WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988

ENROLLED

Com. Sub. for
HOUSE BILL No. H672

(By Mr. Speaker, Mr. Chambers and Delegate Swann
(By Request of the Executive)

Passed March 12, 1988

In Effect Upon Passage
AN ACT to amend and reenact sections fourteen, eighteen and thirty-one-a, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article ten by adding thereto two new sections, designated sections twenty-two-c and fifty-three; to further amend said chapter five by adding thereto a new article, designated article ten-d; to amend article seven-a, chapter eighteen of said code, by adding thereto two new sections, designated sections thirty-five-b and thirty-six; to amend and reenact section four-a, article twenty-three of said chapter eighteen; and to amend and reenact section two, article two, chapter eighteen-a of said code, all relating to the state teachers' retirement system and the public employees retirement system; changing number of years for acquiring service credits; reducing the number of years a person must be reemployed to reenter retirement system and providing for terms of repayment upon returning to employment; providing temporary early retirement incentives for state employees electing early retirement; cancelling certain vacant positions resulting from early retirement; expressing the intent of the Legislature in requiring the transfer of certain public
employees to the public employees retirement system II; establishing the public employees retirement act II; defining certain terms; establishing retirement system II; providing for article to be liberally construed; providing for effective date of system; creating a board of trustees, establishing powers and duties, composition and other provisions relating to board of trustees; providing for actuarial investigations and evaluations; providing for service credit, including military service credit; providing for when and how political subdivision becomes participating public employer; providing for membership in retirement system; providing an exception for employees of board of regents; providing for termination of membership; providing for employers to file information as to employee's service; providing for voluntary retirement; providing for deferred and early retirement; providing for retirement annuity; providing for terminal payment, annuity options, and disability retirement; providing for reexamination for disability retirants, reemployment and adjustment of annuity for earnings; providing for nonduty death annuities; establishing divisions of retirement system and funds; creating members' deposit fund and establishing contributions; providing for refund of accumulated contributions; creating employers accumulation fund and establishing contributions; providing for retroactive contributions to the retirement system; providing for appropriations for state contributions to retirement system and contributions for members paid from special funds or by other employers; providing for contributions by other participating public employers and withholding state money to satisfy delinquencies; providing for transfer to retirement reserve fund; creating retirement reserve fund and providing for transfers from fund on reemployment; creating income fund; establishing expense fund; providing for investment of moneys; prohibiting trustee to benefit from investments of system; restricting use of retirement system moneys; allowing regular interest on balances in funds; requiring fiscal year of retirement system to coincide with fiscal year of the state; providing for pro rata reduction of annuities; providing for correction of errors; provid-
ing for fraud and penalties; providing that benefits shall not be subject to execution, prohibiting assignments of benefits, allowing deductions for group insurance and authorizing setoffs for fraud; exempting benefits from taxes; providing for reemployment after retirement and option for holder of elected public office; providing for removal of member from office for certain reasons; providing for severability clause; expressing the intent of the Legislature in requiring the transfer of certain education employees to the public employees retirement system; providing for temporary early retirement incentives for employees participating in state teachers retirement system; providing for prompt consideration of terminations in respect of reduction in work force; establishing a date after which a member of the state teachers retirement system cannot change an election to choose a retirement system and a retirement plan; and specifying certain effective dates.

Be it enacted by the Legislature of West Virginia:

That sections fourteen, eighteen and thirty-one-a, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article ten be further amended by adding thereto two new sections, designated sections twenty-two-c and fifty-three; that said chapter five be further amended by adding thereto a new article, designated article ten-d; that article seven-a, chapter eighteen of said code, be amended by adding thereto two new sections, designated sections thirty-five-b and thirty-six; that section four-a, article twenty-three of said chapter eighteen be amended and reenacted; and that section two, article two, chapter eighteen-a of said code be amended and reenacted, all to read as follows:

CHAPTER 5.
GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.
§5-10-14. Service credit.

(a) The board of trustees shall credit each member with the prior service and contributing service to which he is entitled based upon such rules and regulations as the board of trustees shall from time to time adopt: Provided, That in no case shall less than ten days of service rendered by a member in any calendar month be credited as a month of service; nor shall less than ten months of service rendered in any calendar year be credited as a year of service; nor shall more than one year of service be credited any member for all service rendered by him in any calendar year; nor shall any member who was not in the employ of a political subdivision within a period of thirty years immediately preceding the date the political subdivision became a participating public employer be credited with prior service: Provided, however, That said member is not required to have been employed by a participating public employer of this state within a period of fifteen years subsequent to the date that participating public employer elected to become a participating employer.

(b) The board of trustees shall grant service credit to employees of boards of health, the clerk of the House of Delegates and the clerk of the state Senate, or to any former and present member of the state teachers retirement system who have been contributing members for more than three years, for service previously credited by the state teachers retirement system, and shall require the transfer of the member's contributions to the system, and shall also require a deposit, with interest, of any withdrawals of contributions any time prior to said member's retirement. Repayment of withdrawals shall be as directed by the board of trustees.

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

(d) Employees of the state Legislature whose term of employment is otherwise classified as temporary and
who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between sessions for eight or more years, may receive service credit for such time as served in that capacity.

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

When a member of the retirement system retires or dies, he ceases to be a member. When a member leaves the employ of a participating public employer for any other reason, he ceases to be a member and forfeits service credited to him at that time. If he becomes reemployed by a participating public employer he shall be reinstated as a member of the retirement system and his credited service last forfeited by him shall be restored to his credit: Provided, That he must be reemployed for a period of one year or longer to have such service restored: Provided, however, That he returns to the members' deposit fund the amount, if any, he withdrew therefrom, together with regular interest thereon from the date of withdrawal to the date of repayment, and that such repayment begins within two years of the return to employment and that the full amount be repaid within five years of the return to employment.

§5-10-22c. Temporary incentive for early retirement; cancellation of positions; increased annuity for extended service.

(a) That beginning on the first day of April, one thousand nine hundred eighty-eight, and continuing through June thirtieth, one thousand nine hundred eighty-nine, members retiring may elect any one of the three following incentive options: Provided, That any employee participating in this retirement incentive program is not eligible to accept further employment from the state or any of its political subdivisions.

Retirement incentive option one:

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

Retirement incentive option two:

A member may elect a lump sum payment, in addition to his regular retirement annuity, equal to ten percent of his final average salary not to exceed five thousand dollars.

Retirement incentive option three:

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

The additional annuity allowed for temporary early retirement under these options is intended to be paid from the retirement incentive account hereby created as a special account in the state treasury and from the funds therein established with moneys required to be transferred by heads of spending units from the unused portion of salary and fringe benefits in their budgets accruing in respect of such positions vacated and subsequently canceled under this temporary early retirement program. Salary and fringe benefit moneys actually saved in a particular fiscal year or deemed to be saved on a continuing basis in any subsequent fiscal year, once occurring, shall constitute the fund source. No such additional annuity shall be disallowed even though initial receipts may not be sufficient.

