WEST VIRGINIA CODE CHAPTER 5 ARTICLE 10D

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§5-10D-1. Consolidated Public Retirement Board continued; members; vacancies; investment of plan funds.

(a) The Consolidated Public Retirement Board is continued to administer all public retirement plans in this state. It shall administer the Public Employees Retirement System established in §5-10-1 *et seq.* of this code; the Teachers Retirement System established in §18-7A-1 *et seq.* of this code; the Teachers' Defined Contribution Retirement System created by §18-7B-1 *et seq.* of this code; the West Virginia State Police Death, Disability, and Retirement Fund created by §15-2-1 *et seq.* of this code; the West Virginia State Police Retirement System created by §15-2A-1 *et seq.* of this code; the Deputy Sheriff Death, Disability, and Retirement Fund created by §7-14D-1 *et seq.* of this code; the Judges' Retirement System created under §51-9-1 *et seq.* of this code; the Emergency Medical Services Retirement System established in §16-5V-1 *et seq.* of this code; and the Municipal Police Officers and Firefighters Retirement System established in §8-22A-1 *et seq.* of this code, and the West Virginia Division of Natural Resources Retirement System created by §20-18-1 *et seq.* of this code.

(b) The membership of the Consolidated Public Retirement Board consists of:

(1) The Governor or his or her designee;

(2) The State Treasurer or his or her designee;

(3) The State Auditor or his or her designee;

(4) The Secretary of the Department of Administration or his or her designee;

(5) Four residents of the state, who are not members, retirants, or beneficiaries of any of the public retirement systems, to be appointed by the Governor, with the advice and consent of the Senate; and

(6) A member, annuitant, or retirant of the Public Employees Retirement System who is or was a state employee; a member, annuitant, or retirant of the Public Employees Retirement System who is not or was not a state employee; a member, annuitant, or retirant of the Teachers Retirement System; a member, annuitant, or retirant of the West Virginia State Police Death, Disability, and Retirement Fund; a member, annuitant, or retirant of the West Virginia State Police Retirement System; a member, annuitant, or retirant of the Deputy Sheriff Death, Disability, and Retirement Fund; a member, annuitant, or retirant of the Teachers' Defined Contribution Retirement System; a member, annuitant, or retirant of the Emergency Medical Services Retirement System; one person who is a member, annuitant, or retirant of a municipal policemen's or firemen's pension and relief fund or the West Virginia Municipal Police Officers and Firefighters Retirement System, and beginning as soon as practicable after January 1, 2022, one person who is a member, annuitant or retirant of the West Virginia Division of Natural Resources Police Officer Retirement System, all to be appointed by the Governor, with the advice and consent of the Senate. The Governor shall

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choose the member representing the municipal policemen's or firemen's pension and relief fund or the West Virginia Municipal Police Officers and Firefighters Retirement System from two names submitted by the state's largest organization of professional police officers and two names submitted by the state's largest organization of professional firefighters. Representation of the municipal police officers and firefighters shall alternate after each term on the board between persons having police officer and firefighter affiliation so that each professional group is represented on the board every other term.

All appointees to the board shall have recognized competence or significant experience in pension management or administration, actuarial analysis, institutional management, or accounting. Those members appointed prior to January 1, 2010, shall be considered to have met these qualifications. One trustee shall be an attorney experienced in finance and pension matters and one trustee shall be a certified public accountant. Each member of the board must complete annual fiduciary training and timely complete any conflict of interest forms required to serve as a trustee.

(c) The appointed members of the board shall serve five-year terms. A member appointed pursuant to subdivision (6), subsection (b) of this section ceases to be a member of the board if he or she ceases to be a member of the represented system. If a vacancy occurs in the appointed membership, the Governor, within 60 days, shall fill the vacancy by appointment for the unexpired term. No more than seven appointees may be of the same political party.

