroactive service credit. This contribution may be made by the employer either in one lump sum or, at the election of the employer, by level term payments over a period not in excess of fifteen years or by both lump sum payments and level term payments, as determined by the employer and the board of trustees under rules and regulations promulgated by the board;

(b) The additional service credit shall be applicable to employees working for the participating employer on the effective date of the change of date of participation;

(c) There shall be no increase in benefits and annuities paid to former members of the system who were retired prior to the effective date of this section;

(d) Employees entitled to such retroactive service credit under the provisions of this section shall make such additional contribution to the retirement system equal to the actuarial equivalent of the amount which would have been contributed, together with earnings thereon, by the employee had the employee been covered during the period of the retroactive service credit;

(e) Each employer and employee shall be required to pay into the retirement system in the manner hereinafter provided the amount necessary for the additional service credit provided by this section, based upon an actuarial study of each employer that elects to participate in the retirement system under this section and as determined by the board of trustees;

(f) The actuarial basis for determining the additional contributions shall be that currently in effect for the valuation of the retirement system on the effective date of the employer's election;

(g) Any new participating employer and any participating employer which is currently a participant and who began participating after July 1, 1961, who desires additional service credit must elect to provide such service credit within one year following the effective date of this section;

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(h) Any participating employer requesting additional service credit as provided by this section shall provide such employee data as may be requested from the board of trustees of the retirement system for the determination of the employer's contributions;

(i) The consulting actuary's fees for computing the additional contribution rates under this section shall be paid directly by the participating employer to the consulting actuary selected by the board of trustees of the retirement system; and

(j) For the purpose of reopening the effectiveness of the provisions of this section for a period of one year following the effective date of the amendment to this section, and for the purpose of granting, retroactively service credit to current employees of employers participating in the Public Employees Retirement System during such period, this section is hereby renewed and reestablished; but any such credited service granted hereunder shall be on the actuarially sound basis for determining required additional contributions, of both employer and employee, required in light of benefits that would be computed in respect of such later point in time and such subsequent final average salary amount.

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§5-10-32. Appropriations for state contributions to retirement system; contributions for members paid from special funds or by other employers.

(a) At least thirty days prior to each regular session of the Legislature, the board of trustees shall certify to the Governor the contributions, determined according to section thirty-one hereof, to be made by the state to the retirement system for the next following fiscal year; the said contributions to be based upon the state's total payroll for the preceding twelve calendar months. The amounts so ascertained shall be included in the appropriation bill to be submitted to the Legislature. In the event the state's contributions for the fiscal year are less than they would have been based upon the state's actual payroll for the fiscal year, the amount of the insufficiency shall be included in the appropriation bill for the next following fiscal year. The said contributions shall be paid to the retirement system quarterly and when paid shall be credited to the employers accumulation fund.

(b) In the case of any member whose compensation is paid out of moneys derived in whole or in part out of any special fund, or from any source other than the state, then contributions on behalf of such member in any year shall be paid out of such special fund or by such other source in proportion to that part of the member's compensation derived therefrom for that year. The governing body of each participating public employer is hereby authorized to make such contributions from funds of the participating public employer as shall be necessary to pay its proportionate share of contributions on account of each state employee whose compensation is paid by such participating public employer.

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§5-10-33. Contributions by other participating public employers; withholding state money to satisfy delinquencies.

(a) The board of trustees shall annually certify to each participating public employer, other than the state, the employer contribution rate, determined in section thirty-one hereof, for the public employer division. Each participating public employer shall pay to the state Treasurer, for credit to the retirement system, the contributions equal to the said contribution rate applied to each and every payroll of the participating public employer. The said payments shall be made in such manner and form, and in such frequency, and shall be accompanied by such supporting data, as the board shall from time to time prescribe. When paid, the said contributions shall be credited to the employers accumulation fund.

