

#4672

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



ENROLLED

Com. Sub. for
HOUSE BILL No. 4672

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

Passed March 12, 1988

In Effect From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 4672

(By MR. SPEAKER, MR. CHAMBERS, and DELEGATE SWANN)
[By request of the Executive]

[Passed March 12, 1988; in effect from 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.

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

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

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

38 (d) Employees of the state Legislature whose term of
39 employment is otherwise classified as temporary and

40 who are employed to perform services required by the
41 Legislature for its regular sessions or during the interim
42 between regular sessions and who have been or are so
43 employed during regular sessions or during the interim
44 between sessions for eight or more years, may receive
45 service credit for such time as served in that capacity.

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

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

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

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

9 Retirement incentive option one:

10 For the purpose of computing the member's annuity,
11 the normal final average salary shall be computed and

12 one-eighth thereof shall be added thereto in arriving at
13 the true final average salary for use in actual compu-
14 tation of retirement benefit.

15 Retirement incentive option two:

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

20 Retirement incentive option three:

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

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

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

45 The executive secretary of the retirement system shall
46 file a report to the Legislature no later than the fifteenth
47 day of February, one thousand nine hundred eighty-
48 nine, and quarterly thereafter, detailing the number of
49 retirees who have elected to accept early retirement
50 incentive options, the dollar cost to date by option

51 selected, and the projected annual cost through the year
52 two thousand.

53 (c) Within every spending unit, department, board,
54 corporation, committee, division, or any other agency or
55 entity wherein two or multiples of two members elect
56 to retire under the temporary early retirement incen-
57 tives set forth above, no more than one of the vacant
58 positions may be filled, with the second position being
59 abolished upon the effective day of the member's
60 retirement. The retirant's employing entity shall decide
61 as to which of the vacated positions made available
62 through special early retirement are to be abolished and
63 the head of the spending unit shall immediately notify
64 the state auditor, the legislative auditor, and the
65 commissioner of the department of finance and admin-
66 istration of the decisions and shall then transfer all
67 remaining salary and fringe benefit appropriations
68 remaining after the employees termination date.
69 *Provided*, That because the Legislature finds that due
70 to insufficient employees therein, this provision for
71 abolishing one of each two vacancies created by special
72 early retirement shall not apply to: conservation officers
73 in the department of natural resources, employees of the
74 forestry division in the department of agriculture,
75 employees in the department of corrections and bona
76 fide meat inspectors in the the department of
77 agriculture.

78 (d) *Special rule.*—Any member of the retirement
79 system may retire under the special early retirement
80 provisions with full pension rights, without reduction of
81 benefits if the sum of such member's age plus years of
82 contributing service equals or exceeds eighty: *Provided*,
83 That such person has at least twenty years of contribut-
84 ing service, and with military service of up to two years
85 to be deemed such contributing service for the purpose
86 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.**

1 Those public employers who are participating in the

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

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

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

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

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

39 (e) Each employer and employee shall be required to
40 pay into the retirement system in the manner hereinaf-
41 ter provided the amount necessary for the additional

42 service credit provided by this section, based upon an
43 actuarial study of each employer that elects to partic-
44 ipate in the retirement system under this section and as
45 determined by the board of trustees;

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

50 (g) Any new participating employer and any partic-
51 ipating employer which is currently a participant and
52 who began participating after the first day of July, one
53 thousand nine hundred sixty-one, who desires additional
54 service credit must elect to provide such service credit
55 within one year following the effective date of this
56 section;

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

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

67 (j) For the purpose of reopening the effectiveness of
68 the provisions of this section for a period of one year
69 following the effective date of the amendment to this
70 section, and for the purpose of granting, retroactively
71 service credit to current employees of employers
72 participating in the public employees retirement system
73 during such period, this section is hereby renewed and
74 reestablished; but any such credited service granted
75 hereunder shall be on the actuarially sound basis for
76 determining required additional contributions, of both
77 employer and employee, required in light of benefits
78 that would be computed in respect of such later point
79 in time and such subsequent final average salary
80 amount.

§5-10-53. Transfer to public employees retirement system II.

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

ARTICLE 10D. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT II.

§5-10D-1. Short title.

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

§5-10D-2. Definitions.