(d) The Consolidated Public Retirement Board has all the powers, duties, responsibilities, and liabilities of the Public Employees Retirement System established pursuant to §5-10-1 *et seq.* of this code; the Teachers' Retirement System established pursuant to §18-7A-1 *et seq.* of this code; the Teachers' Defined Contribution Retirement System established pursuant to §18-7B-1 *et seq.* of this code; the West Virginia State Police Death, Disability, and Retirement Fund created pursuant to §15-2-1 *et seq.* of this code; the West Virginia State Police Retirement System created by §15-2A-1 *et seq.* of this code; the Deputy Sheriff Death, Disability, and Retirement Fund created pursuant to §7-14D-1 *et seq.* of this code; the Judges' Retirement System created pursuant to §51-9-1 *et seq.* of this code; the Emergency Medical Services Retirement System established in §16-5V-1 *et seq.* of this code; the Municipal Police Officers and Firefighters Retirement System created pursuant to §8-22A-1 *et seq.* of this code, and the West Virginia Division of Natural Resources Police Officers Retirement System created and established pursuant to article §20-18-1 *et seq.* of this code and their appropriate governing boards.

(e) The Consolidated Public Retirement Board may propose rules for legislative approval, in accordance with §29A-3-1 *et seq.* of this code, necessary to effectuate its powers, duties, and responsibilities: *Provided*, That the board may adopt any or all of the rules, previously promulgated, of a retirement system which it administers.

(f)(1) The Consolidated Public Retirement Board shall continue to transfer all funds received for the benefit of the retirement systems, including, but not limited to, all employer and employee contributions, to the West Virginia Investment Management Board: *Provided*, That

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the employer and employee contributions of the Teachers' Defined Contribution Retirement System, established in §18-7B-3 of this code, and voluntary deferred compensation funds invested by the West Virginia Consolidated Public Retirement Board pursuant to §5-10B-5 of this code may not be transferred to the West Virginia Investment Management Board.

(2) The board may recover from a participating employer that fails to pay any amount due a retirement system in a timely manner the contribution due and an additional amount not to exceed interest or other earnings lost as a result of the untimely payment, or a reasonable minimum fee, whichever is greater, as provided by legislative rule promulgated pursuant to the provisions of §29A-3-1 *et seq.* of this code. Any amounts recovered shall be administered in the same manner in which the amount due is required to be administered.

(g) Notwithstanding any provision of this code or any legislative rule to the contrary, all assets of the public retirement plans set forth in subsection (a) of this section shall be held in trust. The Consolidated Public Retirement Board is a trustee for all public retirement plans, except with regard to the investment of funds: *Provided*, That the Consolidated Public Retirement Board is a trustee with regard to the investments of the Teachers' Defined Contribution Retirement System and any other assets of the public retirement plans administered by the Consolidated Public Retirement Board as set forth in subsection (a) of this section for which no trustee has been expressly designated in this code.

(h) The board may employ the West Virginia Investment Management Board to provide investment management consulting services for the investment of funds in the Teachers' Defined Contribution Retirement System.

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§5-10D-2. Chairman and vice chairman; executive director; employees; legal advisor; actuary.

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

(b) The board shall appoint an executive director of the retirement systems. The executive director shall be the chief administrative officer of all the systems and he or she shall not be a member of the board. He or she shall perform such duties as are required of him or her in this article and as the board from time to time delegates to him or her. The compensation of the executive director shall be fixed by the board subject to the approval of the Governor. The executive director shall, with the approval of the board of trustees, employ any administrative, technical and clerical employees required in the proper operation of the systems.

(c) Notwithstanding the provisions of section two, article three of this chapter, the board shall employ and be represented by an attorney licensed to practice law in the State of West Virginia who is not an active member of any of the retirement systems administered by the board.

(d) An actuary, employed by the state or the board pursuant to section four of this article, shall be the actuarial consultant to the board.

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§5-10D-3. Board meetings; quorum; vote; proceedings; compensation.

(a) The board shall hold a meeting at least once each three months, and shall designate the time and place of the meeting. Seven voting trustees constitute a quorum at any meeting of the board. Each member is entitled to one vote on each question before the board. 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.