(b) If any participating public employer, other than the state, fails to make any payment due the retirement system for a period of sixty days after the payment is due, the participating public employer shall become delinquent, and such delinquency shall be certified to the State Auditor by the board of trustees. If any participating public employer becomes delinquent, as provided herein, the State Auditor is authorized and directed to withhold any money due such participating public employer by the state until such delinquency, together with regular interest thereon, from the date due, is satisfied. Such money so withheld by the State Auditor shall be paid to the retirement system.

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§5-10-34. Transfers to retirement reserve fund.

Upon the retirement of a member, or if an annuity becomes payable on account of the death of a member, the difference between the annuity reserve and the member's accumulated contributions standing to his credit in the members deposit fund at the time of his retirement or death, as the case may be, shall be transferred to the retirement reserve fund.

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§5-10-35. Retirement reserve fund created; transfers from fund on reemployment.

The retirement reserve fund is hereby created. It shall be the fund from which shall be paid all annuities payable as provided in this article. If a disability retirant returns to the employ of a participating public employer, his annuity reserve at that time shall be transferred from the retirement reserve fund to the members deposit fund and the employers accumulation fund in the same proportions as the annuity reserve was originally transferred to the retirement reserve fund. The amount so transferred to the members deposit fund shall be credited to his individual account therein.

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§5-10-36. Income fund.

The income fund is hereby created. It shall be the fund to which shall be credited all interest, dividends and other income from investments of the retirement system, all transfers from the members deposit fund by reason of lack of claimant or forfeiture of interest credits, and all other moneys received by the retirement system, the disposition of which is not specifically provided for in this article. The board of trustees may accept gifts and bequests and same shall be credited to the income fund. There shall be paid or transferred from the income fund all amounts required to credit regular interest to the members deposit fund, employers accumulation fund, and the retirement reserve fund, as provided in this article. Whenever the board determines that the balance in the income fund is more than sufficient to cover the current charges to the fund, the board may, by resolution, provide for contingency reserves, or for the transfer of such excess, or portions thereof, to cover the needs of the other funds of the retirement system.

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§5-10-37.

Repealed.

Acts, 1994 Reg. Sess., Ch. 133.

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§5-10-38. Investment of moneys; bonds of state departments and institutions to be offered first to board of public works.

All moneys of the retirement system not currently required for the payment of annuities or other benefits shall be invested by the board of public works in any securities or investments in which the sinking funds of the state may be legally invested, or in any securities or investments in which the deposits in savings banks and participation deposits in banks and trust companies may be legally invested, as provided by the general laws. The board of public works shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of the moneys of the retirement system have been invested, as well as the proceeds of such investments. It shall be the duty of every state department or institution issuing any bonds to offer same in writing to the board of public works prior to advertising them for sale. The said board, within fifteen days from and after receipt of such offer, may accept or reject such offer in whole or in part. Available cash on deposit shall not exceed ten percent of the total assets of the system.

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§5-10-39. No trustee, etc., shall gain from investments of system.

Except as otherwise provided in this article, no trustee, no member of the board of public works, and no employee of the board of trustees shall have any interest, direct or indirect, in the gains or profits arising from any investment or reinvestment of retirement system moneys. No trustee, no member of the board of public works, and no employee of the board of trustees shall, directly or indirectly, for himself or as an agent or partner of others, in any manner use the same, except to make current and necessary payments as are authorized by the board of trustees. No trustee, no member of the board of public works, and no employee of the board of trustees shall become an endorser or surety or become in any manner an obligor for moneys loaned or borrowed by the retirement system. Nothing contained herein shall be construed to impair the rights of any member of the retirement system to benefits provided by the system.

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§5-10-40. Restricted use of retirement system moneys.

The moneys, investments and all other assets of the retirement system shall be used for the sole purpose of meeting the disbursements for annuities and other payments authorized by this article, and shall be used for no other purpose whatsoever.

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§5-10-41. Allowance of regular interest on balances in funds.

The board of trustees shall, at the end of each calendar year, allow and credit regular interest on the balance at the beginning of that calendar year in each member's individual account in the members deposit fund and on the mean balances in the employers accumulation fund and the retirement reserve fund. The interest so allowed and credited shall be charged to the income fund.