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

4 (1) "State" means the state of West Virginia;

5 (2) "Retirement system" or "system" means the West
6 Virginia public employees retirement system created
7 and established by this article;

8 (3) "Board of trustees" or "board" means the board of
9 trustees of the West Virginia public employees retire-
10 ment system as provided for in article ten of this
11 chapter;

12 (4) "Political subdivision" means the state of West
13 Virginia, a county, city or town in the state; a county
14 board of education any separate corporation or instru-
15 mentality established by one or more counties, cities or
16 towns, as permitted by law; any corporation or instru-

17 mentality supported in most part by counties, cities or
18 towns; any public corporation charged by law with the
19 performance of a governmental function and whose
20 jurisdiction is coextensive with one or more counties,
21 cities or towns, any agency or organization established
22 by, or approved by the department of mental health for
23 the provision of community health or mental retardation
24 services, and which is supported in part by state, county
25 or municipal funds;

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

36 (6) "Employee" means any person whose employment
37 is effected on or after July one, one thousand nine
38 hundred eighty-eight, and who serves regularly as an
39 officer or employee, full-time, on a salary basis, whose
40 tenure is not restricted as to temporary or provisional
41 appointment, in the service of, and whose compensation
42 is payable, in whole or in part, by any political
43 subdivision, and shall include any regular education
44 employee or an officer or employee whose compensation
45 is calculated on a daily basis and paid monthly or on
46 completion of assignment, including technicians and
47 other personnel employed by the West Virginia national
48 guard whose compensation, in whole or in part, is paid
49 by the federal government: *Provided*, That members of
50 the state Legislature, the clerk of the House of Dele-
51 gates, the clerk of the state Senate, employees of the
52 state Legislature whose term of employment is other-
53 wise classified as temporary and who are employed to
54 perform services required by the Legislature for its
55 regular sessions or during the interim between regular
56 sessions and who have been or are so employed during
57 regular sessions or during the interim between regular

58 sessions for eight or more years, members of the
59 legislative body of any political subdivision and judges
60 of the state court of claims shall be considered to be
61 employees, anything contained herein to the contrary
62 notwithstanding. In any case of doubt as to who is an
63 employee within the meaning of this article the board
64 of trustees shall decide the question;

65 (7) "Education employee" means any employee who is
66 hired by a political subdivision that is participating in
67 the state teachers retirement system on the first day of
68 July, one thousand nine hundred eighty-eight, in
69 accordance with the provisions of article seven-a,
70 chapter eighteen of this code who was not a member of
71 the state teachers retirement system at any time prior
72 to the first day of July, one thousand nine hundred and
73 eighty-eight, and shall include persons hired after the
74 first day of July, one thousand nine hundred eighty-
75 eight, by any county board of education, the state board
76 of education, the state teachers retirement board, the
77 board of regents except as to employees whose retire-
78 ment is in accordance with the provisions of section ten-
79 a of this article, and shall further include any person
80 hired for the provision of educational services by the
81 departments of human services and corrections if such
82 persons would have been members of the state teachers
83 retirement system if hired prior to the first day of July,
84 one thousand nine hundred and eighty-eight. Any
85 employee whose contributions to the state teachers
86 retirement system have ceased for a period of at least
87 five years next preceding the date such employee is
88 hired by a political subdivision named in this subsection
89 for a position which would have required participation
90 in the state teachers retirement system prior to the first
91 day of July, one thousand nine hundred eighty-eight,
92 may also be deemed an education employee at the
93 employee's option;

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

96 (9) "Retirant" means any member who retires with an
97 annuity payable by the retirement system;

98 (10) "Beneficiary" means any person, except a reti-
99 rant, who is entitled to, or will be entitled to, an annuity
100 or other benefit payable by the retirement system;

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

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

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

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

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

122 (16) "Final average salary" means either (a) the
123 average of the highest annual compensation received by
124 a member (including a member of the Legislature who
125 participates in the retirement system in the year one
126 thousand nine hundred eighty-eight ~~one~~ or thereaf- ✓
127 ter) during any period of three consecutive years of his
128 credited service contained within his ten years of
129 credited service immediately preceding the date his
130 employment with a participating public employer last
131 terminated, or (b) if he has less than five years of
132 credited service, the average of the annual rate of
133 compensation received by him during his total years of
134 credited service; and in determining the annual compen-
135 sation, under either (a) or (b) of this subdivision (16), of
136 a member of the Legislature who participates in the

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

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

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

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

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

175 (21) "Retirement" means a member's withdrawal
176 from the employ of a participating public employer with

177 an annuity payable by the retirement system;

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

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

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

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

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

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

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

§5-10D-4. Effective date of system.

1 The effective date of the West Virginia public
2 employees retirement system II shall be July one, one
3 thousand nine hundred eighty-eight.

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

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

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

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

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

16 (c) Beginning in one thousand nine hundred eighty-
17 nine, and at least once in each three-year period
18 thereafter, the actuary shall make an actuarial valua-
19 tion of the assets and liabilities of the retirement system:
20 *Provided*, That until the first actuarial investigations
21 are made, the valuations shall be based upon decrement
22 assumptions which are, in the opinion of the actuary,
23 applicable to the members, retirants and beneficiaries
24 of the system.

25 (d) Beginning in one thousand nine hundred eighty-
26 nine, the actuary shall compute annually the annuity
27 reserve liabilities for annuities being paid retirants and
28 beneficiaries.

§5-10D-7. Service credit.

