
WEST VIRGINIA CODE CHAPTER 8
ARTICLE 22A

WV Legislature

§8-22A-1. Title.

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

WV Legislature

§8-22A-2. Definitions.

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

(a) "Accrued benefit" means on behalf of any member 2.75 percent per year of the member's final average salary for the first 20 years of credited service. Additionally, 2 percent per year for 21 through 25 years and 1.5 percent per year for each year over 25 years will be credited with a maximum benefit of 90 percent of a member's final average salary. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §8-22A-10 of this code.

(b) "Accumulated contributions" means the sum of all retirement contributions deducted from the compensation of a member or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.

(c) "Active military duty" means full-time duty in the active military service of the United States Army, Navy, Air Force, Space Force, Coast Guard, or Marine Corps. The term does not include regularly required training or other duty performed by a member of a reserve component or National Guard unless the member can substantiate that he or she was called into the full-time active military service of the United States and has received no compensation during the period of that duty from any board or employer other than the armed forces.

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

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits, or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost-of-living in accordance with §5-10D-7 of this code and Section 401(a) (17) of the Internal Revenue Code.

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

(g) "Annuity starting date" means the first day of the month for which an annuity is payable

after submission of a retirement application or the required beginning date, if earlier. For purposes of this subsection, if retirement income payments commence after the normal retirement age, "retirement" means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member's normal retirement age and after completing proper written application for retirement on an application supplied by the board.

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

(i) "Board" means the Consolidated Public Retirement Board.

(j) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with any participating public employer in the plan 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, part-time, substitute, per diem, temporary or leased employee basis.

(k) "Covered employment" means: (1) Employment as a full-time municipal police officer or firefighter and the active performance of the duties required of that employment; or (2) employment as a full-time campus police officer as described in §18B-4-5 of this code and the active performance of the duties required of that employment; or (3) the period of time during which active duties are not performed but disability benefits are received under this article; or (4) concurrent employment by a municipal police officer or firefighter or a campus police officer in a job or jobs in addition to his or her employment as a municipal police officer or firefighter or a campus police officer in this plan where the secondary employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided*, That the police officer or firefighter contributes to the fund created in this article the amount specified as the member's contribution in §8-22A-8 of this code.

(l) "Credited service" means the sum of a member's years of service, active military duty, and disability service.

(m) "Dependent child" means: (1) An unmarried person under age 18 who is: (A) A natural child of the member; (B) a legally adopted child of the member; (C) a child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or (D) a stepchild of the member residing in the member's household at the time of the member's death; or (2) Any unmarried child under age 23: (A) Who is enrolled as a full-time student in an accredited college or university; (B) who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and (C) whose relationship with the member is described in paragraph (A), (B) or (C), subdivision (1) of this subsection.

(n) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(o) "Disability service" means service credit received by a member, expressed in whole years, fractions thereof, or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(p) "Effective date" means January 1, 2010.

(q) "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.

(r) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under this article, then "final average salary" means the average of the monthly compensation which the member was receiving in the plan year prior to the initial disability. "Final average salary" does not include any lump sum payment for unused, accrued leave of any kind or character.

(s) "Full-time employment" means permanent employment of an employee by a participating public employer in a position which normally requires 12 months per year service and requires at least 1,040 hours per year service in that position.

(t) "Fund" means the West Virginia Municipal Police Officers and Firefighters Retirement Fund created by this article.

(u) "Hour of service" means: (1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and (2) each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member may not be credited with any hours of service for any period of time he or she is receiving benefits under §8-22A-17 and §8-22A-18 of this code; and (3) each hour for which back pay is either awarded or agreed to be paid by the participating public employer, irrespective of mitigation of damages. The same hours of

service may not be credited both under subdivision (1) or (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

(v) "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.

(w) "Member" means, except as provided in §8-22A-32 §8-22A-33, or §8-22A-33a of this code, a person hired as a municipal police officer or municipal firefighter, as defined in this section, by a participating public employer on or after January 1, 2010, or a campus police officer as described in §18B-4-5 of this code who is hired after January 1, 2026, or who was hired before that date but elects to become a member as described in that section. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(x) "Monthly salary" means the W-2 reportable compensation received by a member during the month.

(y) "Municipality" has the meaning ascribed to it in this code.

(z) (1) "Municipal police officer" means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal policemen's pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal policemen's pension and relief fund as provided in §8-22-16 of this code: *Provided*, That municipal police officer also means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant to §8-22A-33 or §8-22A-33a of this code. Paid police department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

(2) "Municipal firefighter" means an individual employed as a member of a paid fire department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal firemen's pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal firemen's pension and relief fund as provided in §8-22-16 of this code: *Provided*, That municipal firefighter also means an individual employed as a member of a paid fire department by a West Virginia municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant to §8-22A-33 or §8-22A-33a of this code. Paid fire department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

(aa) "Municipal subdivision" means any separate corporation or instrumentality established by one or more municipalities, as permitted by law; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more municipalities.

(bb) "Normal form" means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(cc) "Normal retirement age" means the first to occur of the following: (1) Attainment of age 50 years and the completion of 20 or more years of regular contributory service; (2) while still in covered employment, attainment of at least age 50 years and when the sum of current age plus regular contributory service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years and completion of 10 years of regular contributory service; or (4) attainment of age 62 years and completion of five or more years of regular contributory service.

(dd) "Participating public employer" means a municipality, municipal subdivision participating in the plan or an institution of higher education.

(ee) "Plan" means the West Virginia Municipal Police Officers and Firefighters Retirement System established by this article.

(ff) "Plan year" means the 12-month period commencing on January 1 of any designated year and ending the following December 31.

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

(hh) "Regular contributory service" means a member's credited service excluding active military duty, disability service and accrued annual and sick leave service.

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

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

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

employment.