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

The executive secretary of the retirement system shall file a report to the Legislature no later than the fifteenth day of February, one thousand nine hundred eighty-nine, and quarterly thereafter, detailing the number of retirees who have elected to accept early retirement incentive options, the dollar cost to date by option
selected, and the projected annual cost through the year
two thousand.

(c) Within every spending unit, department, board,
corporation, committee, division, or any other agency or
entity wherein two or multiples of two members elect
to retire under the temporary early retirement incen-
tives set forth above, no more than one of the vacant
positions may be filled, with the second position being
abolished upon the effective day of the member's
retirement. The retirant's employing entity shall decide
as to which of the vacated positions made available
through special early retirement are to be abolished and
the head of the spending unit shall immediately notify
the state auditor, the legislative auditor, and the
commissioner of the department of finance and admin-
istration of the decisions and shall then transfer all
remaining salary and fringe benefit appropriations
remaining after the employees termination date.

Provided, That because the Legislature finds that due
to insufficient employees therein, this provision for
abolishing one of each two vacancies created by special
early retirement shall not apply to: conservation officers
in the department of natural resources, employees of the
forestry division in the department of agriculture,
employees in the department of corrections and bona
fide meat inspectors in the the department of
agriculture.

(d) Special rule.—Any member of the retirement
system may retire under the special early retirement
provisions with full pension rights, without reduction of
benefits if the sum of such member's age plus years of
contributing service equals or exceeds eighty: Provided,
That such person has at least twenty years of contribut-
ing service, and with military service of up to two years
to be deemed such contributing service for the purpose
of this special rule and early retirement thereunder.

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

Those public employers who are participating in the
West Virginia public employees retirement system and
elected to participate after the first day of July, one
thousand nine hundred sixty-one, and those employers
who are eligible but who have not elected to participate,
may elect to cover their employees retroactive for the
period of their prior employment by such employer to
the first day of July, one thousand nine hundred sixty-
one, under the following terms and rules and regulations
to be promulgated by the board of trustees of the
retirement system:

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

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

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

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

(e) Each employer and employee shall be required to
pay into the retirement system in the manner hereinaft-
ter provided the amount necessary for the additional
service credit provided by this section, based upon an
actuarial study of each employer that elects to partici-

date in the retirement system under this section and as
determined by the board of trustees;

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

(g) Any new participating employer and any partici-

pating employer which is currently a participant and
who began participating after the first day of July, one
thousand nine hundred sixty-one, who desires additional
service credit must elect to provide such service credit
within one year following the effective date of this
section;

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

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

(j) For the purpose of reopening the effectiveness of
the provisions of this section for a period of one year
following the effective date of the amendment to this
section, and for the purpose of granting, retroactively
service credit to current employees of employers
participating in the public employees retirement system
during such period, this section is hereby renewed and
reestablished; but any such credited service granted
hereunder shall be on the actuarially sound basis for
determining required additional contributions, of both
employer and employee, required in light of benefits
that would be computed in respect of such later point
in time and such subsequent final average salary
amount.
§5-10-53. Transfer to public employees retirement system II.

To ensure retirement benefits for all the state's public employees, to promote the fiscal soundness of the public employees retirement system, to provide an adequately-funded retirement system for future generations, and to enhance the state's credit rating, any person whose employment would constitute entry into the public employees retirement system created by this article and as the same was in effect on the thirtieth day of June, one thousand nine hundred eighty-eight, but whose employment was effected on or after the first day of July, one thousand nine hundred eighty-eight, shall participate in the retirement system provided for in article ten-d, chapter five of this code.

ARTICLE 10D. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT

§5-10D-1. Short title.

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

§5-10D-2. Definitions.

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

(1) "State" means the state of West Virginia;
(2) "Retirement system" or "system" means the West Virginia public employees retirement system created and established by this article;
(3) "Board of trustees" or "board" means the board of trustees of the West Virginia public employees retirement system as provided for in article ten of this chapter;
(4) "Political subdivision" means the state of West Virginia, a county, city or town in the state; a county board of education any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instru-
mentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns, any agency or organization established by, or approved by the department of mental health for the provision of community health or mental retardation services, and which is supported in part by state, county or municipal funds;

(5) "Participating public employer" means the state of West Virginia, any board, commission, department, institution or spending unit, and includes any agency created by rule of the supreme court of appeals having full-time employees, which for the purposes of this article shall be deemed a department of state government; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia public employees retirement system;

(6) "Employee" means any person whose employment is effected on or after July one, one thousand eight hundred eighty-eight, and who serves regularly as an officer or employee, full-time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, in whole or in part, by any political subdivision, and shall include any regular education employee or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia national guard whose compensation, in whole or in part, is paid by the federal government: Provided, That members of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate, employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between regular
sessions for eight or more years, members of the legislative body of any political subdivision and judges of the state court of claims shall be considered to be employees, anything contained herein to the contrary notwithstanding. In any case of doubt as to who is an employee within the meaning of this article the board of trustees shall decide the question;

(7) "Education employee" means any employee who is hired by a political subdivision that is participating in the state teachers retirement system on the first day of July, one thousand nine hundred eighty-eight, in accordance with the provisions of article seven-a, chapter eighteen of this code who was not a member of the state teachers retirement system at any time prior to the first day of July, one thousand nine hundred and eighty-eight, and shall include persons hired after the first day of July, one thousand nine hundred eighty-eight, by any county board of education, the state board of education, the state teachers retirement board, the board of regents except as to employees whose retirement is in accordance with the provisions of section ten-a of this article, and shall further include any person hired for the provision of educational services by the departments of human services and corrections if such persons would have been members of the state teachers retirement system if hired prior to the first day of July, one thousand nine hundred and eighty-eight. Any employee whose contributions to the state teachers retirement system have ceased for a period of at least five years next preceding the date such employee is hired by a political subdivision named in this subsection for a position which would have required participation in the state teachers retirement system prior to the first day of July, one thousand nine hundred eighty-eight, may also be deemed an education employee at the employee's option;

(8) "Member" means any person who is included in the membership of the retirement system;

(9) "Retirant" means any member who retires with an annuity payable by the retirement system;
(10) "Beneficiary" means any person, except a retiree, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

(11) "Service" means personal service rendered to a participating public employer by an employee, as defined in this article, of a participating public employer;

(12) "Prior service" means service rendered prior to July one, one thousand nine hundred eighty-eight, to the extent credited a member as provided in this article;