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§5-10-42. Fiscal or plan year of retirement system.

The fiscal or plan year of the retirement system shall coincide with the fiscal year of the state.

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§5-10-43. 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 reserve fund during the said fiscal year is more than ten percent of the sum of the balances in the employers accumulation fund and the retirement reserve 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 ten percent of the sum of the said balances in the employers accumulation fund and the retirement reserve fund. The said pro rata reduction shall be applied to all annuities payable in the said ensuing fiscal year.

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§5-10-44. Correction of errors; underpayments; overpayments.

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

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

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

(d) *Overpayments to the retirement system by an employee.* — When mistaken or excess employee contributions or overpayments have been made to the retirement system, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), et seq. of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the participating public employer employing the individual to pay the individual the amounts as wages, with the board crediting the participating public employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the retirement system, the board shall refund said amount directly to the employer: *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

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returned, offset or credited under any of the means used by the board for returning employee overpayments.

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

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

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

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§5-10-45. Fraud; penalty.

Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the retirement system in any attempt to defraud the system shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished accordingly.

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§5-10-46. Right to benefits not subject to execution, etc.; assignments prohibited; deductions for group insurance; setoffs for fraud; exception for certain domestic relations orders.

The right of a person to any benefit provided for in this article shall not be subject to execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other process whatsoever, nor shall any assignment thereof be enforceable in any court except that the benefits or contributions under this system shall be subject to "qualified domestic relations orders" as that term is defined in Section 414(p) of the Internal Revenue Code as applicable to governmental plans: Provided, That should a member be covered by a group insurance or prepayment plan participated in by a participating public employer, and should he or she be permitted to, and elect to, continue such coverage as a retirant, he or she may authorize the board of trustees to have deducted from his or her annuity the payments required of him or her to continue coverage under such group insurance or prepayment plan: Provided, however, That a participating public employer shall have the right of setoff for any claim arising from embezzlement by, or fraud of, a member, retirant or beneficiary.

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§5-10-47. Benefits exempt from taxes.

The annuities and other benefits provided by this article, and the assets of the retirement system, are hereby exempt from state, county and municipal taxes.

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§5-10-48. Reemployment after retirement; options for holder of elected public office.

(a) The Legislature finds that a compelling state interest exists in maintaining an actuarially sound retirement system and that this interest necessitates that certain limitations be placed upon an individual's ability to retire from the system and to then later return to state employment as an employee with a participating public employer while contemporaneously drawing an annuity from the system. The Legislature hereby further finds and declares that the interests of the public are served when persons having retired from public employment are permitted, within certain limitations, to render post-retirement employment in positions of public service, either in elected or appointed capacities. The Legislature further finds and declares that it has the need for qualified employees and that in many cases an employee of the Legislature will retire and be available to return to work for the Legislature as a per diem employee. The Legislature further finds and declares that in many instances these employees have particularly valuable expertise which the Legislature cannot find elsewhere. The Legislature further finds and declares that reemploying these persons on a limited per diem basis after they have retired is not only in the best interests of this state but has no adverse effect whatsoever upon the actuarial soundness of this particular retirement system.

(b) For the purposes of this section: (1) "Regularly employed on a full-time basis" means employment of an individual by a participating public employer, in a position other than as an elected or appointed public official, which normally requires 12 months per year service and at least 1,040 hours of service per year in that position; (2) "temporary full-time employment" or "temporary part-time employment" means employment of an individual on a temporary or provisional basis by a participating public employer, other than as an elected or appointed public official, in a position which does not otherwise render the individual as regularly employed; (3) "former employee of the Legislature" means any person who has retired from employment with the Legislature and who has at least 10 years' contributing service with the Legislature; and (4) "reemployed by the Legislature" means a former employee of the Legislature who has been reemployed on a per diem basis not to exceed 175 days per calendar year.