The applicable age is:

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

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

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

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

(ll) "Retirement income payments" means the monthly retirement income payments payable.

(mm) "Spouse" means the person to whom the member is legally married on the annuity starting date.

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

(oo) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subsection: (1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a police officer or firefighter but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration; and (2) "physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member's annual tax return for purposes of monitoring the earnings limitation.

(pp) "Vested" means eligible for retirement income payments after completion of five or more years of regular contributory service.

(qq) "Year of service" means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based on the hours of service

performed as covered employment and credited to the member during the plan year based on the following schedule:

Hours of Service Year of Service Credited

Less than 500 0

500 to 999 $\frac{1}{3}$

1,000 to 1,499 $\frac{2}{3}$

1,500 or more 1

During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §8-22A-17 and §8-22A-18 of this code.

§8-22A-3. Meaning of terms.

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

WV Legislature

§8-22A-4. Creation and administration of West Virginia Municipal Police Officers and Firefighters Retirement System; specification of actuarial assumptions.

There is hereby created the West Virginia Municipal Police Officers and Firefighters Retirement System. The purpose of this system is to provide for the orderly retirement of certain police officers and firefighters who become superannuated because of age or permanent disability and to provide certain survivor death benefits. Substantially all of the members of the retirement system shall be qualified public safety employees as defined in section two of this article. The retirement system shall come into effect January 1, 2010: Provided, That if the number of members in the system are fewer than one hundred on January 1, 2017, then all of the provisions of this article are void and of no force and effect, and memberships in the system will be merged into the Emergency Medical Services Retirement System created in article five-v, chapter sixteen of this code. If merger is required, the board shall take all necessary steps to see that the voluntary transfers of persons and assets authorized by this article do not affect the qualified status with the Internal Revenue Service of either retirement plan. All business of the system shall be transacted in the name of the West Virginia Municipal Police Officers and Firefighters Retirement System. The board shall specify and adopt all actuarial assumptions for the plan at its first meeting of every calendar year or as soon thereafter as may be practicable, which assumptions shall become part of the plan.

§8-22A-5. Article to be liberally construed; board to administer plan; federal qualification requirements.

(a) The provisions of this article shall be liberally construed so as to provide a general retirement system for municipal police officers and firefighters eligible to retire under the provisions of this plan.

(b) The board shall administer the plan in accordance with its terms and may construe the terms and determine all questions arising in connection with the administration, interpretation and application of the plan. The board may sue and be sued, contract and be contracted with and conduct all the business of the system in the name of the plan. The board may employ those persons it considers necessary or desirable to administer the plan. The board shall administer the plan for the exclusive benefit of the members and their beneficiaries subject to the specific provisions of the plan.

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

§8-22A-6. Members.

(a) A police officer or firefighter hired in covered employment after the effective date of this article by a municipality or municipal subdivision which has established and maintained a policemen's pension and relief fund or a firemen's pension and relief fund pursuant to §8-22-16 of this code and which is a participating employer or which is a participating public employer as authorized by, §8-22A-33 of this code, shall be a member of this retirement plan: *Provided*, That any police officer or firefighter who has concurrent employment in an additional job or jobs which would require the police officer or firefighter to be a member of the West Virginia Deputy Sheriff Retirement System, the West Virginia Emergency Medical Services Retirement System, or the West Virginia Natural Resources Police Officer Retirement System shall participate in only one retirement system administered by the board, and the retirement system applicable to the concurrent employment for which the employee has the earliest date of hire shall prevail.

(b) Except as provided in §8-22A-32 of this code, a police officer or firefighter who is a member of the Municipal Police Officers and Firefighters Retirement System may not have credit for covered employment in any other retirement system applied as service credit in the Municipal Police Officers and Firefighters Retirement System.

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

§8-22A-7. Creation of fund; investments; actuarial valuations.

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

(b) All moneys paid into and accumulated in the fund, except amounts designated by the board for payment of benefits as provided in this article, shall be held in trust and invested in the Consolidated Pensions Fund administered by the West Virginia Investment Management Board as provided by law.

(c) The board shall employ a competent actuary or actuarial firm to prepare an actuarial valuation of the assets and liabilities of the fund. The actuarial valuation period shall coincide with the fiscal year of the state.

§8-22A-8. Members' contributions; employer contributions.

(a)(1) There shall be deducted from the monthly salary of each member and paid into the fund an amount equal to eight and one-half percent, or ten and one-half percent, if applicable, of his or her monthly salary. An additional amount shall be paid to the fund by the municipality or municipal subdivision in which the member is employed in covered employment in an amount determined by the board: Provided, That in no year may the total of the employer contributions provided in this section, to be paid by the municipality or municipal subdivision, exceed ten and one-half percent of the total payroll for the members in the employ of the municipality or municipal subdivision. Any active member who has concurrent employment in an additional job or jobs and the additional employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code shall contribute to the fund the sum of eight and one-half percent, or ten and one-half percent, if applicable, of his or her monthly salary earned as a municipal police officer or firefighter as well as the sum of eight and one-half percent, or ten and one-half percent, if applicable, of his or her monthly salary earned from any additional employment which additional employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code. An additional amount as determined by the board, not to exceed ten and one-half percent of the monthly salary of each member, shall be paid to the fund by the concurrent employer by which the member is employed.

(2) The board may, on the recommendation of the board's actuary, increase the employees' contribution rate from eight and one-half percent to ten and one-half percent should the plan not be seventy percent funded by July 1, 2014. The board shall decrease the contribution rate to eight and one-half percent on July 1 following the acceptance by the board of an actuarial valuation determining that the plan is seventy-five percent funded. If the plan funding level at a later actuarial valuation date falls below seventy percent, the employee rate of contribution shall be increased to ten and one-half percent of salary until the seventy-five percent level of funding is achieved. The board shall change the employee contribution rate on July 1 following the board's acceptance of the actuarial valuation. At no time may the rate of employee contribution exceed the rate of employer contribution.