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

17 (b) The board of trustees shall grant service credit to
18 employees of boards of health, the clerk of the House of
19 Delegates and the clerk of the state Senate, or to any
20 former and present member of the state teachers
21 retirement system or the public employees retirement
22 system established pursuant to article ten of this chapter
23 who have been contributing members of the public
24 employees retirement system II for more than three
25 years, for service previously credited by the state
26 teachers retirement system or the public employees
27 retirement system established pursuant to article ten of
28 this chapter, and shall require the transfer of the
29 member's contributions from the state teachers retire-
30 ment system or the public employees retirement system
31 established pursuant to article ten of this chapter to the
32 public employees retirement system II, and shall also
33 require a deposit, with interest, of any withdrawals of
34 contributions any time prior to said member's retire-
35 ment. Repayment of withdrawals shall be as directed by
36 the board of trustees.

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

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

49 (e) Education employees shall be granted service
50 credit for service as a teacher in the employment of the
51 federal government, or a state or territory of the United
52 States, or a governmental subdivision of such state or
53 territory. Such service credit shall also be granted for
54 service as a teacher in an elementary or secondary
55 parochial or private school located within this state and
56 fully accredited by the West Virginia department of
57 education: *Provided*, That the education employee shall
58 pay to the system an amount equal to the amount
59 contributed by such employee during the first full year
60 as an education employee plus the employer contribution
61 amount required by section twenty-four of this article,
62 times the number of years for which credit is granted,
63 plus regular interest at a rate to be determined by the
64 retirement board, which interest shall begin to accrue
65 on the first day of employment as an education em-
66 ployee. Such interest shall be deposited in the income
67 fund, and service credit so granted at the time of
68 retirement shall not exceed the lesser of ten years of out-
69 of-state service and ten years of parochial or private
70 school credit, or fifty percent of the member's credited
71 service as an education employee. Any transfer of out-
72 of-state or parochial or private school service credit, as
73 provided for in this subsection, shall not be used to
74 establish eligibility for a retirement allowance, and the
75 board shall grant credit for such transfer as additional
76 service only: *Provided, however*, That a transfer of such
77 service credit is prohibited if such service is used to

78 obtain a retirement benefit from another retirement
79 system: *Provided further*, That salaries paid to members
80 for such service shall not be used to compute the average
81 final salary of such member under the retirement
82 system.

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

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

§5-10D-8. Military service credit.

1 Any member of the retirement system who entered or
2 enters the active service of the armed forces of the
3 United States during any period of compulsory military
4 service shall receive credited service for said time spent
5 in the armed forces of the United States, not to exceed
6 five years if such member pays to the members' deposit
7 fund the amount he may have withdrawn therefrom,
8 together with regular interest from the date of withdra-
9 wal to the date of repayment. In any case of doubt as
10 to the period of service to be so credited a member, the

11 board of trustees shall have final power to determine
12 such period. During the period of such armed service
13 and until his return to the employ of a participating
14 public employer, his contributions to the retirement
15 system shall be suspended and any balance remaining
16 to his credit in the members' deposit fund shall be
17 accumulated at regular interest.

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

1 The state of West Virginia shall become a participat-
2 ing public employer effective July one, one thousand
3 nine hundred eighty-eight. An employer of education
4 employees shall become a participating public employer
5 effective July one, one thousand nine hundred eighty-
6 eight. Any other political subdivision may, by a three-
7 fifths vote of its governing body, or by a majority vote
8 of its electors, elect to become a participating public
9 employer and thereby include its employees in the
10 membership of the retirement system. It shall be the
11 duty of the clerk or secretary of each such political
12 subdivision electing to become a participating public
13 employer to certify the determination of the political
14 subdivision to the board of trustees within ten days from
15 and after the vote of the governing body or the canvass
16 of votes upon such action: *Provided*, That an employee
17 whose employment is effected on or after July one, one
18 thousand nine hundred eighty-eight, by a political
19 subdivision which has previously elected to become a
20 participating public employer under the provisions of
21 article ten of this chapter shall participate in the
22 retirement system created by this article.

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

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

3 (a) All employees, as defined in section two of this
4 article, who are in the employ of a political subdivision
5 the day preceding the date it becomes a participating
6 public employer and who continue in the employ of the
7 said participating public employer on and after the said
8 date shall become members of the retirement system;

9 and all persons who become employees of a participating
10 public employer on or after the said date shall thereupon
11 become members of the system.

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

14 (c) The membership of the retirement system shall
15 not include any person who is a member of, or who has
16 been retired by, the state teachers retirement system, on
17 the thirtieth day of June, one thousand nine hundred
18 eighty-eight, unless such person has not been a contri-
19 buting member of such system for five years next
20 preceding employment as an education employee, has
21 not retired, and chooses to be employed as an education
22 employee pursuant to this article or unless such person
23 is hired in such a capacity as would have rendered the
24 employee a contributing member of the public em-
25 ployees retirement system prior to the first day of July,
26 one thousand nine hundred eighty-eight: *Provided*, that
27 nothing herein shall affect other authorized transfers
28 between the state teachers retirement system and the
29 public employees retirement system, or reciprocal
30 service credit pursuant to article thirteen of this
31 chapter.