(c) Subject to the provisions of subsection (i) of this section, if a retirant becomes regularly employed on a full-time basis by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system. If his or her reemployment is for a period of one year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased annuity due to the additional employment, the annuity to be computed according to §5-10-22 of this code. If his or her reemployment is for a period less than one year, he or she may request in writing that the employee and employer retirement contributions submitted during reemployment be credited to the participating public employer pursuant to §5-10-44 of this code, and his or her previous annuity shall be reinstated effective the first day of the month following termination of reemployment and the board's receipt of written notice thereof. Subject to the provisions of subsection (i) of this

section, a retirant may accept legislative per diem, temporary full-time, or temporary part-time employment from a participating employer without suspending his or her retirement annuity so long as he or she does not receive annual compensation in excess of $25,000.

(d) Senior judges, justices, and magistrates. —

(1) Notwithstanding the provisions of subsection (c) of this section, a retired intermediate court judge, circuit court judge, or family court judge, or justice who is recalled and assigned to temporary service as a senior judge or justice by the West Virginia Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of §51-9-10 of this code while continuing to receive his or her annuity, subject to the provisions of subsection (i) of this section.

(2) Notwithstanding the provisions of subsection (c) of this section, a retired magistrate who is recalled and assigned to temporary service as a senior magistrate by the West Virginia Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of §50-1-6a of this code while continuing to receive his or her annuity, subject to the provisions of subsection (i) of this section.

(e) Subject to the provisions of subsection (i) of this section, if a member retires and is then subsequently elected to a public office, or is subsequently appointed to hold an elected public office, or is a former employee of the Legislature who has been reemployed by the Legislature, he or she has the option, notwithstanding subsection (c) of this section, to either:

(1) Continue to receive payment of his or her annuity while holding public office, or during any reemployment of a former employee of the Legislature on a per diem basis, in addition to the salary he or she may be entitled to as an office holder, or as a per diem reemployed former employee of the Legislature; or

(2) Suspend the payment of his or her annuity and become a contributing member of the retirement system as provided in subsection (c) of this section. Notwithstanding the provisions of this subsection, a member who is participating in the system as an elected public official may not retire from his or her elected position and commence to receive an annuity from the system and then be elected or reappointed to the same position unless and until a continuous 12-month period has passed since his or her retirement from the position: *Provided*, That a former employee of the Legislature may not be reemployed by the Legislature on a per diem basis until at least 60 days after the employee has retired: *Provided, however*, That the limitation on compensation provided by subsection (c) of this section does not apply to the reemployed former employee: *Provided further*, That in no event may reemployment by the Legislature of a per diem employee exceed 175 days per calendar year.

(f) Subject to the provisions of subsection (i) of this section, a member who is participating in the system simultaneously as both a regular, full-time employee of a participating public

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employer, and as an elected or appointed member of the legislative body of the state or any political subdivision, may, upon meeting the age and service requirements of this article, elect to retire from his or her regular full-time state employment and may commence to receive an annuity from the system without terminating his or her position as a member of the legislative body of the state or political subdivision: *Provided*, That the retired member shall not, during the term of his or her retirement and continued service as a member of the legislative body of a political subdivision, be eligible to continue his or her participation as a contributing member of the system and shall not continue to accrue any additional service credit or benefits in the system related to the continued service.

(g) Notwithstanding the provisions of §5-10-27b of this code, any publicly elected member of the legislative body of any political subdivision or of the State Legislature, the Clerk of the House of Delegates, and the Clerk of the Senate may elect to commence receiving in-service retirement distributions from this system upon attaining the age of 70 and one-half years: *Provided*, That the member is eligible to retire under the provisions of §5-10-20 or §5-10-21 of this code: *Provided, however*, That the member elects to stop actively contributing to the system while receiving the in-service distributions.