(b) The members shall serve as members without compensation for their services as such: Provided, That each member shall be reimbursed, upon approval of the board, for any necessary expenses actually incurred by him or her in carrying out his or her duties. No public employee member may suffer any loss of salary or wages on account of his or her service as trustee.

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§5-10D-4. Employment of an actuary; duties; compensation.

(a) The board is hereby empowered and authorized to employ a state retirement actuary or actuarial firm with such qualifications as the board may prescribe or to utilize an actuary already in the employ of the state. The actuary or actuarial firm shall perform the following duties for the board:

(1) Analyze each item of state retirement legislation as to cost, actuarial soundness and adherence to sound pension policy;

(2) Prepare an actuarial note to be attached to each item of state retirement legislation prior to its formal introduction. Such actuarial note shall briefly summarize the proposed legislation and set forth its anticipated fiscal and actuarial impact on the affected state retirement system or systems; and

(3) Such other duties as the board or the board of trustees of the state public retirement system may assign.

(b) The state retirement actuary or actuarial firm, if one is employed by the board, shall be compensated in an amount to be fixed by the board. He or she shall receive, in addition, the necessary expenses incident to the performance of his or her duties. In the event that the board utilizes an actuary already employed by the state to perform duties for the board, the board shall reimburse the department or agency which actually employs the actuary for expenses, including the pro rata portion of salary that the actuary actually expends in the performance of duties for the board.

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§5-10D-5.

Repealed.

Acts, 2000 Reg. Sess., Ch. 54.

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§5-10D-6. Voluntary deductions by the Consolidated Public Retirement Board from monthly benefits to retirees to pay association dues.

(a) Any recipient of monthly retirement benefits from any public retirement plan in this state may authorize that a deduction from his or her monthly benefits be made for the payment of membership dues or fees to a retiree association. The deductions shall be authorized on a form provided by the Consolidated Public Retirement Board and shall include: (1) The identity and social security number of the retiree; (2) the amount and frequency of the deduction; (3) the identity and address of the association to which the dues or fees shall be paid; and (4) the signature of the retiree.

(b) Any retiree association authorized by recipients of monthly benefits from any public retirement plan in this state to receive dues or fees from deductions from retirants' monthly benefits may notify the board of its monthly dues on a form provided by the board: Provided, That no increase in dues or fees will be deducted from any retirant's monthly benefit until the retirant has completed an authorization form containing the information in subsection (a) and submitted this authorization to the board. The increased monthly retiree association dues or fees will be deducted commencing the month following the receipt of the authorization form to the board.

(c) Upon execution of the authorization and its receipt by the

Consolidated Public Retirement Board, the deduction shall be made in the manner specified on the form and remitted to the designated association on the tenth day of each month: Provided, That the deduction may not be made more frequently than monthly.

(d) Deduction authorizations may be revoked at any time at least thirty days prior to the date on which the deduction is regularly made and on a form to be provided by the Consolidated Public Retirement Board.

(e) Notwithstanding the provisions of section twenty-one, article eight, chapter five-a of this code to the contrary, a retiree association representing only West Virginia public retirees may request the board to mail voluntary membership applications and dues deduction cards to any eligible retirees of any West Virginia public retirement plan administered by the board: Provided, That the retiree association shall pay all costs associated with these mailings, including, but not limited to, copying, mailing, postage, record-keeping and auditing: Provided, however, That the board may contract with a third-party to provide mailing services that agrees to maintain the confidentiality of the names, addresses and other personally identifiable information of the retirants.

(f) The board is not liable to any retirant, beneficiary or other annuitant for any action undertaken pursuant to this section. Any retiree association agrees, by requesting the board to deduct dues or fees or to provide mailings for it, to be responsible for any errors or omissions by the board in conducting these activities pursuant to this section.

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(g) If any retiree association fails to timely pay to the board all costs required by this section, the board is authorized to thereafter refuse to provide the services in subsection (e).

(h) The provisions of this section shall expire July 1, 2022.