(13) "Contributing service" means service rendered by a member from and after the date of his entrance in the retirement system, to the extent credited him as provided in this article;

(14) "Credited service" means the sum of a member's prior service credit and contributing service credit standing to his credit as provided in this article;

(15) "Compensation" means the remuneration paid a member by a participating public employer for personal services rendered by him to the participating public employer. In the event a member's remuneration is not all paid in money, his participating public employer shall fix the value of the portion of his remuneration which is not paid in money;

(16) "Final average salary" means either (a) the average of the highest annual compensation received by a member (including a member of the Legislature who participates in the retirement system in the year one thousand nine hundred eighty-eight or thereafter) during any period of three consecutive years of his credited service contained within his ten years of credited service immediately preceding the date his employment with a participating public employer last terminated, or (b) if he has less than five years of credited service, the average of the annual rate of compensation received by him during his total years of credited service; and in determining the annual compensation, under either (a) or (b) of this subdivision (16), of a member of the Legislature who participates in the

retirement system as a member of the Legislature in the
year one thousand nine hundred eighty-eight or in any
year thereafter, his actual legislative compensation (the
total of all compensation paid under sections two, three,
four and five, article two-a, chapter four of this code) in
the year one thousand nine hundred eighty-eight, or in
any year thereafter, plus any other compensation he
receives in any such year from any other participating
public employer including the state of West Virginia,
without any multiple in excess of one times his actual
legislative compensation as aforesaid and other compen-
sation, shall be used;

(17) "Accumulated contributions" means, in the case
of education employees, the sum of all amounts deducted
from the compensations of a member and credited to his
individual account in the member's deposit fund, plus
the sum of all amounts deducted from the compensations
of a member and credited to his individual account in
the teachers' accumulation fund of the state teachers'
retirement system established pursuant to article seven-
a, chapter eighteen of this code. For all other members
accumulated contributions means the sum of all
amounts deducted from the compensations of a member
and credited to his individual account in the members'
deposit fund, together with regular interest thereon;

(18) "Regular interest" means such rate or rates of
interest per annum, compounded annually, as the board
of trustees shall from time to time adopt;

(19) "Annuity" means an annual amount payable by
the retirement system throughout the life of a person.
All annuities shall be paid in equal monthly install-
ments, using the upper cent for any fraction of a cent;

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

(21) "Retirement" means a member's withdrawal
from the employ of a participating public employer with
an annuity payable by the retirement system;

(22) "Actuarial equivalent" means a benefit of equal value computed upon the basis of such mortality table and regular interest as the board of trustees shall from time to time adopt; and

(23) The masculine gender shall include the feminine gender, and words of the singular number with respect to persons shall include the plural number, and vice versa.

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

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

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

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

The purpose of this article is to provide a state pension plan which supplements the federal social security pension plan now in force and heretofore authorized by law for all officers and employees of the state.

§5-10D-4. Effective date of system.

The effective date of the West Virginia public employees retirement system II shall be July one, one thousand nine hundred eighty-eight.
§5-10D-5. Board of trustees created; powers and duties
generally; composition.

The board of trustees of the West Virginia public
employees retirement system II shall be the board of
trustees created pursuant to section five, article ten of
this chapter. The administration and management of the
retirement system, the responsibility for making
effective the provisions of this article, and the authority
to make all rules and regulations therefor, are hereby
vested in the said board of trustees, except as is
otherwise specifically provided in this article. The
provisions of sections six, seven, eight, nine, ten, eleven
and twelve, article ten of this chapter shall apply to this
article as if fully set out herein.

§5-10D-6. Actuarial investigations and valuations.

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

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

(c) Beginning in one thousand nine hundred eighty-
ine, and at least once in each three-year period
thereafter, the actuary shall make an actuarial valua-
tion of the assets and liabilities of the retirement system:
Provided, That until the first actuarial investigations
are made, the valuations shall be based upon decrement
assumptions which are, in the opinion of the actuary,
applicable to the members, retirants and beneficiaries
of the system.
(d) Beginning in one thousand nine hundred eighty-nine, the actuary shall compute annually the annuity reserve liabilities for annuities being paid retirants and beneficiaries.

§5-10D-7. Service credit.

(a) The board of trustees shall credit each member with the prior service and contributing service to which he is entitled based upon such rules and regulations as the board of trustees shall from time to time adopt: Provided, That in no case shall less than ten days of service rendered by a member in any calendar month be credited as a month of service; nor shall less than ten months of service rendered in any calendar year be credited as a year of service; nor shall more than one year of service be credited any member for all service rendered by him in any calendar year; nor shall any member who was not in the employ of a political subdivision within a period of thirty years immediately preceding the date the political subdivision became a participating public employer be credited with prior service.

(b) The board of trustees shall grant service credit to employees of boards of health, the clerk of the House of Delegates and the clerk of the state Senate, or to any former and present member of the state teachers retirement system or the public employees retirement system established pursuant to article ten of this chapter who have been contributing members of the public employees retirement system II for more than three years, for service previously credited by the state teachers retirement system or the public employees retirement system established pursuant to article ten of this chapter, and shall require the transfer of the member's contributions from the state teachers retirement system or the public employees retirement system established pursuant to article ten of this chapter to the public employees retirement system II, and shall also require a deposit, with interest, of any withdrawals of contributions any time prior to said member's retirement. Repayment of withdrawals shall be as directed by the board of trustees.
(c) Court reporters who are acting in an official capacity, although paid by funds other than the county commission or state auditor, may receive prior service credit for such time as served in such capacity.

(d) Employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between sessions for eight or more years, may receive service credit for such time as served in that capacity.

(e) Education employees shall be granted service credit for service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of such state or territory. Such service credit shall also be granted for service as a teacher in an elementary or secondary parochial or private school located within this state and fully accredited by the West Virginia department of education: Provided, That the education employee shall pay to the system an amount equal to the amount contributed by such employee during the first full year as an education employee plus the employer contribution amount required by section twenty-four of this article, times the number of years for which credit is granted, plus regular interest at a rate to be determined by the retirement board, which interest shall begin to accrue on the first day of employment as an education employee. Such interest shall be deposited in the income fund, and service credit so granted at the time of retirement shall not exceed the lesser of ten years of out-of-state service and ten years of parochial or private school credit, or fifty percent of the member's credited service as an education employee. Any transfer of out-of-state or parochial or private school service credit, as provided for in this subsection, shall not be used to establish eligibility for a retirement allowance, and the board shall grant credit for such transfer as additional service only: Provided, however, That a transfer of such service credit is prohibited if such service is used to
obtain a retirement benefit from another retirement
system: Provided further, That salaries paid to members
for such service shall not be used to compute the average
final salary of such member under the retirement
system.