(h) The Legislature hereby finds and declares that a severe shortage of child protective services workers and adult protective services workers exists throughout the state, and therefore, a compelling state interest exists in expanding the use of retired employees to serve this critical need. Notwithstanding any provision of subsection (c) of this section to the contrary, a person receiving retirement benefits or who is eligible to receive retirement benefits pursuant to the provisions of this chapter, may accept employment as a child protective services worker or an adult protective services worker on a full-time or part-time basis without having payment of his or her retirement annuity suspended and without reentering the retirement system as a contributing member. This subsection is only applicable if the retired employee meets the minimum qualifications of the position, has been retired for at least 60 days, and is hired to fill an existing child protective services or adult protective services vacancy. The retired employee may continue to work under this subsection only as long as that position remains vacant. The vacant position shall be posted until it is filled by a regularly employed person meeting the minimum qualifications to serve as a child protective service worker or an adult protective service worker. The provisions of this subsection shall expire July 1, 2025.

(i) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by a participating public employer after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the retirement system. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or his or her participating public employer fails to comply with §5-10-19 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 §5-10-44 to recover such annuity payments so that an in-service distribution is not deemed to have been made.

(j) The Legislature hereby finds and declares that a severe shortage of attorneys to represent children in child welfare matters exists throughout the state, and therefore, a compelling state interest exists in expanding the use of retired employees to serve as child protection commissioners or circuit court law clerks. Notwithstanding any provision of subsection (c) of this section to the contrary, a licensed attorney receiving retirement benefits or who is eligible to receive retirement benefits pursuant to the provisions of this chapter, may accept employment from the Supreme Court of Appeals as a child protection commissioner or circuit court law clerk on a full-time or part-time basis without having payment of his or her retirement annuity suspended and without reentering the retirement system as a contributing member. This subsection is only applicable if the retired employee meets the minimum qualifications of the position and has been retired for at least 60 days. The retired employee may continue to work under this subsection only as long as that position remains vacant. The vacant position shall be posted until it is filled by a regularly employed person meeting the minimum qualifications to serve as a child protection commissioner or circuit court law clerk.

WV Legislature

§5-10-49. Removal from office.

Any member of the retirement system who has been removed from office or his office shall have been vacated for official misconduct, incompetence, neglect of duty, gross immorality, malfeasance, or misfeasance shall immediately have his membership in the retirement system terminated permanently by the board of trustees and shall never become eligible for an annuity; however, any such member so terminated by virtue of this section shall be entitled to a refund of his contributions with regular interest as provided in section thirty hereof.

WV Legislature

§5-10-50. 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.

WV Legislature

§5-10-51. Withdrawal.

The police department and/or fire department of any municipality of this state, which municipality is a participating employer as defined in section two (5)) hereof, may withdraw its firemen and/or policemen from the West Virginia Public Employees Retirement System provided the following conditions are met:

(1) City council, by appropriate ordinance, permits all of its policemen of its police department and/or all of its firemen of its fire department to withdraw from the system.

(2) Each member of its police department and/or fire department so withdrawing from the retirement system must execute a release of all claims against the West Virginia Public Employees Retirement System.

(3) Before any such withdrawal shall be effective, the consulting actuary to the retirement system shall compute all past, present and future liabilities and the municipality shall pay the retirement system for all such liabilities before any withdrawal shall be effective; after an effective withdrawal, pursuant to the terms hereof, if additional liabilities of a municipality are discovered, the board of trustees shall certify such sums due the retirement system and the municipality shall thereafter forthwith pay said sum due the system.

(4) Compliance with rules and regulations as the board of trustees may from time to time promulgate supplementing the above conditions.

WV Legislature

§5-10-52. Specific provisions relating to certain members of the Legislature and certain service by members of the Legislature.

The provisions of this article specifying that a legislator may be a member of the retirement system and at the same time also a member of another state or political subdivision retirement program and may receive credit in the retirement system from two or more public employments simultaneously and authorizing automatic increases in the annuities of retired legislators based upon increases in compensation paid to members of the Legislature shall not be applicable to any member of the Legislature who first becomes a member of the retirement system as a member of the Legislature during the year one thousand nine hundred seventy-one, or any year thereafter, nor shall such provisions be applicable to the computation of service, credited service or benefits for any period of service as a member of the Legislature for the year one thousand nine hundred seventy-one, or any year thereafter.