32 (d) The membership of the retirement system shall
33 not include any person who is a member of, or has been
34 retired by, the judges retirement system, the retirement
35 system of the department of public safety, or any
36 municipal retirement system for either, or both,
37 policemen or firemen: *Provided*, That such exclusions of
38 membership shall not apply to any member of the state
39 Legislature, the clerk of the House of Delegates, the
40 clerk of the state Senate or to any member of the
41 legislative body of any political subdivision provided he
42 once becomes a contributing member of the retirement
43 system: *Provided, however*, That any retired member of
44 the retirement system of the department of public
45 safety, and any retired member of any municipal
46 retirement system for either, or both, policemen or
47 firemen may on and after the effective date of this
48 section become a member of the retirement system as
49 provided in this article, without receiving credit for

50 prior service as a municipal policeman or fireman or as
51 a member of the department of public safety.

52 (e) On or after July one, one thousand nine hundred
53 eighty-eight, any member of the state Legislature, the
54 clerk of the House of Delegates, the clerk of the state
55 Senate any employee of the state Legislature whose
56 employment is otherwise classified as temporary and
57 who is employed to perform services required by the
58 Legislature for its regular sessions or during the interim
59 between regular sessions and who has been or is so
60 employed during regular sessions or during the interim
61 between sessions for eight or more years, or any member
62 of the legislative body of any other political subdivision
63 shall become a member of the retirement system
64 provided he notifies the retirement system in writing of
65 his intention to be a member of the system and files a
66 membership enrollment form as the board of trustees
67 shall prescribe, and each person, upon filing his written
68 notice to participate in the retirement system, shall by
69 said act authorize the clerk of the House of Delegates
70 or the clerk of the state Senate or such person or
71 legislative agency as the legislative body of any other
72 political subdivision shall designate to deduct such
73 member's contribution, as provided in subsection (b),
74 section twenty-two of this article, and after said
75 deductions have been made from said member's com-
76 pensation, such deductions shall be forwarded to the
77 appropriate retirement system as provided by subsec-
78 tion (c), section twenty-two of this article.

79 (f) Should any question arise regarding the member-
80 ship status of any employee, the board of trustees has
81 the final power to decide the question.

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

1 Notwithstanding any other provisions of this article to
2 the contrary, any education employee of the West
3 Virginia board of regents may elect a retirement plan

4 in accordance with the provisions of section four-a,
5 article twenty-three, chapter eighteen of this code. Once
6 a member has elected a retirement plan established by
7 the board of regents, such member cannot thereafter
8 change such election.

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

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

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

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

§5-10D-13. Voluntary retirement.

1 Any member who has attained or attains age sixty
2 years and has five or more years of credited service in
3 force, may retire upon his written application filed with
4 the board of trustees setting forth at what time, not less
5 than thirty days nor more than ninety days subsequent

6 to the execution and filing thereof he desires to be
7 retired: *Provided*, That any person who becomes a
8 member of this retirement system shall, in qualifying
9 for retirement hereunder, have five or more years of
10 service, all of which years shall be actual, contributory
11 ones. Upon retirement, the member shall receive an
12 annuity provided for in section fifteen of this article.

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

1 (a) Any member, who has five or more years contri-
2 buting service, and who leaves the employ of a partic-
3 ipating public employer prior to his attainment of age
4 sixty years, for any reason except his disability retire-
5 ment or death, shall be entitled to an annuity computed
6 according to section fifteen of this article, as the said
7 section was in force as of the date of his said separation
8 from the employ of a participating public employer:
9 *Provided*, That he does not withdraw his accumulated
10 contributions from the members' deposit fund. His said
11 annuity shall begin the first day of the calendar month
12 next following the month in which his application for
13 same is filed with the board of trustees on or after his
14 attainment of age sixty-two years.

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

26 (c) Any member who qualifies for deferred retire-
27 ment benefits in accordance with subsection (a) of this
28 section, and has twenty or more years of credited service
29 in force, may elect to receive the actuarial equivalent of
30 his deferred retirement annuity as a reduced annuity
31 commencing on the first day of any calendar month
32 between his fifty-fifth birthday and his attainment of

33 age sixty-two years and payable throughout his life.

34 (d) Notwithstanding any of the other provisions of this
 35 section or of this article and pursuant to regulations
 36 promulgated by the board, any member who has thirty
 37 or more years of credited service in force, at least three
 38 of which are contributing service, and who elects to take
 39 early retirement, which for the purposes of this
 40 subsection shall mean retirement prior to age sixty,
 41 whether an active employee or a separated employee at
 42 the time of application, shall be entitled to the full
 43 computation of annuity according to section fifteen of
 44 this article, as the said section was in force as of the date
 45 of retirement application, but with the reduced actuarial
 46 equivalent of the annuity the member would have
 47 received if his benefit had commenced at age sixty when
 48 he would have been entitled to full computation of
 49 benefit without any reduction.