(f) No education employee shall be deemed absent
from service while serving as a member or employee of
the Legislature of the state of West Virginia during any
duly constituted session of that body or while serving as
an elected member of a county commission during any
duly constituted session of that body: Provided, That the
education employee makes contributions to the system
equal to what would have been contributed during the
period of absence had the education duties been
performed.

No education employee shall be deemed absent from
service as a teacher while serving on leave of absence
as an officer with a statewide professional teaching
association, or who has served in such capacity:
Provided, That the period of service credit granted for
such service on leave of absence shall not exceed two
years: Provided, however, That an education employee
who is serving or has served as an officer of a statewide
professional teaching association shall make contribu-
tions for the time of any such absence, in an amount
equal to the amount which such employee would have
contributed had the education duties been performed,
plus the contribution of the participating public
employer required by section twenty-four of this article.

§5-10D-8. Military service credit.

Any member of the retirement system who entered or
ers the active service of the armed forces of the
United States during any period of compulsory military
service shall receive credited service for said time spent
in the armed forces of the United States, not to exceed
five years if such member pays to the members' deposit
fund the amount he may have withdrawn therefrom,
- together with regular interest from the date of withdra-
wal to the date of repayment. In any case of doubt as
to the period of service to be so credited a member, the
board of trustees shall have final power to determine such period. During the period of such armed service and until his return to the employ of a participating public employer, his contributions to the retirement system shall be suspended and any balance remaining to his credit in the members' deposit fund shall be accumulated at regular interest.

§5-10D-9. When and how political subdivision becomes participating public employer.

The state of West Virginia shall become a participating public employer effective July one, one thousand nine hundred eighty-eight. An employer of education employees shall become a participating public employer effective July one, one thousand nine hundred eighty-eight. Any other political subdivision may, by a three-fifths vote of its governing body, or by a majority vote of its electors, elect to become a participating public employer and thereby include its employees in the membership of the retirement system. It shall be the duty of the clerk or secretary of each such political subdivision electing to become a participating public employer to certify the determination of the political subdivision to the board of trustees within ten days from and after the vote of the governing body or the canvass of votes upon such action: Provided, That an employee whose employment is effected on or after July one, one thousand nine hundred eighty-eight, by a political subdivision which has previously elected to become a participating public employer under the provisions of article ten of this chapter shall participate in the retirement system created by this article.

§5-10D-10. Retirement system membership.

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

(a) All employees, as defined in section two of this article, who are in the employ of a political subdivision the day preceding the date it becomes a participating public employer and who continue in the employ of the said participating public employer on and after the said date shall become members of the retirement system;
and all persons who become employees of a participating public employer on or after the said date shall thereupon become members of the system.

(b) All education employees, as defined in subdivision seven of section two of this article.

(c) The membership of the retirement system shall not include any person who is a member of, or who has been retired by, the state teachers retirement system, on the thirtieth day of June, one thousand nine hundred eighty-eight, unless such person has not been a contributing member of such system for five years next preceding employment as an education employee, has not retired, and chooses to be employed as an education employee pursuant to this article or unless such person is hired in such a capacity as would have rendered the employee a contributing member of the public employees retirement system prior to the first day of July, one thousand nine hundred eighty-eight: Provided, that nothing herein shall affect other authorized transfers between the state teachers retirement system and the public employees retirement system, or reciprocal service credit pursuant to article thirteen of this chapter.

(d) The membership of the retirement system shall not include any person who is a member of, or has been retired by, the judges retirement system, the retirement system of the department of public safety, or any municipal retirement system for either, or both, policemen or firemen: Provided, That such exclusions of membership shall not apply to any member of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate or to any member of the legislative body of any political subdivision provided he once becomes a contributing member of the retirement system: Provided, however, That any retired member of the retirement system of the department of public safety, and any retired member of any municipal retirement system for either, or both, policemen or firemen may on and after the effective date of this section become a member of the retirement system as provided in this article, without receiving credit for
prior service as a municipal policeman or fireman or as a member of the department of public safety.

(e) On or after July one, one thousand nine hundred eighty-eight, any member of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate any employee of the state Legislature whose employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is so employed during regular sessions or during the interim between sessions for eight or more years, or any member of the legislative body of any other political subdivision shall become a member of the retirement system provided he notifies the retirement system in writing of his intention to be a member of the system and files a membership enrollment form as the board of trustees shall prescribe, and each person, upon filing his written notice to participate in the retirement system, shall by said act authorize the clerk of the House of Delegates or the clerk of the state Senate or such person or legislative agency as the legislative body of any other political subdivision shall designate to deduct such member's contribution, as provided in subsection (b), section twenty-two of this article, and after said deductions have been made from said member's compensation, such deductions shall be forwarded to the appropriate retirement system as provided by subsection (c), section twenty-two of this article.

(f) Should any question arise regarding the membership status of any employee, the board of trustees has the final power to decide the question.

§5-10D-10a. Options of education employees of the Board of Regents to elect between public employees retirement system II and a retirement plan other than the public employees retirement system II.

Notwithstanding any other provisions of this article to the contrary, any education employee of the West Virginia board of regents may elect a retirement plan
in accordance with the provisions of section four-a, 
article twenty-three, chapter eighteen of this code. Once 
a member has elected a retirement plan established by 
the board of regents, such member cannot thereafter 
change such election.

§5-10D-11. Termination of membership; reentry.

When a member of the retirement system retires or 
dies, he ceases to be a member. When a member leaves 
the employ of a participating public employer for any 
other reason, he ceases to be a member and forfeits 
service credited to him at that time. If he becomes 
reemployed by a participating public employer he shall 
be reinstated as a member of the retirement system and 
his credited service last forfeited by him shall be 
restored to his credit: Provided, That he must be 
reemployed for a period of one year or longer to have 
such service restored: Provided, however, That he 
returns to the members' deposit fund the amount, if any, 
he withdrew therefrom, together with regular interest 
thereon from the date of withdrawal to the date of 
repayment, and that such repayment begins within two 
years of the return to employment and that the full 
amount be repaid within five years of the return to 
employment.

§5-10D-12. Employers to file information as to employees' 
service.

Each participating public employer shall file with the 
board of trustees, in such form as the board shall from 
time to time prescribe, a detailed statement of all 
service rendered to participating public employers by 
each of its employees, and such other information as the 
board shall require in the operation of the retirement 
system.


Any member who has attained or attains age sixty 
years and has five or more years of credited service in 
force, may retire upon his written application filed with 
the board of trustees setting forth at what time, not less 
than thirty days nor more than ninety days subsequent
to the execution and filing thereof he desires to be retired: Provided, That any person who becomes a member of this retirement system shall, in qualifying for retirement hereunder, have five or more years of service, all of which years shall be actual, contributory ones. Upon retirement, the member shall receive an annuity provided for in section fifteen of this article.