WV Legislature

§5-10-52a. Specific provisions relating to certain staff members participating in the Public Employees Retirement System employed by Hopemont Hospital, Jackie Withrow Hospital, John Manchin Sr. Health Care Center, and Lakin State Hospital.

Notwithstanding any provision of this code to the contrary, any staff member participating in the Public Employees Retirement System employed by Hopemont Hospital, Jackie Withrow Hospital, John Manchin Sr. Health Care Center, or Lakin State Hospital on October 31, 2025, who will be 55 years within one calendar year of that date and who, but for not having yet attained the age of 60 if participating in Tier 1 of the Public Employees Retirement System, or the age of 62 if participating in Tier 2 of the Public Employees Retirement System, would be eligible for retirement under the provisions of this article, shall be permitted to begin drawing his or her retirement benefit as though he or she had attained that age: *Provided*, That Tier 1 employees with unused sick leave standing to their credit on October 31, 2025, who begin receiving a retirement benefit annuity pursuant to this section, shall be permitted to use unused sick leave toward additional retirement service: *Provided, further*, That nothing in this section may be construed to otherwise alter any other provision of this article relating to the members described in this section: *Provided, further*, That employees described in this section shall begin commencement of retirement annuity benefits the first day of the month following the effective date of this section or upon attaining the age of 55, whichever occurs last: *Provided, however*, That for purposes of coverage in retirement by the Public Employees Insurance Agency, the individuals described in this section shall be considered to have retired directly from a participating public employer upon receiving their retirement benefit annuity.

WV Legislature

§5-10-53. Joint study of state retirement systems; report to Joint Committee on Government and Finance by specified date of study conclusions.

In light of the determination to repeal the Public Employees Retirement System II (PERS II) before its proposed date of initial operation, a study shall be undertaken through the cooperative efforts of the board of the Public Employees Retirement System, the board of the Teachers Retirement System and the legislative commission on pensions and retirement toward determining the best method by which to address the fiscal problems of the Teachers Retirement System together with any combining of retirement systems of the state that might be indicated, with report to be made to the Joint Committee on Government and Finance of the Legislature by June 30, 1989.

WV Legislature

§5-10-54. Termination of benefits; procedure.

Whenever the board determines that (1) any person has knowingly made any false statement or falsified or permitted to be falsified any record or records of the retirement system in an attempt to defraud the system, or (2) any person who resumes employment with a governmental entity or accepts, directly or indirectly, work on a contract basis from a governmental entity, except as provided for under this article, the board shall terminate any benefit that person has received, is receiving and is entitled to receive under the early retirement provisions of this article. Further, if any person taking early retirement under this article desires to revoke his or her early retirement incentive, he or she shall be allowed to do so if he or she is entitled to regular retirement pursuant to this article: Provided, That such revocation shall be retroactive to the date of last employment and any incentive annuity, under any incentive option, already received by the retiree be repaid to the retirement system. Any person who revokes his or her early retirement incentive shall be thereafter carried upon the records of the retirement system as a regular retiree and shall not be entitled to any enhanced benefit by reason of the early retirement options contained in this article: Provided, however, That any person who chose to retire under the early retirement provisions of this article who would not have been and is not eligible for regular retirement but for the early retirement incentive options must reapply for admission to a retirement system and repay all pension benefits plus regular interest which would have been earned by the fund in the period during which the annuity payments were paid to him or her since the date his or her employment ceased.

Any termination of benefits may be appealed pursuant to the state administrative procedures act in chapter twenty-nine-a of this code. The board shall promulgate rules and regulations regarding the procedure for termination of benefits and the repayment of any benefit in accordance with the provisions of article three, chapter twenty-nine-a of this code.

WV Legislature

§5-10-55. Benefits not to be 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