WEST VIRGINIA LEGISLATURE
THIRD EXTRAORDINARY SESSION, 1990

---

ENROLLED

Com. Sub. for

HOUSE BILL No. 311

(By Mr. Speaker, Mr. Chambers, & Del. R. Banks)
(By Request of the Executive)

---

Passed August 31, 1989

In Effect From Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 311
(By Mr. Speaker, Mr. Chambers, and Delegate R. Burk)
(By Request of the Executive)

[Passed August 31, 1990; in effect from passage.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven and eight, article nine of chapter four; to amend and reenact sections five, twenty-two-c, twenty-eight, and fifty-four, article ten, chapter five; to further amend said article ten by adding thereto a new section designated section twenty-two-d; to further amend said chapter five by adding thereto a new article, designated article ten-d; to amend and reenact sections two, nine and ten, article six, chapter twelve; to amend and reenact section twenty-six, article two, chapter fifteen; to amend and reenact sections four, thirty-four and thirty-five-b, article seven-a, chapter eighteen; to further amend article seven-a by adding thereto three new sections, designated sections eighteen-a, twenty-six-i and thirty-five-e; to amend and reenact section fourteen-d, article three, chapter thirty-three; to further amend said chapter eighteen by adding thereto a new article, designated article seven-b; to amend and reenact section fourteen-d, article three, chapter thirty-three; and to amend and reenact section three, article nine, chapter fifty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to public retirement systems; creation of a
legislative committee on pensions and retirement, providing for its membership, duties, responsibilities and authority and compensation; providing for unified accounting of the public employees retirement system; providing supplemental benefits for certain annuitants; creating a consolidated public retirement board, providing for its membership, powers, duties, responsibilities and liabilities, officers, meetings and compensation, providing for the employment of an actuary for the board; providing for the transfer of administration of the public employees retirement system, the teachers retirement system, the department of public safety's death, disability and retirement fund and the retirement system for judges of courts of record to the consolidated board as of a specified date; creating a teachers' defined contribution retirement system, defining terms therefor, providing for the administration of the system by the consolidated board, providing guidelines for participation in the system, providing for member and employer contributions, creating member annuity accounts, termination of membership, providing for the commencement of annuity payments, providing for the amount of annuity payments, providing for supplemental annuity contracts; providing for the investment of pension funds in corporate stock and providing restrictions on certain investments; providing a calculation for the allocation of funds to the teachers retirement reserve fund; providing a supplemental benefit for retired teachers; defining terms that will be used to determine re-employment for certain retirees, requiring a waiver and disclosure statement; providing for acceptance of work for the state on a contract basis for early retirees, providing for the termination of benefits, procedure and appeal; providing for the redirection of a percentage of proceeds from the additional fire and casualty insurance premium tax.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 4. THE LEGISLATURE

ARTICLE 9. LEGISLATIVE COMMITTEE ON PENSIONS AND RETIREMENT.

§4-9-1. Definitions.

   (1) "Committee" as used in this article means the legislative committee on pensions and retirement.

   (2) "State retirement legislation" means a proposed bill or resolution which would have a fiscal or actuarial effect on any state retirement system. This definition is to be liberally construed so that all reasonable doubts are resolved in favor of inclusion.

   (3) "Actuarial note" means an analysis and statement of the cost, actuarial soundness and adherence to sound pension policy of pension or retirement related legislation submitted by a qualified actuary or actuarial firm.

§4-9-2. Creation of committee.

There is hereby created a permanent joint standing committee to continually study and investigate public retirement systems. The name of the committee shall be the legislative committee on pensions and retirement. The committee shall have all the powers of any other
standing committee and all pension and retirement related legislation introduced in the Legislature shall be referred to the committee in addition to any other reference the presiding officer may designate; Provided, That upon reference of any pension or retirement related legislation the committee shall forward such legislation to an actuary or actuarial firm who shall return an actuarial note to the committee prior to the committee's consideration of such legislation.

§4-9-3. Powers and duties.