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

§5-10D-15. Retirement annuity.

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

§5-10D-16. Terminal payment.

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

§5-10D-17. Annuity options.

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

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

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

§5-10D-18. Disability retirement.

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

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

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

1 (a) At least once each year during the first five years
2 following the retirement of a member on account of

3 disability, as provided in section eighteen hereof, and at
4 least once in each three-year period thereafter, the
5 board of trustees may, and upon the retirant's applica-
6 tion shall, require a disability retirant, who has not
7 attained the age of sixty years, to undergo a medical
8 examination to be made by or under the direction of a
9 physician designated by the board. Should the said
10 retirant refuse to submit to such medical examination
11 in any such period his disability annuity may be
12 discontinued by the board until his withdrawal of such
13 refusal. Should such refusal continue for one year all his
14 rights in and to his annuity may be revoked by the
15 board. If upon such medical examination of a disability
16 retirant, the said physician reports to the board that the
17 retirant is physically able and capable of resuming
18 employment with a participating public employer he
19 shall be returned to the employ of the participating
20 public employer from whose employment he retired and
21 his disability annuity shall terminate: *Provided*, That
22 the report of the said physician is concurred in by the
23 board.

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

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

§5-10D-20. Nonduty death annuities.

1 (a) In the event any member who has ten or more
2 years of credited service, or any former member with

3 ten or more years of credited service and who is entitled
4 to a deferred annuity, pursuant to section fourteen
5 hereof, may at any time prior to the effective date of his
6 retirement, by written declaration duly executed and
7 filed with the board of trustees, in the same manner as
8 if he were then retiring from the employ of a partici-
9 pating public employer, elect option A provided for in
10 section seventeen hereof, and nominate a beneficiary
11 whom the board finds to have had an insurable interest
12 in the life of said member. Prior to the effective date
13 of his retirement a member may revoke his said election
14 of option A and nomination of beneficiary and he may
15 again prior to his retirement elect the said option A and
16 nominate a beneficiary as provided in this subsection.
17 Upon the death of a member who has an option A
18 election in force, his beneficiary, if living, shall
19 immediately receive an annuity computed in the same
20 manner in all respects as if the same member had
21 retired the day preceding the date of his death,
22 notwithstanding that he might not have attained age
23 sixty years, and elected the said option A. If at the time
24 of his retirement a member has an option A election in
25 force, his said election of option A and nomination of
26 beneficiary shall thereafter continue in force.

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

40 (c) In the event any member who has ten or more
41 years of credited service, or any former member with
42 ten or more years of credited service and who is entitled
43 to a deferred annuity, pursuant to section fourteen

44 hereof (1) dies without leaving a surviving spouse, but
45 (2) leaves a surviving infant child or children, and
46 (3) does not have a beneficiary nominated as provided
47 in subsection (a) of this section, said infant child or
48 children shall be entitled to an annuity to be calculated
49 as follows: The annuity reserve shall be calculated as
50 though said member had retired as of the date of his
51 decease and elected a straight life annuity, and the
52 amount of said annuity reserve shall be paid in equal
53 monthly installments to said member's infant child or
54 children until said child or children attain age twenty-
55 one or sooner marry or become emancipated; however,
56 in no event shall any child or children receive more than
57 two hundred fifty dollars per month each. The said
58 annuity payments shall be computed as of the date of
59 the death of the said member and the amount of said
60 annuity shall remain constant during the period of
61 payment. The annual amount of the annuities payable
62 by this section shall not exceed sixty percent of said
63 deceased member's final average salary.

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

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

§5-10D-22. Members' deposit fund; members'

contributions.

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

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

24 (c) The officer or officers responsible for making up
25 the payrolls for payroll units of the state government
26 and for each of the other participating public employers
27 shall cause the contributions, provided for in subsection
28 (b) above, to be deducted from the compensations of each
29 member in the employ of the participating public
30 employer, on each and every payroll, for each and every
31 payroll period, from the date the member enters the
32 retirement system to the date his membership termi-
33 nates. When deducted, each of said amounts shall be
34 paid by the participating public employer to the
35 retirement system, except that in the case of education
36 employees, four and one-half percent of their annual
37 compensation shall be paid to the public employees
38 retirement system created by this article and one and
39 one-half percent of their annual compensation shall be
40 paid to the teachers' accumulation fund of the state

41 teachers' retirement system established pursuant to
42 article seven-a, chapter eighteen of this code; said
43 payments to be made in such manner and form, and in
44 such frequency, and shall be accompanied by such
45 supporting data, as the boards of trustees of both
46 retirement systems shall from time to time prescribe.
47 When paid to the appropriate retirement system, each
48 of said amounts shall be credited to the members'
49 deposit fund account of the member from whose
50 compensations said contributions were deducted.