(b) All required deposits shall be remitted to the board no later than fifteen days following the end of the calendar month for which the deposits are required. If the board on the recommendation of the board actuary finds that the benefits provided by this article can be actuarially funded with a lesser contribution, then the board shall reduce the required member and employer contributions proportionally. Any municipality or municipal subdivision which fails to make any payment due the Municipal Police Officers and Firefighters Retirement Fund by the fifteenth day following the end of each calendar month in which contributions are due may be required to pay the actuarial rate of interest lost on the total amount owed for each day the payment is delinquent. Accrual of the loss of earnings owed by the delinquent municipality or municipal subdivision commences after the

fifteenth day following the end of the calendar month in which contributions are due and continues until receipt of the delinquent amount. Interest compounds daily and the minimum surcharge is \$50.

WV Legislature

§8-22A-8a. Correction of errors; underpayments; overpayments.

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

(b) *Underpayments to the plan.* — Any error resulting in an underpayment to the plan may be corrected by the member or retirant remitting the required employee contribution or underpayment and the 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 employer. The employer may remit total payment and the employee reimburse the 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 plan will result in the plan correcting an erroneous underpayment from the plan, the correction of the underpayment from the plan 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 plan by the employer.* — When mistaken or excess employer contributions, including any overpayments have been made to the retirement system by the employer, 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 plan, 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 plan.

(d) *Overpayments to the plan by an employee.* — When mistaken or excess employee contributions or overpayments have been made to the plan, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the employer employing the individual to pay the individual the amounts as wages, with the board crediting the 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 plan, 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 returned, offset, or credited under any of the means used by the board for returning employee overpayments.

(e) *Overpayments from the plan.* — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the plan 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 plan 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 plan pursuant to this subsection.

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

§8-22A-9. Retirement; commencement of benefits; insurance requirements during early period.

(a) To ensure the fiscal integrity of the retirement system during the start-up phase, no member is entitled to retirement, disability or death benefits under this retirement system until January 1, 2017. Participating municipalities shall purchase insurance for their new plan members to provide coverage in an amount equal to disability coverage otherwise provided in sections seventeen and eighteen of this article and death benefits otherwise provided in sections twenty, twenty-two and twenty-three of this article for claims arising before January 1, 2013: Provided, That pursuant to the amendments made to this subsection during the 2013 regular session of the Legislature, participating municipalities shall reinstate or purchase the insurance coverage for all plan members no later than July 1, 2013, and continue coverage through January 1, 2017.

(b) A member may retire and commence to receive retirement income payments on the first day of the calendar month following written application for his or her voluntary petition for retirement coincident with or next following the later of the date the member ceases employment, or the date the member attains early or normal retirement age, in an amount as provided under this article: Provided, That retirement income payments under this plan are subject to the provisions of this article. On receipt of the petition, the board shall promptly provide the member with an explanation of his or her optional forms of retirement benefits and on receipt of properly executed forms from the member, the board shall process a member's request for and commence payments as soon as administratively feasible.

§8-22A-10. Federal law maximum benefit limitations.

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

(a) A member'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 401(a)(11) 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 one-half percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date; and (3) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate defined in Treasury Regulation §1.417(e)-1(d)(3) and the applicable mortality table defined in Treasury 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, 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 1, if greater), and the denominator of which is ten. This adjustment shall not be applicable to preretirement disability benefits or preretirement death benefits.

§8-22A-11. Federal law minimum required distributions.

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

(a) The payment of benefits under the plan to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under §401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section 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 plan which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent on, receipt of an application for retirement from the member.

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

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the plan 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

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 §8-22A-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 §8-22A-2 of this code; or

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

§8-22A-12. Direct rollovers.

Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this plan, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (A) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (B) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; and (C) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. 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 to a qualified trust described in Section 401(a) or to an annuity contract described in Section 403(a) or 403(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 includable, or to a Roth IRA described in Section 408A of the Internal Revenue Code.

(2) "Eligible retirement plan" means 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 plan, 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, an annuity contract described in Section 403(b) of the Internal Revenue Code, a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution, or a Roth IRA described in Section 408A of the Internal Revenue Code: Provided, That in the case of an eligible rollover distribution to a designated beneficiary (other than a surviving spouse) as the 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. The term "distributee" also includes a designated beneficiary (other than a surviving spouse) as the term is defined in Section 402(c)(11) of the Internal Revenue Code.

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

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§8-22A-13. Rollovers and transfers to repay withdrawn contributions.

(a) Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the plan shall accept the following rollovers and plan transfers on behalf of a member solely for the purpose of the repayment of withdrawn or refunded contributions, in whole and in part, with respect to a previous forfeiture of service credit as otherwise provided in this article: (1) 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; (2) 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; (3) 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 (4) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: Provided, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with such policies, practices and procedures established by the board from time to time. For purposes of this section, "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.

(b) Nothing in this section may 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 repayment of withdrawn or refunded contributions.

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

§8-22A-14. Retirement benefits.

This section describes when adjustment of a member's accrued benefit to reflect the difference in age, in years and months, between the member's annuity starting date and the date the member attains normal retirement age shall be made. This age adjustment, when required, shall be made based on the normal form of benefit and shall be the actuarial equivalent of the accrued benefit at the member's normal retirement age. The member shall receive the age adjusted retirement income in the normal form or in an actuarial equivalent amount in an optional form as provided under this article, subject to reduction if necessary to comply with the maximum benefit limitations of Section 415 of the Internal Revenue Code and §8-22A-10 of this code. The first day of the calendar month following the month of birth shall be used in lieu of any birth date that does not fall on the first day of a calendar month.