The committee shall make a continuing study and investigation of retirement benefit plans applicable to nonfederal government employees in this state. The powers and duties of the committee shall include, but not be limited to, the following:

(a) Study of retirement benefit plans applicable to nonfederal government employees in the state of West Virginia, including, without limitation, federal plans available to such employees;

(b) Making of recommendations within the scope of the study with particular attention to financing of the various pension funds and financing of accrued liabilities;

(c) Consideration of all aspects of pension planning and operation, and making of recommendations designed to establish and maintain sound pension policy as to all funds;

(d) Filing of a report to each regular session of the Legislature;

(e) Analyzing of each item of proposed pension and retirement legislation, including amendments thereto, with particular reference to analysis as to cost, actuarial soundness, and adherence to sound pension policy, and reporting of its findings in regard thereto to the Legislature; and

(f) Maintenance of reference materials concerning pension and retirement matters, including, without limitation, information as to laws and systems in other states;
§4-9-4. Appointment of members; terms.

The committee shall consist of seven members of the Senate to be appointed by the president of the Senate and seven members of the House of Delegates to be appointed by the speaker of the House. No more than five of the seven members appointed by the president of the Senate and the speaker of the House, respectively, may be members of the same political party. Appointments shall be made in the same manner as any other joint standing committee of the Legislature. Members shall serve until their successor has been appointed.

§4-9-5. Time and place of meetings; officers.

The committee shall hold meetings at such times and places as it may designate. The president of the Senate shall appoint a cochair of the committee from the Senate members and the speaker of the House of Delegates shall appoint a cochair of the committee from the House of Delegates members.

§4-9-6. Staff.

The committee may employ such professional, clerical and technical assistants as it deems necessary in order to perform the duties herein prescribed.

§4-9-7. Assistance of other agencies.

The committee may request information from any state officer or agency in order to assist in carrying out the terms of this article, and such officer or agency is authorized and directed to promptly furnish any data requested.

§4-9-8. Members' expenses; reimbursement.

The members of the committee and its assistants shall be reimbursed for all expenses actually and necessarily incurred in the performance of their duties hereunder from the fund of the joint committee on government and finance. Compensation and other expenses of the committee may be paid from the fund of the joint committee on government and finance.
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. PUBLIC EMPLOYEES RETIREMENT ACT.

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

The board of trustees of the West Virginia public
employees retirement system is hereby continued. The
administration and management of the retirement
system, the responsibility for making effective the
provisions of this article, and the authority to make all
rules and regulations therefor, are hereby vested in the
said board of trustees through the thirtieth day of June,
one thousand nine hundred ninety-one and thereafter in
the consolidated public retirement board created by
article ten-d of this chapter and except as otherwise
specifically provided in this article. The board shall
consist of five trustees, as follows:

(a) The auditor of the state, by virtue of his office;
(b) The treasurer of the state, by virtue of his office;
(c) The commissioner of finance and administration,
by virtue of his office;
(d) A resident of the state, who is not a member,
retirant or beneficiary of the retirement system, to be
appointed by the governor, by and with the advice and
consent of the Senate;
(e) One member of the retirement system, who is an
employee of a participating public employer other than
the state of West Virginia, to be appointed by the
governor, by and with the advice and consent of the
Senate.

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

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

(a) For the purposes of this section: (1) "contract" means any personal service agreement, not involving the sale of commodities, that cannot be performed within sixty days or that exceeds two thousand five hundred dollars in any twelve month period. The term "contract" does not include any agreement obtained by a retiree through a bidding process and which is for the furnishing of any commodity to a government agency; (2) "governmental entity" means the state of West Virginia; a constitutional branch or office of the state government, or any subdivision thereof; a county, city or town in the state; a county board of education; a separate corporation or instrumentality established
pursuant to a state statute; any other entity currently permitted to participate in any state public retirement system or the public employee's insurance agency; or any officer or official of any entity listed above who is acting in his or her official capacity (3) "part time elected or appointed office" means any elected or appointed office that pays annual compensation of less than two thousand five hundred dollars or requires less than sixty days of service in any twelve month period; (4) "substitute teacher" means a teacher, public school librarian, registered professional nurse employed by the county board of education or any other person employed for counselling or instructional purposes in a public school in this state who is temporarily fulfilling the duties of an existing real person employed in a specific position who is temporarily absent from that specified position.