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

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

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

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

1 (a) In the event a member leaves the employ of a
2 participating public employer prior to the date he

3 becomes entitled to retire with an annuity payable by
4 the retirement system, he shall be paid, upon his written
5 application filed with the board of trustees, his accum-
6 ulated contributions standing to his credit in the
7 appropriate members deposit fund, if his separation
8 from the employ of a participating public employer
9 occurs subsequent to a period of two years from and
10 after the date he last became a member of the system.
11 If his said separation from the employ of a participating
12 public employer occurs within a period of two years
13 from and after the date he last became a member of the
14 system, he shall be paid his accumulated contributions
15 standing to his credit in the appropriate members
16 deposit fund less the total interest credited to his
17 individual account therein; and the said total interest
18 credit shall be transferred to the appropriate income
19 fund.

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

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

35 (d) In the event a member dies and a refund of his
36 accumulated contributions is due to be made to an infant
37 child or children by reason of being the person or
38 persons nominated by written designation duly executed
39 and filed with the retirement system, and the amount
40 of said refund is less than one thousand dollars, then,
41 and in said event, the board of trustees may make said
42 refund, upon written application, to the closest relative
43 or natural guardian for the use of said infant child or

44 children. The board of trustees may, at its discretion,
45 require that said relative or natural guardian post bond
46 with the retirement system to insure that said money
47 will be used for the benefit of said infant child or
48 children. In any event, before said refund is made to
49 said relative or natural guardian of the said infant or
50 infants, said relative or natural guardian shall give the
51 retirement system an indemnifying release of said sums
52 so paid over.

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

1 (a) The employers accumulation fund is hereby
2 created. It shall be the fund in which shall be accum-
3 ulated the contributions made by the participating
4 public employers to the retirement system, and from
5 which transfers shall be made as provided in this
6 section.

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

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

24 (2) The participating public employers contributions
25 for members' accrued service shall be a percent of the
26 members' annual compensation which will equal an
27 amount which if paid annually by the participating
28 public employers over a period of years, to be deter-
29 mined by the board of trustees, will amortize, at regular

30 interest, the unfunded annuity reserves for the accrued
31 portions of the annuities to be paid on account of
32 members.

33 (3) The participating public employers contributions
34 for annuities being paid retirants and beneficiaries shall
35 be a percent of the members' annual compensations
36 which will equal an amount which if paid annually by
37 the participating public employers over a period of
38 years, to be determined by the board of trustees, will
39 amortize, at regular interest, the unfunded annuity
40 reserves for annuities being paid retirants and
41 beneficiaries.

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

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

1 Those public employers who are participating in the
2 West Virginia public employees retirement system II
3 and elected to participate after the first day of July, one
4 thousand nine hundred eighty-eight, and those employ-
5 ers who are eligible but who have not elected to
6 participate, may elect to cover their employees retroac-
7 tively for the period of their prior employment by such
8 employer to the first day of July, one thousand nine
9 hundred eighty-eight, under the following terms and
10 rules and regulations to be promulgated by the board
11 of trustees of the retirement system:

12 (a) The participating employer, in order to provide
13 the benefits set forth herein, shall pay an additional
14 contribution to the retirement system as shall be the
15 actuarial equivalent of the amount which would have
16 been contributed, together with earnings thereon, by the
17 employer had the employee who is to receive retroactive
18 credit been covered during the period of the retroactive
19 service credit. This contribution may be made by the
20 employer either in one lump sum or, at the election of

21 the employer, by level term payments over a period not
22 in excess of fifteen years or by both lump sum payments
23 and level term payments, as determined by the em-
24 ployer and the board of trustees under rules and
25 regulations promulgated by the board;

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

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

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

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

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

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

59 (h) The consulting actuary's fees for computing the

60 additional contribution rates under this section shall be
61 paid directly by the participating employer to the
62 consulting actuary selected by the board of trustees of
63 the retirement system.

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

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

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

§5-10D-26. Contributions by other participating public

employers; withholding state money to satisfy delinquencies.

1 (a) The board of trustees shall certify annually to each
2 participating public employer, other than the state, the
3 employer contribution rate, determined in section
4 twenty-four hereof, for the public employer division.
5 Each participating public employer shall pay to the
6 state treasurer, for credit to the retirement system, the
7 contributions equal to the said contribution rate applied
8 to each and every payroll of the participating public
9 employer. The said payments shall be made in such
10 manner and form, and in such frequency, and shall be
11 accompanied by such supporting data, as the board shall
12 from time to time prescribe. When paid, the said
13 contributions shall be credited to the employers accum-
14 ulation fund.

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

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

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

§5-10D-28. Retirement reserve fund created; transfers from fund on reemployment.

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

§5-10D-29. Income fund.

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

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

1 The expense fund shall be the fund from which shall
2 be paid the expenses incurred in the administration of
3 the retirement system. The cost of administering the
4 system shall be paid by the state and the other
5 participating public employers on a proportionate basis
6 to be determined by the board of trustees. The board

7 shall certify annually to the governor the state's
8 proportionate share of the cost of administration and to
9 each of the other participating public employers their
10 respective shares, and each of said participating public
11 employers shall pay the amounts due by them to the
12 state treasurer for credit to the expense fund.