Normal retirement. — A member whose annuity starting date is the date the member attains normal retirement age is entitled to his or her accrued benefit without adjustment for age at commencement.

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

§8-22A-15. Annuity options.

Prior to the effective date of retirement, but not after that date, a member may elect to receive retirement income payments in the normal form, or the actuarial equivalent of the normal form from the following options:

(a) Option A -- Contingent joint and survivor annuity. -- A life annuity payable during the joint lifetime of the member and his or her beneficiary who must be a natural person with an insurable interest in the member's life. On the death of the member, the benefit shall continue as a life annuity to the beneficiary in an amount equal to fifty percent, sixty-six and two-thirds percent, seventy-five percent or one hundred percent of the amount paid while both were living, as elected by the member. If the beneficiary dies first, the monthly amount of benefits may not be reduced, but shall be paid at the amount that was in effect before the death of the beneficiary. If the retiring member is married, the spouse shall sign a waiver of benefit rights if the beneficiary is to be other than the spouse.

(b) Option B -- Ten years certain and life annuity. -- A life annuity payable during the member's lifetime but in any event for a minimum of ten years. If the member dies before the expiration of ten years, the remaining payments shall be made to a designated beneficiary, if any, or otherwise to the member's estate.

§8-22A-16. Refunds to certain members upon discharge or resignation; deferred retirement; preretirement death; forfeitures.

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

(b)(1) Any member who ceases employment in covered employment and active participation in this plan and who thereafter becomes reemployed in covered employment may not receive any credited service for any prior accumulated contributions withdrawn from the plan unless following his or her return to covered employment and active participation in this plan, the member redeposits in the fund the amount of the accumulated contributions withdrawn from previous covered employment, together with interest on the accumulated contributions at the rate determined by the board from the date of withdrawal to the date of redeposit. On repayment he or she shall receive the same credit on account of his or her former covered employment as if no refund had been made.

(2) The repayment authorized by this subsection shall be made in a lump sum within 60 months of the police officer's or firefighter's reemployment in covered employment.

(c) Every member who completes 60 months of regular contributory service may, on cessation of covered employment, either withdraw his or her accumulated contributions in accordance with this section or choose not to withdraw his or her accumulated contribution and receive retirement income payments, if eligible, on attaining normal retirement age.

(d) If a member dies from any cause other than those specified in §8-22A-20 of this code and does not have 10 or more years of contributory service, the member's accumulated contributions may be paid to a named beneficiary or beneficiaries. If no beneficiary is named, then the accumulated contributions shall be paid to the estate of the deceased member.

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

§8-22A-17. Awards and benefits for disability – duty related; exception during early period.

- (a) Any member who after the effective date of this article and during covered employment:
- (1) Has been or becomes totally or partially disabled by injury, illness or disease; and (2) the disability is a result of an occupational risk or hazard inherent in or peculiar to the services required of members; or (3) the disability was incurred while performing police officer or firefighter functions during either scheduled work hours or at any other time; and (4) in the opinion of two physicians after medical examination, at least one of whom shall be named by the board, the member is by reason of the disability unable to perform adequately his or her previous work as a police officer or firefighter, is entitled to receive and shall be paid from the fund in monthly installments the compensation under either subsection (b) or (c) of this section.
- (b) If the member is totally disabled, the member shall receive 90 percent of his or her average full monthly compensation for the 12-month contributory period preceding the member's disability award, or the shorter period if the member has not worked 12 months.
- (c) If the member is partially disabled, the member shall receive 45 percent of his or her average full monthly compensation for the 12-month contributory period preceding the member's disability award, or the shorter period if the member has not worked 12 months. If the member remains partially disabled until attaining 60 years of age, the member shall then receive the retirement benefit provided in §8-22A-14 and §8-22A-15 of this code.
- (d) If the member remains totally disabled until attaining 65 years of age, the member shall then receive the retirement benefit provided in §8-22A-14 and §8-22A-15 of this code.
- (e) The disability benefit payments will begin the first day of the month following termination of employment and receipt of the disability retirement application by the Consolidated Public Retirement Board.
- (f) For purposes of this article, unless a federal law or regulation or the context clearly requires a different meaning, "partially disabled" means a member's inability to engage in the duties of a police officer or firefighter by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state, but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent June 30, as of which plan data has been assembled and used for the actuarial valuation of the plan.

§8-22A-18. Awards and benefits for disability – due to other causes; exception during early period.

(a) Except as provided in §8-22A-9(a) of this code, any municipal police officer or municipal firefighter with 10 or more years of contributory service who, after the effective date of this article and during covered employment: (1) Has been or becomes totally disabled from any cause other than those set forth in §8-22A-17 of this code and not due to vicious habits, intemperance or willful misconduct on his or her part; and (2) in the opinion of two physicians after medical examination, at least one of whom shall be named by the board, he or she is by reason of the disability not only unable to perform his or her previous work as a police officer or firefighter but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work, is entitled to receive and shall be paid from the fund in monthly installments during the lifetime of the member or, if sooner, until the member attains normal retirement age or until the disability sooner terminates, the compensation set forth in, either subsection (b) or (c) of this section.

(b) If the member is totally disabled, he or she shall receive 66 and two-thirds percent of his or her average monthly compensation for months in which full compensation was received for the 12-month contributory period preceding the disability.

(c) If the member remains totally disabled until attaining 60 years of age, then the member shall receive the retirement benefit provided in §8-22A-14 and §8-22A-15 of this code.

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

§8-22A-19. Same -- Physical examinations; recertification; termination of disability.