(b) Beginning on the first day of April, one thousand nine hundred eighty-eight, and continuing through the thirty-first day of December, one thousand nine hundred eighty-eight, (or as extended by eligibility qualification requirement, as hereinafter specified) eligible members, being those active, contributing members actually and currently employed on such beginning date, retiring pursuant to this section, and from any state, county or municipal position, covered under the two divisions of this retirement system (the state division and the public employer, nonstate division) including those so employed on said beginning date and leaving the system during the incentive period and who are eligible for taking deferred retirement (but not disability retirees) may elect to participate in this incentives program and may elect any one of the three following incentive options:

(1) Retirement incentive option one:

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

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

(3) Retirement incentive option three:

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

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

c) Any member participating in this retirement incentive program is not eligible to accept further employment or accept, directly or indirectly, work on a contract basis from any governmental entity: Provided, That nothing in this section shall affect any contract
entered into prior to the effective date of this section:

Provided, however, That the executive director may approve, upon written request and for good cause shown, an exception allowing a retirant to perform work on a contract basis. The executive director shall report all approved exceptions to the board of trustees:

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

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

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

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

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

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

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

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

(e) Within every spending unit, department, board, corporation, commission, or any other agency or entity wherein two or multiples of two members elect to retire either under the temporary early retirement incentives set forth above, or under regular, voluntary retirement, and countable on an agency-wide or entity-wide basis, no more than one of such vacated positions may be filled, with the second position being abolished upon the
effective day of the member's retirement. The vacant
elective positions or appointed public officers whose
positions are established by state constitutional or
statutory provision. The retirant's employing entity shall
decide as to which of the vacated positions made
available through special early retirement or through
regular, voluntary retirement are to be abolished and
the head of such spending unit shall immediately notify
the state auditor, the legislative auditor, and the
commissioner of the department of finance and admin-
istration of the decisions and shall then apply and/or
transfer the remaining salary and fringe benefits as
aforesaid: Provided, That this vacant position abolish-
ment provision shall not apply to any county or
municipal position except those under the authority of
a county board of education, nor to any position or
positions, whether designated by spending unit, depart-
ment, agency, commission, entity or otherwise, which
the governor in respect of the executive branch, or the
chief justice of the supreme court of appeals in respect
of the judicial branch, or the president of the senate or
speaker of the house of delegates, in respect of the
legislative branch, may exempt or amend, under such
abolishment provision, upon his respective recommenda-
tion that such exemption or amendment is necessary to
provide for continuity of governmental operation or to
preserve the health, welfare or safety of the people of
West Virginia, and with the prior concurrence of the
joint committee on government and finance in such
recommendation, after the chairmen thereof shall cause
such committee to meet.

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

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

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

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

Beginning on the first day of January, one thousand nine hundred ninety-one, as an additional supplement to other retirement allowances provided, and notwithstanding the provisions of section twenty-two-b of this article requiring appropriation by the Legislature for payment of certain supplemental benefits, any annuitant who is receiving a retirement annuity on the effective date of this section shall receive a supplemental benefit, prospectively, if the effective date of retirement for such annuitant was prior to the first day of January, one thousand nine hundred eighty-one. Each such annuitant shall receive as his or her supplemental benefit an increased annual amount which is the product of the sum of six dollars multiplied by his or her years of credited service. Nothing in this or any other section of this code shall be construed to require any appropriation of state general revenue funds for the payment of any benefit provided for in this section.

§5-10-28. Unified accounting; funds.

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

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

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

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

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-1. Consolidated public retirement board created; transition; members; vacancies.

(a) There is hereby created a consolidated public retirement board to administer all public retirement plans in this state. It shall administer the public employees retirement system established in article ten, chapter five of this code; the teachers retirement system established in article seven-a, chapter eighteen of this code; the teachers' defined contribution retirement system created by article seven-b, chapter eighteen of this code; the death, disability and retirement fund of the department of public safety created by article two, chapter fifteen of this code; and the judges' retirement system created under article nine, chapter fifty-one of this code;

(b) The consolidated public retirement board shall begin administration of the systems listed in subsection (a) of this section on the first day of July, one thousand nine hundred ninety-one: Provided, That the board shall begin administration of the teachers' defined contribu-
tion retirement system established in article seven-b, chapter eighteen of this code on the first day of January, one thousand nine hundred ninety-one. Prior to that date the existing entities which administer the system shall cooperate with the board in the orderly transition of all duties, responsibilities, records and other materials in their possession;