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§5-10D-6a. Voluntary election by eligible retired public safety officers to have amounts from eligible retirement plan distributed to pay for qualified health insurance premiums.

(a) Any eligible retired public safety officer who is a participant or member under any eligible retirement plan administered by the board may voluntarily elect to have amounts from an eligible retirement plan distributed to the eligible retired public safety officer in order to pay for his or her qualified health insurance premiums directly to his or her insurance provider. Alternatively, any eligible retired public safety officer who is a participant or member under any eligible retirement plan administered by the board may voluntarily elect to have amounts from an eligible retirement plan deducted and paid by the board directly to the West Virginia Public Employees Insurance Agency in order to pay for qualified health insurance premiums owed by the eligible retired public safety officer. Such election shall be made in writing, in a form and manner authorized by the board, and shall be consistent with the provisions of §402(l)(6) of the Internal Revenue Code as it may be amended from time to time. Said election shall be effective for all tax years of the eligible retired public safety officer after the election is made, unless and until otherwise terminated by the eligible retired public safety officer in writing and in a form and manner authorized by the board: *Provided*, That any election currently on file with the board and in effect shall be deemed effective for all tax years after the election was made until terminated by the eligible retired public safety officer in writing and in a form and manner authorized by the board.

(b) The definitions of the following terms contained in §402(l)(4) of the Internal Revenue Code, as it may be amended from time to time, shall apply for purposes of this section:

(1)"Eligible retirement plan";

(2)"Eligible retired public safety officer";

(3)"Public safety officer"; and

(4)"Qualified health insurance premiums".

(c) The amount which a participant or member may elect to have distributed pursuant to subsection (a) of this section shall not exceed $3,000 per taxable year of the participant or member (or such other limitation amount as is specified in §402(l)(2) of the Internal Revenue Code, as it may be amended or as the limitation may be adjusted from time to time) and any amounts so elected to be distributed shall be paid by the board or the eligible retired public safety officer directly to the provider in payment of the qualified health insurance premiums. "Qualified health insurance premiums" includes premiums for certain accident or health insurance plans and certain long-term care insurance contracts.

(d) For purposes of this section, all eligible retirement plans administered by the board shall be treated as a single plan.

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§5-10D-7. Compensation limitations; effective dates.

(a) Effective for plan years beginning after December 31, 1995, and prior to January 1, 2002, the annual compensation of a participant taken into account in determining benefits or contributions under any of the public retirement plans administered by the board and which are qualified plans under Section 401(a) of the Internal Revenue Code may not exceed $150,000, as indexed in accordance with the provisions of Section 401(a)(17) of the Internal Revenue Code. Effective for plan years beginning on or after January 1, 2002, the annual compensation of each participant taken into account in determining allocations for any plan year beginning on or after the January 1, 2002, shall not exceed $200,000 as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Internal Revenue Code. In determining benefit accruals in plan years beginning after December 31, 2001, the annual compensation limit for determination periods beginning before January 1, 2002, shall be $200,000. Annual compensation means compensation during the plan year or any other consecutive twelve-month period over which compensation is otherwise determined (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within that calendar year. This provision applies notwithstanding any other provision to the contrary in this code and notwithstanding any provisions of any legislative rule.

(b) In applying the limitations of subsection (a) of this section, the Consolidated Public Retirement Board may: (1) Adopt policies or procedures that may be necessary or appropriate in applying the compensation limitations of Section 401(a)(17) to participants, including, without limitation, the adoption and application of any transitional rules to implement the compensation limitations; and (2) to take any actions that may at any time be required by the internal revenue service regarding compliance with the requirements of Section 401(a)(17), including, without limitation, distributions, credits, set-asides or other adjustments.

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§5-10D-8.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

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§5-10D-9. When annuities to be paid.

For all of the public retirement plans administered by the board, the board shall make monthly annuity payments on the twenty-fifth day of each month, except the month of December, when the board shall make the payments on December 18, . If the date of payment falls on a holiday, Saturday or Sunday, then the payment shall be made on the preceding workday. All annuities shall be paid in twelve monthly payments.