§5-10D-31. Investment of moneys.

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

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

1 Except as otherwise provided in this article, no
2 trustee, no member of the board of public works, and
3 no employee of the board of trustees shall have any
4 interest, direct or indirect, in the gains or profits arising
5 from any investment or reinvestment of retirement
6 system moneys. No trustee, no member of the board of
7 public works, and no employee of the board of trustees
8 shall, directly or indirectly, for himself or as an agent
9 or partner of others, in any manner use the same, except
10 to make current and necessary payments as are auth-
11 orized by the board of trustees. No trustee, no member
12 of the board of public works, and no employee of the
13 board of trustees shall become an endorser or surety or
14 become in any manner an obligor for moneys loaned or
15 borrowed by the retirement system. Nothing contained
16 herein shall be construed to impair the rights of any
17 member of the retirement system to benefits provided
18 by the system.

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

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

§5-10D-34. Allowance of regular interest on balances in funds.

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

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

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

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

1 Any provision in this article to the contrary notwith-
2 standing, if at the end of any fiscal year the total of the
3 annuities paid from the retirement reserve fund during
4 the said fiscal year is more than ten percent of the sum
5 of the balances in the employers accumulation fund and
6 the retirement reserve fund at the end of the said fiscal
7 year, the said annuities payable in the next ensuing
8 fiscal year shall be reduced, pro rata, so that the sum
9 of the annuities so reduced shall not exceed ten percent
10 of the sum of the said balances in the employers
11 accumulation fund and the retirement reserve fund. The
12 said pro rata reduction shall be applied to all annuities
13 payable in the said ensuing fiscal year.

§5-10D-37. Correction of errors.

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

§5-10D-38. Fraud; penalty.

1 Any person who shall knowingly make any false

2 statement or shall falsify or permit to be falsified any
3 record or records of the retirement system in any
4 attempt to defraud the system shall be guilty of a
5 misdemeanor, and, upon conviction thereof, shall be
6 punished accordingly.

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

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

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

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

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

1 (a) In the event a retirant becomes employed by a
2 participating public employer, payment of his or her
3 annuity shall be suspended during the period of his or
4 her reemployment and he or she shall become a
5 contributing member to the retirement system. If his or
6 her reemployment is for a period of one year or longer,
7 his or her annuity shall be recalculated and he or she
8 shall be granted an increased annuity due to such

9 additional employment, said annuity to be computed
10 according to section fifteen of this article. A retirant
11 may accept temporary employment from a participating
12 employer so long as he or she does not receive compen-
13 sation in excess of six thousand dollars.

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

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

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

§5-10D-42. Removal from office.

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

§5-10D-43. Severability.

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

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

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

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

3 thirtieth day of June, one thousand nine hundred eighty-
4 nine, members retiring may elect any one of the
5 following three incentive options: *Provided*, That any
6 employee participating in this retirement incentive
7 program is not eligible to accept further employment
8 from the state or any of its political subdivisions.

9 Retirement incentive option one:

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

15 Retirement incentive option two:

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

20 Retirement incentive option three:

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

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

41 The executive secretary of the retirement system shall
42 provide forms for applicants. Such forms shall include
43 a detailed description of the three incentive plan options
44 outlined above.

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

53 Within every spending unit, department, board,
54 corporation, committee, division or any other agency or
55 entity wherein two or multiples of two members elect
56 to retire under the temporary early retirement incen-
57 tives set forth above no more than one of the vacant
58 positions may be filled, with the second position being
59 abolished upon the effective day of the member's
60 retirement: *Provided*, That county boards of education
61 in replacing employees leaving under this temporary
62 early retirement incentive program shall be eligible to
63 replace in that number as authorized by the basic school
64 aid formula and pursuant to those guidelines in respect
65 of number of positions lost or projected to be lost due
66 to declining enrollment, changes in statutes, changes in
67 state appropriations and the other guidelines set forth
68 and contained within said basic school aid formula. The
69 head of the spending unit shall immediately notify the
70 state auditor, the legislative auditor, and the commis-
71 sioner of the department of finance and administration
72 of the decisions and shall transfer all remaining salary
73 and fringe benefit appropriations remaining after the
74 employee's termination date: *Provided*, That because the
75 Legislature finds that due to insufficient employees
76 therein, the provision for abolishing one of each two
77 vacancies created by special early retirement shall not
78 apply to the board of regents, but instead a ratio of three
79 vacancies occurring and with one to be deemed abol-
80 ished and canceled shall obtain.