(c) The membership of the consolidated public retirement board consists of:

(1) The governor or his or her designee;
(2) The state auditor or his or her designee;
(3) The secretary of the department of administration or his or her designee;
(4) Four residents of the state, who are not members, retirants or beneficiaries of any of the public retirement system, to be appointed by the governor, with the advice and consent of the Senate;
(5) A member, annuitant or retirant of the public employees retirement system who is or was a state employee; a member, annuitant or retirant of the public employees retirement system who is not or was not a state employee; a member, annuitant or retirant of the teachers retirement system; a member, annuitant or retirant of the department of public safety death, disability and retirement fund; and a member, annuitant or retirant of the teachers' defined contribution retirement system, all to be appointed by the governor, with the advice and consent of the Senate.

(d) The appointed members of the board shall serve five-year terms. Of the members initially appointed, three shall be appointed for two-year terms; three shall be appointed for three-year terms; and three shall be appointed for five-year terms. Thereafter, all members shall serve full five-year terms. A member appointed pursuant to subdivision (5), subsection-c of this section ceases to be a member of the board if he or she ceases to be a member of the represented system. If a vacancy occurs in the appointed membership, the governor, within sixty days, shall fill the vacancy by appointment
18

for the unexpired term. No more than five appointees shall be of the same political party.

(e) The consolidated public retirement board shall have all the powers, duties, responsibilities and liabilities of the public employees retirement system established pursuant to article ten, chapter five of this code; the teachers retirement system established pursuant to article seven-a, chapter eighteen of this code; the teachers' defined contribution system established pursuant to article seven-b, chapter eighteen of this code; the death disability and retirement fund of the department of public safety created pursuant to article two, chapter fifteen of this code, and the judges' retirement system created pursuant to article nine, chapter fifty-one of this code and their appropriate governing boards. The consolidated public retirement board may promulgate all rules necessary to effectuate its powers, duties and responsibilities: Provided, That the board may adopt any or all of the rules and regulations, previously promulgated, of a retirement system which it administers.

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

(a) The secretary of the department of administration shall call the first meeting of the consolidated public retirement board no later than the fifteenth day of January, one thousand nine hundred ninety-one.

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

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

(d) The attorney general shall be the legal advisor to the board of trustees.

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

(g) Prior to the first day of July, one thousand nine hundred ninety-one, the expenses of the board for the administration of the teachers' defined contribution retirement system created pursuant to article seven-b, chapter eighteen of this code shall be paid by the teachers retirement system created pursuant to article seven-a, chapter eighteen of this code.

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

(a) The board shall hold a meeting at least once each three months, and shall designate the time and place thereof. Five voting trustees constitute a quorum at any meeting of the board. Each member is entitled to one vote on each question before the board. The board shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings of the board shall be public.

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

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

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

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

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

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

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

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA BOARD OF INVESTMENTS.

§12-6-2. Definitions.

As used in this article, unless a different meaning clearly appears from the context:

(1) “Board” means the West Virginia state board of investments;

(2) “Consolidated fund” means the investment fund managed by the board and established pursuant to subsection (b), section eight of this article;

(3) “Consolidated pension fund” means the investment fund managed by the board and established pursuant to subsection (a), section eight of this article;

11 Notwithstanding the restrictions which may otherwise
be provided by law as to the investment of funds, the board may invest funds made available to it in any of the following:

(a) Any direct obligation of, or obligation guaranteed as to the payment of both principal and interest by, the United States of America;

(b) Any evidence of indebtedness issued by any United States government agency guaranteed as to the payment of both principal and interest, directly or indirectly, by the United States of America including, but not limited to, the following: Government National Mortgage Association, Federal Land Banks, Federal Home Loan Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Tennessee Valley Authority, United States Postal Service, Farmers Home Administration, Export-Import Bank, Federal Financing Bank, Federal Home Loan Mortgage Corporation, Student Loan Marketing Association and Federal Farm Credit Banks;