The board may require any member who has applied for or is receiving disability benefits under this article to submit to a physical examination, mental examination or both, by a physician or physicians selected or approved by the board and may cause all costs incident to the examination and approved by the board to be paid from the fund. The costs may include hospital, laboratory, X-ray, medical and physicians' fees. A report of the findings of any physician shall be submitted in writing to the board for its consideration. If, from the report, independent information, or from the report and any hearing on the report, the board finds that the member is no longer totally disabled and is engaged in or is able to engage in substantial gainful employment, then the disability benefits shall cease. The board shall require recertification annually for the first three years of disability and thereafter at the discretion of the board. For purposes of recertification the board may require a disability retiree 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 retiree's physician certifying continued disability, and may require the retiree to submit copies of annual income tax returns. If a retiree refuses to submit to medical examinations or to provide statements or returns requested for recertification, the board may discontinue disability until the retiree complies.

§8-22A-20. Awards and benefits to surviving spouse - When member dies in performance of duty, etc.

(a) The surviving spouse of any member who dies by reason of injury, illness, or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members, while the member was or is engaged in the performance of his or her duties as a police officer or firefighter, or the surviving spouse of a member who dies from any cause while receiving benefits pursuant to §8-22A-17 of this code, is entitled to receive and shall be paid from the fund benefits as determined in this section. To the surviving spouse annually, in equal monthly installments during his or her lifetime, an amount equal to the greater of: (1) Two thirds of the annual compensation received by the deceased member during the last 12 full months of contributory service; or (2) if the member dies after his or her meeting normal retirement age requirements, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a 100 percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(b) Benefits for a surviving spouse received under this section, §8-22A-22, and §8-22A-23 of this code, are in lieu of receipt of any other benefits under this article for the spouse or any other person or under the provisions of any other state retirement system based on the member's covered employment.

§8-22A-21. Awards and benefits to surviving spouse - when member dies from nonservice-connected causes.

(a) If a member who has been a contributing member for at least 10 years dies prior to retirement from any cause other than those specified in §8-22A-20 of this code, and not due to vicious habits, intemperance, or willful misconduct on his or her part, the fund shall pay annually in equal monthly installments to the surviving spouse during his or her lifetime, a sum equal to the greater of: (1) One half of the annual compensation received by the deceased member during the last 12 full months of contributory service; or (2) if the member dies after meeting normal retirement age requirements, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a 100 percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(b) In any case where a member who had been a contributing member for at least 10 years, had not obtained the age of 60, and was receiving benefits pursuant to §8-22A-18 of this code, dies and leaves a surviving spouse, the fund shall pay annually in equal monthly installments to the surviving spouse during his or her lifetime a sum equal to the greater of: (1) One half of the annual compensation received by the deceased member during the last 12 full months of contributory service; or (2) if the member dies after meeting normal retirement age requirements, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a 100 percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(c) Benefits for a surviving spouse received under this section, or other sections of this article are in lieu of receipt of any other benefits under this article for the spouse or any other person or under the provisions of any other state retirement system based on the member's covered employment.

§8-22A-22. Additional death benefits and scholarships - Dependent children.

(a) Except as provided in §8-22A-9(a) of this code, in addition to the spouse death benefits in this article, the surviving spouse is entitled to receive and there shall be paid to the spouse \$100 monthly for each dependent child.

(b) If the surviving spouse dies while receiving death benefits provided in §8-22A-20 or §8-22A-21 of this code, or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to 100 percent of the spouse's entitlement under this article divided by the number of dependent children. If there is neither a surviving spouse nor a dependent child, the fund shall pay in equal monthly installments to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: *Provided*, That when there is only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive: *Provided, however*, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, the accumulated contributions shall be paid to a named beneficiary or beneficiaries: *Provided further*, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

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

§8-22A-23. Burial benefit.

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

§8-22A-24. Double death benefits prohibited.

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

WV Legislature

§8-22A-25. Right to benefits not subject to execution, etc.; assignments prohibited; deductions for group insurance; setoffs for fraud; exception for certain domestic relations orders; assets exempt from taxes.

The right of a person to any benefit provided 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. The assets of the retirement system are exempt from state, county and municipal taxes.

§8-22A-26. Fraud; penalties; and repayment.

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

§8-22A-27. Credit toward retirement for member's military service; qualified military service.

(a) Each member shall receive months of credited service for months served in active military duty not to exceed twenty-four months: Provided, That any employee may purchase as much as an additional twelve months of service for time served in active military duty that otherwise has not been credited, by paying the actuarial reserve lump sum purchase amount within three years after becoming vested.

(b) "Actuarial reserve lump sum purchase amount" means the purchase annuity rate multiplied by the purchase accrued benefit. The purchase annuity rate is the actuarial lump sum annuity factor calculated on a monthly basis based on the following actuarial assumptions: Interest rate of seven and one-half percent; mortality of the 1983 group annuity mortality table, male rates, applied on a unisex basis to all members; if purchase age is under age fifty, a deferred annuity factor with payments commencing at age fifty; and if purchase age is fifty or over, an immediate annuity factor with payments starting at the purchase age. The purchase accrued benefit is two and three-fourths percent times the purchase military service times the purchase average monthly salary. The purchase military service is the amount of military service being purchased by the employee as a fraction of a year up to a one year maximum. The purchase average monthly salary is the final average monthly salary of the employee at the beginning of the month which is three months prior to the purchase month as if the employee terminated employment on that date. The purchase month is the month in which the employee deposits the actuarial reserve lump sum purchase amount into the plan trust fund in full payment of the service being purchased. The purchase age is the attained age of the employee in years and completed months as of the first day of the purchase month.

(c) Members who are eligible to receive credited service for periods of active military duty must substantiate to the retirement board:

(1) That the member has served one or more periods of active duty as substantiated by a federal form DD-214;

(2) That the member has been honorably discharged from active military duty as substantiated by a federal form DD-214; and

(3) That the member is receiving no benefits from any other governmental retirement system, except those benefits provided by federal law, for his or her active military duty.