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§5-10D-10. Death benefits for participants or members who die while performing qualified military service; treatment of differential wage payments.

(a) Death benefits. In the case of a death occurring on or after January 1, 2007, if a participant or member of any plan administered by the board dies while performing qualified military service (as defined in Section 414(u) of the Internal Revenue Code), the survivors of the participant or member are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan as if the participant or member had resumed and then terminated employment on account of death, to the extent required by Section 401(a)(37) of the Internal Revenue Code: Provided, That the death of the participant or member shall not be considered to be by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of the participant or member, or as having occurred in the performance of his or her duties as a member, or as a result of any service-related illness or injury.

(b) Differential wage payments. For years beginning on or after December 31, 2008, if a participant or member of any plan administered by the board is receiving a differential wage payment (as defined by Section 3401(h)(2) of the Internal Revenue Code), then for purposes of applying the Internal Revenue Code to the plan, all of the following shall apply: (i) The participant or member shall be treated as an employee of the employer making the payment; and (ii) the differential wage payment shall be treated as compensation of the participant or member for purposes of applying the Internal Revenue Code (but not for purposes of determining contributions and benefits under the plan, unless the plan terms explicitly so provide); (iii) the plan shall not be treated as failing to meet the requirements of any provision described in Section 414(u)(1)(C) of the Internal Revenue Code by reason of any contribution or benefit which is based on the differential wage payment.

(c) Nondiscrimination. Subsection (b)(iii) applies only if all employees of the employer performing service in the uniformed services described in Section 3401(h)(2)(A) of the Internal Revenue Code are entitled to receive differential wage payments (as defined in Section 3401(h)(2) of the Internal Revenue Code) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms.

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§5-10D-11. Liability of participating public employer for delinquent retirement contributions; liability of participating public employer's successor for delinquent retirement contributions; lien for delinquent contributions; collection by suit.

(a) A participating public employer of a public retirement system administered pursuant to this article that fails, for a period of sixty days, to pay: (i) An employee retirement contribution; (ii) an employer retirement contribution; (iii) a delinquency fee; (iv) any other fees, charges or costs related to the public retirement system; or (v) any combination of subdivisions (i) through (iv) of this subsection, is liable for the amount pursuant to this article.

(b) If a participating public employer of a public retirement system administered pursuant to this article: (i) Sells all or substantially all of its stock or assets; (ii) merges with another entity; (iii) dissolves its business; or (iv) participates, voluntarily or involuntarily, in an event which causes its business to terminate, all unpaid employee retirement contributions, employer retirement contributions, delinquency fees and other fees, charges, or costs related to the public retirement system shall be paid within thirty days of the date of applicable event identified in subdivision (i) through (iv) of this subsection.

(c) A transferee, successor or assignee of a participating public employer of a public retirement system administered pursuant to this article is liable for the payment of all employee retirement contributions, employer retirement contributions, delinquency fees and other fees, charges or costs related to the public retirement system, if the participating public employer does not pay those amounts as provided in subsection (b) of this section.

(d) All amounts due to the Consolidated Public Retirement Board from a participating public employer under this article is a debt owed to the Consolidated Public Retirement Board enforceable by a lien on all assets of a participating public employer, or its transferee, successor or assignee within this state. The lien attaches to all assets of a participating public employer within this state, or all assets of its transferee, successor or assignee on the date that any amount owed to the Consolidated Public Retirement Board is due. If a participating public employer, or its transferee, successor or assignee fails to pay an amount owed to the Consolidated Public Retirement Board under this article for a period of more than sixty days, the Consolidated Public Retirement Board may enforce the lien against the participating public employer, or its transferee, successor or assignee by instituting an action in the Circuit Court of Kanawha County. In the event that the Consolidated Public Retirement Board institutes an action against a participating public employer, or its transferee, successor or assignee to enforce a lien, the Consolidated Public Retirement Board is entitled to recover the amounts identified in subsection (a) of this section and in addition to those amounts, is entitled to recover all fees and costs incurred by the Consolidated Public Retirement Board during the pendency of the action, including, without limitation, accrued interest, expert witness costs, filing fees, deposition costs and reasonable attorney fees.