(c) Any evidence of indebtedness issued by the Federal National Mortgage Association to the extent such indebtedness is guaranteed by the Government National Mortgage Association;

(d) Any evidence of indebtedness that is secured by a first lien deed of trust or mortgage upon real property situate within this state, if the payment thereof is substantially insured or guaranteed by the United States of America or any agency thereof;

(e) Direct and general obligations of this state;

(f) Any undivided interest in a trust, the corpus of which is restricted to mortgages on real property and, unless all of such property is situate within the state and insured, such trust at the time of the acquisition of such undivided interest, is rated in one of the three highest rating grades by an agency which is nationally known in the field of rating pooled mortgage trusts;

(g) Any bond, note, debenture, commercial paper or other evidence of indebtedness of any private corporation or association organized and operating in the
Provided, That any such security is, at the time of its acquisition, rated in one of the three highest rating grades by an agency which is nationally known in the field of rating corporate securities: Provided, however, That if any commercial paper and/or any such security will mature within one year from the date of its issuance, it shall, at the time of its acquisition, be rated in one of the two highest rating grades by such an agency: Provided further, That any such security not rated in one of the two highest rating grades by any such agency and commercial paper or other evidence of indebtedness of any private corporation or association shall be purchased only upon the written recommendation from an investment adviser that has over three hundred million dollars in other funds under its management:

(h) Negotiable certificates of deposit issued by any bank, trust company, national banking association or savings institution organized and operating in the United States, which mature in less than one year and are fully collateralized:

(i) Interest earning deposits including certificates of deposit, with any duly designated state depository, which deposits are fully secured by a collaterally secured bond as provided in section four, article one of this chapter; and

(j) Any corporate stock of any private corporation or association organized and operating in the United States and which is also listed on the Standard and Poor's List of 500.

§12-6-10. Restrictions on investments.

Moneys on deposit in the consolidated fund and the consolidated pension fund shall be invested as permitted by section nine of this article subject to the restrictions and conditions contained in this section:

(1) At no time shall more than seventy-five percent of the portfolio of either fund be invested in securities described in subdivision (g) of said section nine;

(2) At no time shall more than twenty percent of the
portfolio of either fund be invested in securities described in said subdivision (g) which mature within one year from the date of issuance thereof;

(3) At no time shall more than three percent of the portfolio of either fund be invested in securities issued by a single private corporation or association;

(4) At no time shall more than twenty percent of the portfolio of the consolidated pension fund be invested in securities described in subdivision (j) of section nine of this article; and

(5) At no time may any of the consolidated fund be invested in securities described in subdivision (j) of section nine of this article.

For the purpose of making the computations required by this section, securities shall be valued in accordance with generally accepted accounting principles.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.


There shall be continued the death, disability and retirement fund heretofore created for the benefit of members of the department of public safety and any dependent of a retired or deceased member thereof.

There shall be deducted from the monthly payroll of each member of the department of public safety and paid into such fund six percent of the amount of his salary, and an additional twelve percent of the monthly salary of each member of said department shall be paid by the state of West Virginia monthly into such fund out of the annual appropriation for said department. There shall also be paid into the fund, such amounts as have previously been collected by the superintendent of the department of public safety on account of payments to members for court attendance and mileage, rewards for apprehending wanted persons, fees for traffic accident reports and photographs, fees for criminal investigation reports and photographs, fees for criminal history
record checks, fees for criminal history record reviews
and challenges or from any other sources designated by
the superintendent. All moneys payable into such fund
shall be deposited in the state treasury, and the
treasurer and auditor shall keep a separate account
thereof on their respective books.

The moneys in this fund, and the right of a member
to a retirement allowance, to the return of contributions,
or to any benefit under the provisions of this article, are
hereby exempt from any state or municipal tax; shall
not be subject to the execution, garnishment, attachment
or any other process whatsoever; and shall be unassign-
able except as is provided in this article.