(d) Any service credit allowed under this section may be credited one time only for each municipal police officer or municipal firefighter, regardless of any changes in job title or responsibilities.

(e) Notwithstanding any provision of this section to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with

Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

(f) Any contribution under this section to purchase service for time served in active military duty must satisfy the special limitation rules described in Section 415(n) of the Internal Revenue Code to the extent it is considered permissive service credit, and shall be automatically reduced, limited, or required to be paid over multiple years (consistent with the time limits under this section for making such contributions) if necessary to ensure such compliance. To the extent the purchased service 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 the purchase as described in Section 414(u)(1)(B) of the Internal Revenue Code.

(g) The retirement board may propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to administer the provisions of this section.

(h) 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. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code.

§8-22A-27a. Credit toward retirement for member's accrued annual or sick leave days.

(a) For purposes of this section, an annual leave or sick leave day shall be the equivalent of eight hours of leave.

(b) Any member accruing annual leave or sick leave days may, after the effective date of this section, elect to use the days which stand to the member's credit with the member's last covered employment employer at the time of retirement to acquire additional credited service in this retirement system. The days shall be applied on the basis of one days' credit granted for each one day of accrued annual or sick leave days, with each month of retirement service credit to equal 20 days and with any remainder of 10 days or more to constitute a full month of additional credit and any remainder of less than 10 days to be dropped and not used, notwithstanding any provisions of this code to the contrary. The credited service shall be allowed and not considered to controvert the requirement of no more than 12 months' credited service in any year's period.

(c) Members employed by any covered employment employer with a policy for the accrual of unused sick and annual leave which is more generous than that of the State of West Virginia for its state agency employees shall receive service credit only for accrued unused sick and annual leave as provided for by the State of West Virginia for state employees who are covered by the rules of the West Virginia Division of Personnel. If the member is paid in a lump sum for accrued unused leave, the Board shall not consider the lump sum payment as annual compensation in computing a member's final average salary.

§8-22A-28. How a municipality or municipal subdivision becomes a participating public employer; duty to request referendum on Social Security coverage.

(a) Subject to §8-22-16 of this code, any municipality or municipal subdivision employing municipal police officers or firefighters may by a majority of the members of its governing body eligible to vote, elect to become a participating public employer and thereby include its police officers and firefighters in the membership of the plan. The clerk or secretary of each municipality or municipal subdivision electing to become a participating public employer shall certify the determination of the municipality or municipal subdivision by corporate resolution to the Consolidated Public Retirement Board within 10 days from and after the vote of the governing body. Separate resolutions are required for municipal police officers and municipal firefighters. Once a municipality or municipal subdivision elects to participate in the plan, the action is final and it may not, at a later date, elect to terminate its participation in the plan.

(b) On or before October 1, 2024, all participating employers shall submit a plan to the State Auditor, as the designated state agency under the Social Security Act, to extend Social Security benefits to members of the retirement system as authorized by §5-7-5 of this code and applicable federal laws. The State Auditor shall assist the participating employers in complying with the requirements for providing extension of Social Security benefits to members of the retirement system.

§8-22A-29. Effective date; special starting date for benefits; provisions governing health care benefits for retirees age fifty to fifty-five.

(a) The effective date of this article is January 1, 2010. No payout of any benefits may be made by the retirement system to any person prior to January 1, 2013, except as provided in subsection (a), section nine of this article.

(b) The Director of the Public Employees Insurance Agency shall include in the insurance plan document filed in the office of the Secretary of State as 151 CSR 1 provisions governing health insurance benefits for retirees under the plan who are enrolled by their employers in insurance provided by the Public Employees Insurance Agency.

§8-22A-30. Limitation of employer liability.

No municipality or municipal subdivision which has timely met all of its obligations under this article is liable for any payments or contributions to the retirement plan which are owed to the plan by another participating employer.

WV Legislature

§8-22A-31. Benefits not forfeited if system terminates.

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

WV Legislature

§8-22A-32. Membership retroactive in certain circumstances.

(a) Notwithstanding all other provisions relating to this article and article twenty-two of this chapter, any police officer or firefighter hired by a participating public employer on or after June 1, 2009, and before January 1, 2010, who received notice at the time of employment that he or she may be placed in a new retirement system created by legislation and who has been enrolled in but received no benefits from a municipal policemen's or firemen's pension and relief fund shall, if permitted by applicable federal law, be enrolled in the Municipal Police Officers and Firefighters Retirement System upon acceptance by the Consolidated Public Retirement Board of the resolution of the municipality required by section twenty-eight of this article. Employee and employer contributions made by or on behalf of the employee to the municipal pension and relief fund pursuant to article twenty-two of this chapter shall be transferred within sixty days to the retirement system created in this article and the employee subject to the transfer shall receive service credit for time worked while a member of the municipal pension and relief fund.

(b) Notwithstanding any other provision of the code to the contrary, any police officer or firefighter hired by a participating public employer on or after July 1, 2015, who chooses pursuant to section thirty-three of this article to be a member of the plan, shall be a member of the plan upon acceptance by the Consolidated Public Retirement Board of the notification by the municipality required by section thirty-three of this article.

(1) The Consolidated Public Retirement Board shall transfer assets and service credit earned on or after July 1, 2015, from the Public Employees Retirement System Trust Fund into the West Virginia Municipal Police Officers and Firefighters Retirement Fund for those police officers or firefighters who elect to be a member of the plan and were members in the Public Employees Retirement System no later than sixty days from receipt of notification by the municipality or municipal subdivision of the police officer or firefighter's election to become a member. The amount of service credit recognized by the plan for the transferring employees shall be the service credit transferred and recognized by the Public Employees Retirement System.