§5-10D-14. Deferred retirement and early retirement.

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

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

(c) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section, and has twenty or more years of credited service in force, may elect to receive the actuarial equivalent of his deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his fifty-fifth birthday and his attainment of
(d) Notwithstanding any of the other provisions of this section or of this article and pursuant to regulations promulgated by the board, any member who has thirty or more years of credited service in force, at least three of which are contributing service, and who elects to take early retirement, which for the purposes of this subsection shall mean retirement prior to age sixty, whether an active employee or a separated employee at the time of application, shall be entitled to the full computation of annuity according to section fifteen of this article, as the said section was in force as of the date of retirement application, but with the reduced actuarial equivalent of the annuity the member would have received if his benefit had commenced at age sixty when he would have been entitled to full computation of benefit without any reduction.

(e) Notwithstanding any of the other provisions of this section or of this article, any member of the retirement system may retire with full pension rights, without reduction of benefits, if such member is at least fifty-five years of age and the sum of his or her age plus years of contributing service equals or exceeds eighty.


Upon a member's retirement, as provided in this article, he shall receive a straight life annuity equal to two percent of his final average salary multiplied by the number of years, and fraction of a year, of his credited service in force at the time of his retirement. In either event, upon his retirement he shall have the right to elect an option provided for in section seventeen of this article. All annuity payments shall commence effective the first of the month following the month in which a member retires or a member dies leaving a beneficiary entitled to benefits and shall continue to the end of the month in which said retirant or beneficiary dies, and said annuity payments shall not be prorated for any portion of a month in which a member retires or retirant or beneficiary dies.

§5-10D-16. Terminal payment.
In the event a retirant dies before he has received in straight life annuity payments an aggregate amount equal to his accumulated contributions standing to his credit in the appropriate members deposit fund at the time of his retirement, the difference between his said accumulated contributions and the said aggregate amount of straight life annuity payments received by him shall be paid to such person or persons as he shall have nominated by written designation duly executed and filed with the board of trustees. If there be no such designated person or persons surviving the said retirant such difference, if any, shall be paid to his estate. In no case shall any benefits be paid under this section on account of the death of a retirant if he was receiving an annuity under option A or B provided for in section twenty-four hereof.

§5-10D-17. Annuity options.

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

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

Option B — Modified joint and survivor annuity. — Upon the death of a retirant who elected option B, one half of his reduced annuity shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he shall have nominated by written designation duly executed and filed with the board of trustees prior to the effective date of his retirement.

§5-10D-18. Disability retirement.
(a) Upon the application of a member or former member of the retirement system, or his present or past employing authority, any member or former member who (1) is or was in the employ of a participating public employer, (2) has ten or more years of credited service of which three years is contributing service, and (3) becomes totally and permanently incapacitated for employment, by reason of a personal injury or disease, may be retired by the board of trustees if after a medical examination of the said member or former member, made by or under the direction of a medical committee consisting of two physicians, one of whom shall be named by the board, and one by the said member or former member, the said medical committee reports, in writing, to the board that (1) the said member or former member is physically or mentally totally incapacitated for employment, (2) that such incapacity will probably be permanent, and (3) that the said member or former member should be retired. In the event the two above mentioned physicians do not agree in their findings, then the board of trustees may, at its discretion, appoint a third physician to examine said member or former member and, based upon the third physician's report in writing, the board may retire said member or former member.

(b) A member with less than ten years of credited service shall have the service requirement provided for in subsection (a) above (including the requirement of three years contributing service) waived in the event (1) the board of trustees finds his total and permanent disability to be the natural and proximate result of a personal injury or disease arising out of and in the course of his actual performance of duty in the employ of a participating public employer, and (2) he is in receipt of workmen's compensation on account of such physical or mental disability.

§5-10D-19. Reexamination of disability retirants; reemployment; adjustment of annuity for earnings.

(a) At least once each year during the first five years following the retirement of a member on account of
disability, as provided in section eighteen hereof, and at
least once in each three-year period thereafter, the
board of trustees may, and upon the retirant’s applica-
tion shall, require a disability retirant, who has not
attained the age of sixty years, to undergo a medical
examination to be made by or under the direction of a
physician designated by the board. Should the said
retirant refuse to submit to such medical examination
in any such period his disability annuity may be
discontinued by the board until his withdrawal of such
refusal. Should such refusal continue for one year all his
rights in and to his annuity may be revoked by the
board. If upon such medical examination of a disability
retirant, the said physician reports to the board that the
retirant is physically able and capable of resuming
employment with a participating public employer he
shall be returned to the employ of the participating
public employer from whose employment he retired and
his disability annuity shall terminate: Provided, That
the report of the said physician is concurred in by the
board.

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

(c) If a disability retirant, who has not attained the
age of sixty years, becomes engaged in a gainful
occupation, business or employment, and the sum of his
earnings from such occupation, business or employment,
and his disability annuity exceeds his annual rate of
compensation at the time of his retirement, his disability
annuity shall be reduced to an amount which when
added to the amount so earned by him shall equal his
said annual rate of compensation. If his earnings are
later changed, his disability annuity shall be corres-
pondingly adjusted.

§5-10D-20. Nonduty death annuities.

(a) In the event any member who has ten or more
years of credited service, or any former member with
ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section fourteen hereof, may at any time prior to the effective date of his retirement, by written declaration duly executed and filed with the board of trustees, in the same manner as if he were then retiring from the employ of a participating public employer, elect option A provided for in section seventeen hereof, and nominate a beneficiary whom the board finds to have had an insurable interest in the life of said member. Prior to the effective date of his retirement a member may revoke his said election of option A and nomination of beneficiary and he may again prior to his retirement elect the said option A and nominate a beneficiary as provided in this subsection. Upon the death of a member who has an option A election in force, his beneficiary, if living, shall immediately receive an annuity computed in the same manner in all respects as if the same member had retired the day preceding the date of his death, notwithstanding that he might not have attained age sixty years, and elected the said option A. If at the time of his retirement a member has an option A election in force, his said election of option A and nomination of beneficiary shall thereafter continue in force.

(b) In the event any member who has ten or more years of credited service, or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section fourteen hereof, (1) dies, and (2) leaves a surviving spouse, the surviving spouse shall immediately receive an annuity computed in the same manner in all respects as if the said member had (1) retired the day preceding the date of his death, notwithstanding that he might not have attained age sixty or sixty-two years, as the case may be, (2) elected option A provided for in section seventeen hereof, and (3) nominated a surviving spouse as beneficiary.