The death, disability and retirement fund shall be
administered through the thirtieth day of June one
thousand nine hundred ninety-one, by a retirement
board which shall consist of the attorney general, state
treasurer, the superintendent and two members in
active service of the department: Provided, That
members of said retirement board shall not be entitled
to receive any compensation in addition to the salary of
their respective offices for any service rendered as a
member of said retirement board: Provided, however,
That the superintendent may pay out of funds approp-
riated for operation of said department the reasonable
expenses of members of said board necessarily incurred
in connection with dispatch of any business properly
before such board. From the first day of July, one
thousand nine hundred ninety-one and thereafter, the
death, disability and retirement fund shall be adminis-
tered by the consolidated public retirement board
created by article ten-d, chapter five of this code. The
two members of said department shall be elected to
membership on the retirement board by vote of the
members of the department of public safety; such
election to be held on the first Tuesday in June next
following the passage of this article and on the first
Tuesday in June each two years thereafter. The attorney
general, state treasurer and the superintendent of the
department of public safety shall promulgate any and
all necessary rules and regulations for holding in a fair
and impartial manner the election on the first Tuesday in June next following the passage of this article and thereafter the retirement board consisting of the attorney general, state treasurer, superintendent and the two duly elected members of said department shall have authority to promulgate and, from time to time, revise rules and regulations for holding all subsequent elections in a fair and impartial manner. All elections shall be held under the direction of the superintendent of said department in accordance with said rules and regulations. The members of the department chosen to serve on said retirement board shall hold office for a period of two years commencing on the first day of July next following the date of such election. When any member elected to the retirement board shall die, resign from the board, resign or be discharged from service in the department, make application for retirement, be retired, or become disabled, the office of such member of the retirement board shall be declared vacant by the superintendent of said department, and said superintendent, to fill such vacancy, shall appoint the member in active service of said department who as an unsuccessful candidate at the preceding election of members to said retirement board received the greatest number of votes. No member of the retirement board shall participate in any hearing at which his own petition for retirement or the petition of any member of said department who is related to him by blood or marriage shall be presented for consideration.

At its first meeting following each election of members to the retirement board said board shall elect one of its members to serve as chairman and a second member to serve as secretary thereof. The retirement board shall have the power to make rules and regulations, not inconsistent with the provisions hereof, governing procedure and order and manner of business by and before such board. The retirement board shall have the power to make awards and to revise and terminate awards previously made for such times and under such terms and conditions as are hereinafter provided. The votes of a majority of the five members of the board shall be necessary to decision of any matter.
by the board. Decisions made by the board shall be
supreme and final and there shall be no appeal
therefrom.

It shall be the duty of the retirement board on or
before the first day of July of each year to cause all
future awards from such fund to be valued and, to the
extent that moneys shall be available, reserves based on
sound actuarial principles for payment thereof to be
carried on the fund's account as a liability against the
reserve fund. The board shall have the authority to
employ an actuary for such purpose. The board shall
cause a system of accounting to be installed and
maintained to reflect currently and truly all transac-
tions or developments pertaining to age of members and
eligible dependents surviving deceased members,
periods of service and aggregate earnings of all
members eligible to participate in said fund and any
other matter relating to maintenance of said fund or
administration thereof, and each year to cause to be
made and submitted to each member of said department
a statement of the condition of said fund. Costs and
expenses incurred in making actuarial studies, audits
and installations and maintenance of such accounting
system shall be paid by the superintendent from funds
appropriated for operation of the department of public
safety.

All moneys paid into and accumulated in said death,
disability and retirement fund, except such amounts as
shall be designated or set aside by the retirement board
for payments of death, disability and retirement benefits
and awards, shall be invested by the state board of
investments as provided by law.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-4. Teachers retirement board.

The general administration and the management of
the retirement system are hereby continued in a
"teachers retirement board" through the thirtieth day of
June, one thousand nine hundred ninety-one and
thereafter in the consolidated public retirement board created by article ten-d, chapter five of this code. The retirement board shall have the right to sue and be sued, plead and be impleaded, contract and be contracted with and shall make all necessary rules and regulations to carry out the provisions of this article. All of the business of the board shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property shall be held in the name of the "teachers retirement board."

§18-7A-18a. Calculation of allocation to reserve fund.