(2) The amount of assets to be transferred for each police officer or firefighter shall be computed as of the actuarial valuation date preceding the notification to the Consolidated Public Retirement Board by the municipality or municipal subdivision of the police officer or firefighter's election to become a member and updated with seven and one-half percent annual interest to the date of the actual asset transfer. For purposes of this section, the actuarial valuation date is the most recent actuarial valuation of the Public Employees Retirement System approved by the Consolidated Public Retirement Board. The market value of the assets of the transferring employees in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred, the Consolidated Public Retirement Board shall:

(A) Compute the market value of the Public Employees Retirement System assets using the

actuarial valuation date;

(B) Compute the actuarial accrued liabilities for all Public Employees Retirement System retirees, beneficiaries, disabled retirees and terminated inactive members using the actuarial valuation date:

(C) Compute the market value of active member assets in the Public Retirement System as of the actuarial valuation date by reducing the assets value under paragraph (A) of this subdivision by the inactive liabilities under paragraph (B) of this subdivision;

(D) Compute the actuarial accrued liability for all active Public Employees Retirement System members using the actuarial valuation date immediately preceding the computation date;

(E) Compute the funded percentage of the active members' actuarial accrued liabilities under the Public Employees Retirement System as of the actuarial valuation date by dividing the active members' market value of assets under paragraph (C) of this subdivision by the active members' actuarial accrued liabilities under paragraph (D) of this subsection;

(F) Compute the actuarial accrued liabilities under the Public Employees Retirement System as of the actuarial valuation date for active employees transferring to the plan;

(G) Determine the assets to be transferred from the Public Employees Retirement System to the plan by multiplying the active members' funded percentage determined under paragraph (E) of this subdivision by the transferring active members' actuarial accrued liabilities under the Public Employees Retirement System under paragraph (F) of this subdivision and adjusting the asset transfer amount by interest at seven and five-tenths percent for the period from the calculation date of July 1 through the first day of the month in which the asset transfer is to be completed.

(3) Any police officer or firefighter who elects to become a member of the plan must also pay to the plan a four percent contribution no later than June 30, 2019. The contribution shall be calculated as four percent of the member's total earnings for which assets are transferred, plus interest of seven and one-half percent accumulated from the date of the police officer's or firefighter's initial participation in the Public Employees Retirement System through the calculation date. Installment payments may be made over no more than a twenty-four month period plus seven and one-half percent interest shall accrue on the outstanding balance due from the calculation date until paid in full.

(4) Once an employee transfers from the Public Employees Retirement System to the plan, the Public Employees Retirement System shall bar any further liability and said transfer will constitute an agreement whereby the transferring employee forever indemnifies and holds harmless the Public Employees Retirement System from providing him or her any form of retirement benefit whatsoever until that employee obtains other employment which would make him or her eligible to reenter the Public Employees Retirement System with no credit

whatsoever for the amounts transferred to the plan.

WV Legislature

§8-22A-33. Special authorization for municipal police or firefighters hired after July 1, 2015.

(a) Notwithstanding any provision of this code to the contrary, any municipality or municipal subdivision that employs individuals as members of paid police departments or paid fire departments, but did not establish either a municipal policemen's pension and relief fund or a municipal firemen's pension and relief fund as provided in section sixteen, article twenty-two of this chapter and whose current police officers or firefighters are participating in the Public Employees Retirement System may elect, in the same manner as provided in section twenty-eight of this article, to become a participating public employer in the plan and thereby include its police officers and firefighters in the membership of the plan subject to the restrictions provided in this section.

(b) The municipality or municipal subdivision may elect to include only police officers and firefighters who have been hired on or after July 1, 2015, to become members of the plan. Police officers and firefighters hired before July 1, 2015, will remain members of the Public Employees Retirement System.

(c) The municipality or municipal subdivision must make its election on or prior to July 1, 2017.

(d) Once a municipality or municipal subdivision makes its election to become a participating public employer pursuant to this section and section twenty-eight of this article, all police officers and firefighters hired by the municipality or municipal subdivision after the date of election shall be members of the plan: Provided, That police officers and firefighters hired by the municipality or municipal subdivision on or after July 1, 2015, who are members of the Public Employees Retirement System, may choose to become a member of the plan by notifying the municipality or municipal subdivision on a form provided by the Consolidated Public Retirement Board: Provided, however, That he or she make this decision within ninety days of the municipality or municipal subdivision's decision to participate in the plan. A municipality or municipal subdivision making an election to become a participating public employer pursuant to section twenty-eight of this article that has hired any police officer or firefighter on or after July 1, 2015, shall notify each police officer or firefighter hired on or after July 1, 2015, of its election to become a participating public employer within thirty days of making the election. This notice shall include instructions as to how a police officer or firefighter may make notification to the municipality or municipal subdivision of his or her decision to become a member in the plan. The municipality or municipal subdivision shall notify the Consolidated Public Retirement Board in writing of any police officer or firefighter hired after July 1, 2015, who has decided to become a member of the plan and terminate his or her membership in the Public Employees Retirement System within thirty days of notification by the police officer or firefighter on forms provided by the Consolidated Public Retirement System.

§8-22A-33a. Second special authorization for municipal police or firefighters hired after July 1, 2015.

(a) Notwithstanding any provision of this code to the contrary, any municipality or municipal subdivision that employs individuals as members of paid police departments or paid fire departments and whose current police officers or firefighters are participating in the Public Employees Retirement System may elect, as provided in same manner as provided in §8-22A-28(a) of this code, to become a participating public employer in the plan and thereby include its police officers and firefighters in the membership of the plan subject to the restrictions provided in this section.

(b) The municipality or municipal subdivision may elect to include only police officers or firefighters who have been hired on or after July 1, 2015, to become members of the plan. Police officers or firefighters hired before July 1, 2015, will remain members of the Public Employees Retirement System.

(c) The municipality or municipal subdivision must make its election on or prior to July 1, 2025.