(c) In the event any member who has ten or more years of credited service, or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section fourteen
hereof (1) dies without leaving a surviving spouse, but
(2) leaves a surviving infant child or children, and
(3) does not have a beneficiary nominated as provided
in subsection (a) of this section, said infant child or
children shall be entitled to an annuity to be calculated
as follows: The annuity reserve shall be calculated as
though said member had retired as of the date of his
decease and elected a straight life annuity, and the
monthly installments to said member's infant child or
children until said child or children attain age twenty-
one or sooner marry or become emancipated; however,
in no event shall any child or children receive more than
two hundred fifty dollars per month each. The said
annuity payments shall be computed as of the date of
the death of the said member and the amount of said
annuity shall remain constant during the period of
payment. The annual amount of the annuities payable
by this section shall not exceed sixty percent of said
deceased member's final average salary.

§5-10D-21. Divisions of retirement system; funds.

1. For financing and accounting purposes the West
Virginia public employees retirement system II shall
consist of two divisions, namely, the state and education
division for the participation of state employees and
education employees, and the public employer division
for the participation of the public employees who are not
state or education employees. Separate accounting of the
retirement system transactions shall be maintained for
each division showing the equities of each division in the
assets of the system. The retirement system funds shall
be (1) the members deposit fund, (2) the employers
accumulation fund, (3) the retirement reserve fund,
(4) the income fund, and (5) the expense fund. Each
such fund shall be maintained by the board of trustees
for the state and education division and the public
employer division, respectively. Nothing contained in
this section shall be interpreted to mean that the assets
of the system are to be segregated between the divisions
or the funds.

§5-10D-22. Members' deposit fund; members'
(a) The members' deposit fund is hereby created. It shall be the fund in which shall be accumulated, at regular interest, the contributions deducted from the compensation of members, and from which refunds of accumulated contributions shall be paid and transfers made as provided in this section.

(b) The contributions of a member to the retirement system (including any member of the Legislature) shall be a sum of not less than three and five-tenths percent of his annual compensations but not more than four and five-tenths percent of his annual compensations, as determined by the board of trustees, except that in the case of education employees the contribution shall be not less than six percent. The said contributions shall be made notwithstanding that the minimum salary or wages provided by law for any member shall be thereby changed. Each member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of a member's compensation less said deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered by him to a participating public employer, except as to benefits provided by this article.

(c) The officer or officers responsible for making up the payrolls for payroll units of the state government and for each of the other participating public employers shall cause the contributions, provided for in subsection (b) above, to be deducted from the compensations of each member in the employ of the participating public employer, on each and every payroll, for each and every payroll period, from the date the member enters the retirement system to the date his membership terminates. When deducted, each of said amounts shall be paid by the participating public employer to the retirement system, except that in the case of education employees, four and one-half percent of their annual compensation shall be paid to the public employees retirement system created by this article and one and one-half percent of their annual compensation shall be paid to the teachers' accumulation fund of the state.
teachers' retirement system established pursuant to article seven-a, chapter eighteen of this code; said payments to be made in such manner and form, and in such frequency, and shall be accompanied by such supporting data, as the boards of trustees of both retirement systems shall from time to time prescribe. When paid to the appropriate retirement system, each of said amounts shall be credited to the members' deposit fund account of the member from whose compensations said contributions were deducted.

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

(e) Upon the retirement of a member, or if a survivor annuity becomes payable on account of his death, in either event his accumulated contributions standing to his credit in the appropriate members' deposit fund shall be transferred to the appropriate retirement reserve fund.

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

§5-10D-23. Refund of accumulated contributions.

(a) In the event a member leaves the employ of a participating public employer prior to the date he
becomes entitled to retire with an annuity payable by
the retirement system, he shall be paid, upon his written
application filed with the board of trustees, his accumu-
lated contributions standing to his credit in the
appropriate members deposit fund, if his separation
from the employ of a participating public employer
occurs subsequent to a period of two years from and
after the date he last became a member of the system.
If his said separation from the employ of a participating
public employer occurs within a period of two years
from and after the date he last became a member of the
system, he shall be paid his accumulated contributions
standing to his credit in the appropriate members
deposit fund less the total interest credited to his
individual account therein; and the said total interest
credit shall be transferred to the appropriate income
fund.

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

(c) Refunds of a member’s contributions or accumu-
lated contributions, as the case may be, may be made
in equal installments according to such rules and
regulations as the board of trustees may from time to
time adopt.

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

§5-10D-24. Employers accumulation fund; employers contributions.

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

(b) Based upon the provisions of section six of this article, the participating public employers contributions to the retirement system shall be determined, according to subdivisions one, two, three and four below, for the state as the state and education division, and for the other participating public employers as the public employer division.

(1) The participating public employers contributions for members' current service shall be a percent of the members' annual compensation which will equal an amount which if paid annually by the participating public employers during the members' future service will be sufficient to provide, at the time annuities will become payable on their account, the difference between the annuity reserves for the future service portions of the annuities to be paid and the present value of the members' future net contributions.

(2) The participating public employers contributions for members' accrued service shall be a percent of the members' annual compensation which will equal an amount which if paid annually by the participating public employers over a period of years, to be determined by the board of trustees, will amortize, at regular
(3) The participating public employers contributions for annuities being paid retirants and beneficiaries shall be a percent of the members' annual compensations which will equal an amount which if paid annually by the participating public employers over a period of years, to be determined by the board of trustees, will amortize, at regular interest, the unfunded annuity reserves for annuities being paid retirants and beneficiaries.

(4) In no year shall the total of the contributions, provided for in subdivisions one, two and three above, to be paid by any participating public employer exceed ten and five-tenths percent of the total payroll for the members in the employ of such participating public employer for the preceding fiscal year.

§5-10D-24a. Retroactive contributions to the retirement system.

Those public employers who are participating in the West Virginia public employees retirement system II and elected to participate after the first day of July, one thousand nine hundred eighty-eight, and those employers who are eligible but who have not elected to participate, may elect to cover their employees retroactively for the period of their prior employment by such employer to the first day of July, one thousand nine hundred eighty-eight, under the following terms and rules and regulations to be promulgated by the board of trustees of the retirement system:

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

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

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

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

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

(f) Any new participating employer and any partici-
pating employer who is currently a participant and who
began participating after the first day of July, one
thousand nine hundred eighty-eight, who desires
additional service credit must elect to provide such
service credit within one year following the effective
date of this section;

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

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

§5-10D-25. Appropriations for state contributions to
retirement system; contributions for
members paid from special funds or by
other employers.

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

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

§5-10D-26. Contributions by other participating public
employers; withholding state money to satisfy delinquencies.

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

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

§5-10D-27. Transfers to retirement reserve fund.