(a) Beginning the first day of June, one thousand nine hundred ninety-one, the consolidated public retirement board, created pursuant to article ten-d, chapter five of this code shall make an annual calculation of the aggregate full compensation actually received by the following persons:

(1) Those persons employed on or after the first day of July, one thousand nine hundred ninety-one who would have been teacher members of the state teachers retirement system under this article if such persons' employment had begun prior to such date; and

(2) Those persons employed on and after the first day of July, one thousand nine hundred ninety-one who would have been non-teaching members of the state teacher's retirement system under this article if such persons' employment had begun prior to such date.

(b) There shall be an annual allocation from the state general revenue fund to the reserve fund, created by section eighteen of this article, equal to the sum of seven and one half percent of the aggregate compensation totals of subdivisions one and two, subsection (a) of this section.

There shall be an additional allocation in each year an amount equal to the total of all irrevocably forfeited amounts in the suspension account established in section eleven, article seven-b of this chapter plus earnings thereon which have been certified to the several
28 contributing employers as irrevocably forfeited in the
29 prior fiscal year and subsequently utilized by said
30 contributing employers to reduce their total aggregate
31 contribution requirements pursuant to section seven-
32 teen, article seven-b of this chapter.
33
34 (c) The additional allocation provided in this section
35 represents a funding method by which a part of a
36 rational amortization plan will be established to
37 amortize the current unfunded liability of the teachers
38 retirement system created by this article. The additional
39 allocations are not and shall not be construed to be
40 moneys which are owed to, nor earned by any employee,
41 designated in subdivision (1) or (2), subsection (a) of this
42 section. The calculation of additional allocation provided
43 for herein is solely a mathematical formula to quantify
44 the savings in the state general revenue funds caused
45 by the enactment of the Teachers' Retirement Reform
46 Act codified in article seven-b of this chapter.

§18-7A-26i. Supplemental benefits for retired teachers.

1 Beginning on the first day of January, one thousand
2 nine hundred ninety-one, any annuitant who is receiving
3 a retirement annuity on the effective date of this section
4 shall receive a supplemental benefit, prospectively, if
5 the effective date of retirement for such annuitant was
6 prior to the first day of July, one thousand nine hundred
7 eighty-one and such annuitant is not receiving supple-
8 mental benefits pursuant to section twenty-six-h of this
9 article. For the purposes of this section, "effective date
10 of retirement" means the last day of actual employment
11 or the last day carried on the payroll of the employer,
12 whichever is later, together with fully meeting all of the
13 eligibility requirements for retirement prior to the
14 aforesaid effective date.

15 Each such eligible annuitant shall receive as his or
16 her supplemental benefit an increased annual amount
17 which is the product of the sum of eighteen dollars
18 multiplied by his or her years of credited service.

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

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

Prior to the first day of January, one thousand nine hundred ninety-one, the executive secretary of the board shall provide to the Legislature information as to the number of annuitants who retired before the first day of July, one thousand nine hundred eighty-one, the amounts of the annuities they receive, the amount of funds necessary to provide cost of living increases to such annuitants, and such other detail and related information as the joint committee on government and finance may direct.

§18-7A-34. Loans to members.

A member of the retirement system upon written application may borrow from his individual account in the teachers accumulation fund, subject to these restrictions:

(1) Loans shall be made in multiples of ten dollars, the minimal loan being one hundred dollars and the maximum being eight thousand dollars except if the total amount of loaned money outstanding exceeds forty million dollars, the maximum will be three thousand dollars until the teachers retirement board determines that loans outstanding have been reduced to an extent that eight thousand dollar loans are again authorized.

(2) Loans to any one member shall not exceed one half of his contributions to his individual account in the teachers accumulation fund.

(3) Interest charged on the amount of the loan shall be six percent per annum, or a higher rate as set by the teachers retirement board. If repayable in installments, the interest shall not exceed the annual rate so estab-
lished upon the principal amount of the loan, for the entire period of the loan, and such charge shall be added to the principal amount of the loan. The minimal interest charge shall be for six months.

(4) No member shall be eligible for more than one loan in any one year.

(5) If a refund or benefit is payable to the borrower or his beneficiary before he repays the loan with interest, the balance due with interest to date shall be deducted from such benefit or refund.