(d) Once a municipality or municipal subdivision makes its election to become a participating public employer pursuant to this section, all police officers or firefighters hired by the municipality or municipal subdivision after the date of election shall be members of the plan: *Provided*, That police officers or firefighters hired by the municipality or municipal subdivision on or after July 1, 2015, who are members of the Public Employees Retirement System, may choose to become a member of the plan by notifying the municipality or municipal subdivision on a form provided by the Consolidated Public Retirement Board: *Provided, however*, That he or she make this decision within 90 days of the municipality or municipal subdivision's decision to participate in the plan. A municipality or municipal subdivision making an election to become a participating public employer pursuant to this section that has hired any police officer or firefighter on or after July 1, 2015, shall notify each police officer or firefighter hired on or after July 1, 2015, of its election to become a participating public employer within 30 days of making the election. This notice shall include instructions as to how a police officer or firefighter may make notification to the municipality or municipal subdivision of his or her decision to become a member in the plan. The municipality or municipal subdivision shall notify the Consolidated Public Retirement Board in writing of any police officer or firefighter hired after July 1, 2015, who has decided to become a member of the plan and terminate his or her membership in the Public Employees Retirement System within 30 days of notification by the police officer or firefighter on forms provided by the Consolidated Public Retirement System.

(e) Notwithstanding any other provision of the code to the contrary, any police officer or firefighter hired by a participating public employer on or after July 1, 2015, who chooses pursuant to this section to be a member of the plan, shall be a member of the plan upon acceptance by the Consolidated Public Retirement Board of the notification by the municipality required by this section.

(1) The Consolidated Public Retirement Board shall transfer assets and service credit earned on or after July 1, 2015, from the Public Employees Retirement System Trust Fund into the West Virginia Municipal Police Officers and Firefighters Retirement Fund for those police officers or firefighters who elect to be a member of the plan and were members in the Public Employees Retirement System no later than 60 days from receipt of notification by the municipality or municipal subdivision of the police officer or firefighter's election to become a member. The amount of service credit recognized by the plan for the transferring employees shall be the service credit transferred and recognized by the Public Employees Retirement System.

(2) The amount of assets to be transferred for each police officer or firefighter shall be computed as of the actuarial valuation date preceding the notification to the Consolidated Public Retirement Board by the municipality or municipal subdivision of the police officer or firefighter's election to become a member and updated with seven and one-half percent annual interest to the date of the actual asset transfer. For purposes of this section, the actuarial valuation date is the most recent actuarial valuation of the Public Employees Retirement System approved by the Consolidated Public Retirement Board. The market value of the assets of the transferring employees in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred, the Consolidated Public Retirement Board shall:

(A) Compute the market value of the Public Employees Retirement System assets using the actuarial valuation date;

(B) Compute the actuarial accrued liabilities for all Public Employees Retirement System retirees, beneficiaries, disabled retirees, and terminated inactive members using the actuarial valuation date;

(C) Compute the market value of active member assets in the Public Employees Retirement System as of the actuarial valuation date by reducing the assets value under paragraph (A) of this subdivision by the inactive liabilities under paragraph (B) of this subdivision;

(D) Compute the actuarial accrued liability for all active Public Employees Retirement System members using the actuarial valuation date immediately preceding the computation date;

(E) Compute the funded percentage of the active members' actuarial accrued liabilities under the Public Employees Retirement System as of the actuarial valuation date by dividing the active members' market value of assets under paragraph (C) of this subdivision by the active members' actuarial accrued liabilities under paragraph (D) of this subsection;

(F) Compute the actuarial accrued liabilities under the Public Employees Retirement System as of the actuarial valuation date for active employees transferring to the plan;

(G) Determine the assets to be transferred from the Public Employees Retirement System to the plan by multiplying the active members' funded percentage determined under paragraph (E) of this subdivision by the transferring active members' actuarial accrued liabilities under the Public Employees Retirement System under paragraph (F) of this subdivision and adjusting the asset transfer amount by interest at seven and five-tenths percent for the period from the calculation date of July 1 through the first day of the month in which the asset transfer is to be completed.

(3) Any police officer or firefighter who elects to become a member of the plan must also pay to the plan a four percent contribution no later than June 30, 2027. The contribution shall be calculated as four percent of the member's total earnings for which assets are transferred, plus interest of seven and one-half percent accumulated from the date of the police officer's or firefighter's initial participation in the Public Employees Retirement System through the calculation date. Installment payments may be made over no more than a 24-month period plus seven and one-half percent interest shall accrue on the outstanding balance due from the calculation date until paid in full. Any police officer or firefighter who elects to become a member of the plan but fails to timely pay the required four percent contribution and interest will have all years of service in the plan transferred to the Public Employees Retirement System no later than December 31, 2027. The assets previously transferred to the plan shall be returned to the Public Employees Retirement System, in addition to the employee and employer contribution amounts that would have been paid had the member not elected to transfer, plus interest of seven and one-half percent per annum. Any remaining excess employee contribution amount paid to the plan since the date of transfer shall remain in the plan until the employee terminates employment with the municipality.

(4) Once an employee transfers from the Public Employees Retirement System to the plan, the Public Employees Retirement System shall bar any further liability and said transfer will constitute an agreement whereby the transferring employee forever indemnifies and holds harmless the Public Employees Retirement System from providing him or her any form of retirement benefit whatsoever until that employee obtains other employment which would make him or her eligible to reenter the Public Employees Retirement System with no credit whatsoever for the amounts transferred to the plan.

§8-22A-34. Return to covered employment by retirant.

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

(b) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by 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 plan. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or the participating public employer fails to comply with subsection (c) of this section in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement. The board may take any actions necessary or appropriate in accordance with the provisions of §8-22A-8a of this code to recover such annuity payments so that an in-service distribution is not deemed to have been made.

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

§8-22A-35. Severability.

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

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