81 *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 RESPONSIBILITIES 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

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

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

29 The board is further authorized, by way of additional
30 compensation to such employees, to pay an amount equal
31 to the contributions of such employees into either the
32 supplemental or additional retirement plan from funds
33 appropriated to it for personal services. Each participat-
34 ing employee shall have a full and immediate vested
35 interest in the retirement and death benefits accrued
36 from all the moneys paid into such supplemental or
37 additional retirement plan for his benefit. Upon proper
38 requisition of the board, the auditor shall periodically
39 issue a warrant, payable as specified in the requisition,
40 for the total contributions so withheld from the salaries
41 of all participating employees and for the governing
42 board's matching funds.

43 Notwithstanding any provisions contained in article
44 seven-a and article twenty-three of this chapter, once a
45 member has elected one of the options contained in
46 section fourteen-a, article seven-a of this chapter and
47 this section, he cannot thereafter change such election
48 after June thirtieth, one thousand nine hundred eighty-
49 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.

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

10 A teachers' contract, under this section, shall be for
11 a term of not less than one nor more than three years;
12 and if, after three years of such employment, the teacher
13 who holds a professional certificate, based on at least a
14 bachelor's degree, has met the qualifications for the
15 same, and the board of education enter into a new
16 contract of employment, it shall be a continuing
17 contract: *Provided*, That any teacher holding a valid
18 certificate with less than a bachelor's degree who is
19 employed in a county beyond the said three-year
20 probationary period shall upon qualifying for said
21 professional certificate based upon a bachelor's degree,
22 if reemployed, be granted continuing contract status:
23 *Provided, however*, That a teacher holding continuing
24 contract status with one county shall be granted
25 continuing contract status with any other county upon

26 completion of one year of acceptable employment if such
27 employment is during the next succeeding school year
28 or immediately following an approved leave of absence
29 extending no more than one year.

30 The continuing contract of any teacher shall remain
31 in full force and effect except as modified by mutual
32 consent of the school board and the teacher, unless and
33 until terminated (1) by a majority vote of the full
34 membership of the board before April first of the then
35 current year, after written notice, served upon the
36 teacher, return receipt requested, stating cause or
37 causes, and an opportunity to be heard at a meeting of
38 the board prior to the board's action thereon, or (2) by
39 written resignation of the teacher before that date. Such
40 termination shall take effect at the close of the school
41 year in which the contract is so terminated: *Provided,*
42 That the contract may be terminated at any time by
43 mutual consent of the school board and the teacher, and
44 that this section shall not affect the powers of the school
45 board to suspend or dismiss a principal or teacher
46 pursuant to section eight of this article: *Provided,*
47 *however,* That a continuing contract for any teacher
48 holding a certificate valid for more than one year and
49 in full force and effect during the school year one
50 thousand nine hundred eighty-four and one thousand
51 nine hundred eighty-five shall remain in full force and
52 effect: *Provided further,* That a continuing contract shall
53 not operate to prevent a teacher's dismissal based upon
54 the lack of need for the teacher's services pursuant to
55 the provisions of law relating to the allocation to
56 teachers and pupil-teacher ratios. But in case of such
57 dismissal, the teachers so dismissed shall be placed upon
58 a preferred list in the order of their length of service
59 with that board, and no teacher shall be employed by
60 the board until each qualified teacher upon the pre-
61 ferred list, in order, shall have been offered the
62 opportunity for reemployment: *And provided further,*
63 That he has not accepted a teaching position elsewhere.
64 Such reemployment shall be upon a teacher's preexist-
65 ing continuing contract and shall have the same effect
66 as though the contract had been suspended during the
67 time the teacher was not employed.

68 In the assignment of position or duties of a teacher
69 under said continuing contract, the board shall have
70 authority to provide for released time of a teacher for
71 any special professional or governmental assignment
72 without jeopardizing the contractual rights of such
73 teacher or any other rights, privileges or benefits under
74 the provisions of this chapter.

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

87 Notwithstanding the provisions of sections two and
88 seven, article two, chapter eighteen-a and section eight-
89 b, article four, chapter eighteen-a, of this code for the
90 school year one thousand nine hundred eighty-seven-one
91 thousand nine hundred eighty-eight only, employees
92 recommended by the county superintendent of schools
93 for termination or transfer of employment because of
94 reductions-in-force shall be notified by the first day of
95 May, one thousand nine hundred eighty-eight. All
96 hearings held at the employees request shall be com-
97 pleted and final board action taken by the thirtieth day
98 of May, one thousand nine hundred eighty-eight.

51 [Enr. Com. Sub. for H. B. 4672

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Gene O. Sullivan
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect from passage.

Joseph C. Mathis
Clerk of the Senate

Donald J. Kopp
Clerk of the House of Delegates

Dan Tomlin
President of the Senate

Robert M. Anderson
Speaker of the House of Delegates

The within *appeared* this the *30th*
day of *March*, 1988.

Arthur Ruff
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/88

Time 2:40 p.m.

RECEIVED

1000 APR -5 AM 8 52

OFFICE OF LEAD VIRGINIA
SECRETARY OF STATE