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

§5-10D-28. Retirement reserve fund created; transfers from fund on reemployment.
The retirement reserve fund is hereby created. It shall be the fund from which shall be paid all annuities payable as provided in this article. If a disability retirant returns to the employ of a participating public employer, his annuity reserve at that time shall be transferred from the retirement reserve fund to the members deposit fund and the employers accumulation fund in the same proportions as the annuity reserve was originally transferred to the retirement reserve fund. The amount so transferred to the members deposit fund shall be credited to his individual account therein.

§5-10D-29. Income fund.

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

§5-10D-30. Expense fund; state and other employers to share expenses.

The expense fund shall be the fund from which shall be paid the expenses incurred in the administration of the retirement system. The cost of administering the system shall be paid by the state and the other participating public employers on a proportionate basis to be determined by the board of trustees. The board
shall certify annually to the governor the state's proportionate share of the cost of administration and to each of the other participating public employers their respective shares, and each of said participating public employers shall pay the amounts due by them to the state treasurer for credit to the expense fund.

§5-10D-31. Investment of moneys.

All moneys of the retirement system not currently required for the payment of annuities or other benefits shall be invested in the same manner and under the same conditions as moneys of the public employees retirement system created under article ten of this chapter are invested.

§5-10D-32. No trustee, etc., shall gain from investments of system.

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

§5-10D-33. Restricted use of retirement system moneys.

The moneys, investments and all other assets of the retirement system shall be used for the sole purpose of meeting the disbursements for annuities and other payments authorized by this article, and shall be used for no other purpose whatsoever.
§5-10D-34. Allowance of regular interest on balances in funds.

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

§5-10D-35. Fiscal year of retirement system.

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

§5-10D-36. Pro rata reduction of annuities.

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

§5-10D-37. Correction of errors.

Should any change or error in the records of any participating public employer or the retirement system result in any person receiving from the system more or less than he would have been entitled to receive had the records been correct, the board of trustees shall correct such error, and as far as is practicable, shall adjust the payment of the benefit in such manner that the actuarial equivalent of the benefit to which such person was correctly entitled shall be paid.

§5-10D-38. Fraud; penalty.

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

§5-10D-39. Right to benefits not subject to execution, etc.;
assignments prohibited; deductions for
group insurance; setoffs for fraud.

The right of a person to any benefit provided for in
this article shall not be subject to execution, attachment,
garnishment, the operation of bankruptcy or insolvency
laws, or other process whatsoever, nor shall any
assignment thereof be enforceable in any court:
Provided, That should a member be covered by a group
insurance or prepayment plan participated in by a
participating public employer, and should he be
permitted to, and elect to, continue such coverage as a
retirant, he may authorize the board of trustees to have
deducted from his annuity the payments required of him
to continue coverage under such group insurance or
prepayment plan: Provided, however, That a participat-
ing public employer shall have the right of setoff for any
claim arising from embezzlement by, or fraud of, a
member, retirant or beneficiary.

§5-10D-40. Benefits exempt from taxes.

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

§5-10D-41. Reemployment after retirement; option for
holder of elected public office.

(a) In the event a retirant becomes employed by a
participating public employer, payment of his or her
annuity shall be suspended during the period of his or
her reemployment and he or she shall become a
contributing member to the retirement system. If his or
her reemployment is for a period of one year or longer,
his or her annuity shall be recalculated and he or she
shall be granted an increased annuity due to such
additional employment, said annuity to be computed according to section fifteen of this article. A retirant may accept temporary employment from a participating employer so long as he or she does not receive compensation in excess of six thousand dollars.

(b) In the event a retirant is elected to a public office or appointed to hold an elected public office, he or she has the option, notwithstanding subsection (a) of this section, to either:

(1) Continue to receive payment of his or her annuity while holding such public office, in addition to the salary he or she may be entitled to as such office holder; or

(2) Suspend the payment of his or her annuity and become a contributing member of the retirement system as provided in subsection (a) of this section.

§5-10D-42. Removal from office.

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

§5-10D-43. 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.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-35b. Temporary early retirement incentives.

That beginning on the first day of April, one thousand nine hundred eighty-eight, and continuing through the

thirtieth day of June, one thousand nine hundred eighty-nine, members retiring may elect any one of the following three incentive options:

Provided, That any employee participating in this retirement incentive program is not eligible to accept further employment from the state or any of its political subdivisions.

Retirement incentive option one:

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

Retirement incentive option two:

A member may elect a lump sum payment, in addition to his regular retirement annuity, equal to ten percent of his final average salary not to exceed five thousand dollars.

Retirement incentive option three:

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

The additional annuity allowed for temporary early retirement under these options is intended to be paid from the retirement incentive account hereby created as a special account in the state treasury and from the funds therein established with moneys required to be transferred by heads of spending units from the unused portion of salary and fringe benefits in their budgets accruing in respect of such positions vacated and subsequently canceled under this temporary early retirement program. Salary and fringe benefit moneys actually saved in a particular fiscal year or deemed to be saved on a continuing basis in any subsequent fiscal year, once occurring, shall constitute the fund source. No such additional annuity shall be disallowed even though initial receipts may not be sufficient.
The executive secretary of the retirement system shall provide forms for applicants. Such forms shall include a detailed description of the three incentive plan options outlined above.

The executive secretary of the retirement system shall file a report to the Legislature no later than the fifteenth day of February, one thousand nine hundred eighty-nine and quarterly thereafter detailing the number of members who have elected to accept early retirement incentive options, the dollar cost to date by option selected and the projected annual cost through the year two thousand.

Within every spending unit, department, board, corporation, committee, division or any other agency or entity wherein two or multiples of two members elect to retire under the temporary early retirement incentives set forth above no more than one of the vacant positions may be filled, with the second position being abolished upon the effective day of the member's retirement: Provided, That county boards of education in replacing employees leaving under this temporary early retirement incentive program shall be eligible to replace in that number as authorized by the basic school aid formula and pursuant to those guidelines in respect of number of positions lost or projected to be lost due to declining enrollment, changes in statutes, changes in state appropriations and the other guidelines set forth and contained within said basic school aid formula. The head of the spending unit shall immediately notify the state auditor, the legislative auditor, and the commissioner of the department of finance and administration of the decisions and shall transfer all remaining salary and fringe benefit appropriations remaining after the employee's termination date: Provided, That because the Legislature finds that due to insufficient employees therein, the provision for abolishing one of each two vacancies created by special early retirement shall not apply to the board of regents, but instead a ratio of three vacancies occurring and with one to be deemed abolished and canceled shall obtain.