(e) If a section, subsection, subdivision, provision, clause or phrase of this article or its

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application to any person or circumstance is held unconstitutional or invalid, the unconstitutionality or invalidity does not affect other sections, subsections, subdivisions, provisions, clauses or phrases or applications of the article, and to this end each and every section, subsection, subdivision, provision, clause and phrase of this article are declared to be severable. The Legislature declares that it would have enacted the remaining sections, subsections, subdivisions, provisions, clauses and phrases of this article even if it had known that any sections, subsections, subdivisions, provisions, clauses and phrases of this article would be declared to be unconstitutional or invalid, and that it would have enacted this article even if it had known that its application to any person or circumstance would be held to be unconstitutional or invalid.

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§5-10D-12. Employer reporting requirements; payments by electronic funds transfer.

(a) Pursuant to its responsibility as a regulatory body, the Consolidated Public Retirement Board shall collect all information regarding individuals employed with a participating public employer of a retirement system administered pursuant to this article necessary to ensure compliance with retirement plan provisions. All participating public employers of a public retirement system administered pursuant to this article shall promptly report all individuals employed with the participating public employer to the board and include information regarding the individual including, but not limited to, the individual's name, Social Security number, gross salary or compensation, rate of pay, hours or days worked or paid, type of pay (salary, hourly or per diem), employment contract period, job title, permanent or temporary employment, full-time or part-time employment, scheduled hours and benefit eligibility.

(b) All participating public employers of a public retirement system administered pursuant to this article shall remit all retirement contributions and fees owed to the Consolidated Public Retirement Board by electronic funds transfer beginning July 1, 2024. Failure to comply will result in a $300 surcharge for each paper check submission. The executive director of the board or his or her designee may waive the surcharge on an emergency basis or for an extenuating circumstance.

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§5-10D-13. Withholding state and county money to satisfy delinquencies.

(a) If any employer participating in a retirement plan administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq*. of this code fails to make any payment due to the retirement system for a period of 60 days after the payment is due, the participating employer is delinquent, and the delinquency shall be certified by the Consolidated Public Retirement Board to the State Auditor, the county commission of the county in which the participating employer is located, and the sheriff of the county in which the participating employer is located. If any participating employer becomes delinquent as provided in this section, the State Auditor, county commission, or sheriff is authorized and directed to withhold any money due the participating employer by the state or county until the delinquency, together with interest thereon, is satisfied. The rate of interest applicable to the delinquency shall be the actuarial interest rate assumption as approved by the Consolidated Public Retirement Board for completing the actuarial valuation for the plan year immediately preceding the first day of the plan year in which the delinquency payment is made, compounded daily, and the minimum interest charge is $50. The money withheld by the State Auditor, county commission, or sheriff shall be paid to the applicable retirement system on behalf of the participating employer.

(b) The Consolidated Public Retirement Board shall provide notice to the participating employer 30 days prior to certifying delinquency under this section.

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§5-10D-14. Employer unilateral termination of participation prohibited.

Once an employer has begun participating, whether by election or by operation of law, in any public retirement system administered pursuant to this article, it may not terminate its participation without affirmative legislative action.

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§5-10D-15. Confidential information exempt from disclosure.

Due to the increased risk of fraud and personal identity theft, all information contained in the records maintained by the Consolidated Public Retirement Board for all retirement systems administered pursuant to this article that would tend to disclose personally identifiable information of a member, retirant, beneficiary, or alternate payee are confidential and exempt from disclosure under the provisions of §29B-1-1 *et seq*. of this code. This information includes, without limitation, Social Security numbers, account numbers, dates of birth, addresses, telephone numbers, e-mail addresses, medical or disability information, direct deposit information, and any other personally identifiable information. Members, retirants, beneficiaries, alternate payees, or persons authorized by them, are permitted access to their own information.

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