Special rule.—Any member of the retirement system
82 may retire under the special early retirement provisions
83 with full pension rights, without reduction of benefits if
84 the sum of such member's age plus years of contributing
85 service equals or exceeds eighty: Provided, That such
86 person has at least twenty years of contributing service,
87 and with military service of up to two years to be
88 deemed such contributing service for the purpose of this
89 special rule and early retirement thereunder. The
90 savings which have accrued from the implementation of
91 this temporary early retirement incentive shall, after
92 determination of the special early incentive program, be
93 deemed to continue in such amount and be budgeted to
94 provide for the payment of the retirement incentive
95 account needs and any excess thereof to be directed as
96 additional funding to the teachers retirement system.

§18-7A-36. Transfer to public employees retirement system II.

1 To ensure retirement benefits for all the state's
2 education employees, to promote the fiscal soundness of
3 the state teachers retirement system, to provide an
4 adequately-funded retirement system for future gener-
5 ations, to abandon the tendency to increase retirement
6 benefits in years that salaries are not increased or to
7 fund inadequately the state teachers retirement system
8 in order to provide such salary increase, and to enhance
9 the state's credit rating, any person whose employment
10 would constitute entry into the state teachers retirement
11 system as the same was in effect on the thirtieth day
12 of June, one thousand nine hundred eighty-eight, but
13 whose employment was effected on or after the first day
14 of July, one thousand nine hundred eighty-eight, shall
15 participate in such retirement system as shall be
16 provided for in article ten-d, chapter five of this code.

ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSI-
BILITIES OF GOVERNING BOARDS OF STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-23-4a. Supplemental and additional retirement plans
for employees; payroll deductions; authority
to match employee contributions.

1 The governing boards shall have the authority to
contract for a supplemental retirement plan for any or all of its employees to supplement the benefits such employees will receive under the state teachers retirement system. The governing boards shall have the authority to make additional periodic deductions from the salary payments due such employees in the amount they are required to contribute for the supplemental retirement plan selected by the board. The additional deductions shall not exceed five percent of the salary of employees under thirty-five years of age, six percent of the salary of those thirty-five through forty-four years of age, and seven and one-half percent of the salary of those forty-five years of age and above, and shall not cover any portion of an employee's salary which is covered by the state teachers retirement system.

The governing boards shall also have the authority to contract for an additional retirement plan for any of its employees who elect to participate solely in such a retirement plan selected by the governing boards without participating in the state retirement system. The governing boards shall have the authority to make periodic deductions from the salary payments due such employees in the amount they are required to contribute to the additional plan, which deductions shall be the same percentage of the participating employees' salaries as that deducted from the salaries of members of the state retirement system.

The board is further authorized, by way of additional compensation to such employees, to pay an amount equal to the contributions of such employees into either the supplemental or additional retirement plan from funds appropriated to it for personal services. Each participating employee shall have a full and immediate vested interest in the retirement and death benefits accrued from all the moneys paid into such supplemental or additional retirement plan for his benefit. Upon proper requisition of the board, the auditor shall periodically issue a warrant, payable as specified in the requisition, for the total contributions so withheld from the salaries of all participating employees and for the governing board's matching funds.
Notwithstanding any provisions contained in article seven-a and article twenty-three of this chapter, once a member has elected one of the options contained in section fourteen-a, article seven-a of this chapter and this section, he cannot thereafter change such election after June thirtieth, one thousand nine hundred eighty-nine.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof; prompt coordination in reduction of employment force.

Before entering upon their duties, all teachers shall execute a contract with their boards of education, which contract shall state the salary to be paid and shall be in the form prescribed by the state superintendent of schools. Every such contract shall be signed by the teacher and by the president and secretary of the board of education, and when so signed shall be filed, together with the certificate of the teacher, by the secretary of the office of the board.

A teachers' contract, under this section, shall be for a term of not less than one nor more than three years; and if, after three years of such employment, the teacher who holds a professional certificate, based on at least a bachelor's degree, has met the qualifications for the same, and the board of education enter into a new contract of employment, it shall be a continuing contract: Provided, That any teacher holding a valid certificate with less than a bachelor's degree who is employed in a county beyond the said three-year probationary period shall upon qualifying for said professional certificate based upon a bachelor's degree, if reemployed, be granted continuing contract status: Provided, however, That a teacher holding continuing contract status with one county shall be granted continuing contract status with any other county upon
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The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated (1) by a majority vote of the full membership of the board before April first of the then current year, after written notice, served upon the teacher, return receipt requested, stating cause or causes, and an opportunity to be heard at a meeting of the board prior to the board’s action thereon, or (2) by written resignation of the teacher before that date. Such termination shall take effect at the close of the school year in which the contract is so terminated: Provided, That the contract may be terminated at any time by mutual consent of the school board and the teacher, and that this section shall not affect the powers of the school board to suspend or dismiss a principal or teacher pursuant to section eight of this article: Provided, however, That a continuing contract for any teacher holding a certificate valid for more than one year and in full force and effect during the school year one thousand nine hundred eighty-four and one thousand nine hundred eighty-five shall remain in full force and effect: Provided further, That a continuing contract shall not operate to prevent a teacher’s dismissal based upon the lack of need for the teacher’s services pursuant to the provisions of law relating to the allocation to teachers and pupil-teacher ratios. But in case of such dismissal, the teachers so dismissed shall be placed upon a preferred list in the order of their length of service with that board, and no teacher shall be employed by the board until each qualified teacher upon the preferred list, in order, shall have been offered the opportunity for reemployment: And provided further, That he has not accepted a teaching position elsewhere. Such reemployment shall be upon a teacher’s preexisting continuing contract and shall have the same effect as though the contract had been suspended during the time the teacher was not employed.
In the assignment of position or duties of a teacher under said continuing contract, the board shall have authority to provide for released time of a teacher for any special professional or governmental assignment without jeopardizing the contractual rights of such teacher or any other rights, privileges or benefits under the provisions of this chapter.

Any teacher who fails to fulfill his contract with the board, unless prevented from so doing by personal illness or other just cause, or unless released from such contract by the board, or who violates any lawful provision thereof, shall be disqualified to teach in any other public school in the state for a period of the next ensuing school year, and the state department of education or board may hold all papers and credentials of such teacher on file for a period of one year for such violation: Provided, That marriage of a teacher shall not be considered a failure to fulfill, or violation of, the contract.

Notwithstanding the provisions of sections two and seven, article two, chapter eighteen-a and section eight-b, article four, chapter eighteen-a, of this code for the school year one thousand nine hundred eighty-seven-one thousand nine hundred eighty-eight only, employees recommended by the county superintendent of schools for termination or transfer of employment because of reductions-in-force shall be notified by the first day of May, one thousand nine hundred eighty-eight. All hearings held at the employees request shall be completed and final board action taken by the thirtieth day of May, one thousand nine hundred eighty-eight.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within __________________________ this the __________________________ day of ______________, 1988.

Governor