(6) From his monthly salary as a teacher the member shall pay the loan and interest by deductions which will pay the loan and interest in not more than sixty nor less than six months. Upon notice of loan granted and payment due, the employer shall be responsible for making such salary deductions and reporting them to the retirement board. At the option of the retirement board, loan deductions may be collected as prescribed herein for the collection of members' contribution, or may be collected through issuance of warrant by employer. If the borrower decides to make loan payments while not paid for service as a teacher, the retirement board must accept such payments.

§18-7A-35b. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

The Legislature hereby finds and declares that a compelling state interest exists in providing a temporary, early retirement incentives program for encouraging the early, voluntary retirement of those public employees who were current, active, contributing members of this retirement system on the first day of April, one thousand nine hundred eighty-eight, in the reduction of the number of such employees and in
reduction of governmental costs therefor; that such
program constitutes a public purpose; and that the
special classifications and differentiations provided in
respect of such program are reasonable and equitable
ones for the accomplishment of such purpose and
program as enacted in Enrolled Committee Substitute
for H. B. No. 4672, regular session, one thousand nine
hundred eighty-eight, and as clarified and supple-
mented herein, retroactive to such beginning date,
aforesaid. The Legislature further finds that maintain-
ing an actuarily sound retirement fund is essential and
that the reemployment in any manner, including
reemployment on a contract basis, by the state of any
person who retires under this section is contrary to the
intent of the early retirement program and severely
threatens the fiscal integrity of the retirement fund.

(a) For the purposes of this section: (1) "contract"
means any personal service agreement, not involving the
sale of commodities, that cannot be performed within
sixty days or for which the total compensation exceeds
two thousand five hundred dollars in any twelve month
period. The term "contract" does not include any
agreement obtained by a retirant through a bidding
process and which is for the furnishing of any commod-
ity to a government agency; (2) "governmental entity"
means the state of West Virginia; a constitutional
branch or office of the state government, or any
subdivision thereof; a county, city or town in the state;
a county board of education; a separate corporation or
instrumentality established pursuant to a state statute;
any other entity currently permitted to participate in
any state public retirement system or the public
employee's insurance agency; or any officer or official
of any entity listed above who is acting in his or her
official capacity; (3) "substitute teacher" means a
teacher, public school librarian, registered professional
nurse employed by the county board of education or any
other person employed for counselling or instructional
purposes in a public school in this state who is tempor-
arily fulfilling the duties of an existing real person
employed in a specific position who is temporarily
absent from that specific position; (4) "part time elected
"or appointed office" means any elected or appointed
office that compensates its members in an amount less
than two thousand five hundred dollars or requires less
than sixty days of service in any twelve month period.

(b) Beginning on the first day of April, one thousand
nine hundred eighty-eight, and continuing through the
thirty-first day of December, one thousand nine hundred
eighty-eight, (or as extended by contract or by eligibility
qualification requirement, as hereinafter speci-
fied) eligible members, being those active, contributing
members actually and currently employed on such
beginning date, retiring pursuant to this section (except
disability retirees, but including those so employed on
said beginning date and leaving the system during the
incentive period and who are eligible for deferred
benefits), may elect to participate in this incentives
program and may elect any one of the three following
incentive options:

(1) Retirement incentive option one:

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

(2) Retirement incentive option two:

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

(3) Retirement incentive option three:

A person shall be credited with an additional two
years of contributing service and an additional two
years of age. The years credited under this option shall
in no way add to a member's final average salary factor
of computation.
(c) Eligible, active, contributing members, aforesaid, employed under agreement and rendering services during school year one thousand nine hundred eighty-eight—eighty-nine shall, if retiring pursuant to the provisions of this section and the early retirement incentive program set forth herein, make application for retirement, including choice of their respective option, and give notice to their respective county boards of education by the thirty-first day of December, one thousand nine hundred eighty-eight, but shall be permitted to postpone actual retirement until immediately after the close of such agreement period and said school year; with proper credit to be granted for such extended period.

Also, eligible, active contributing members employed, not under agreement, who desire to retire under this section but who are unable to retire by the thirty-first day of December, one thousand nine hundred eighty-eight, because an element of eligibility for retirement, such as age or other element, will not be met until a date after the thirty-first day of December, one thousand nine hundred eighty-eight, and before the first day of July, one thousand nine hundred eighty-nine, shall be permitted to postpone actual retirement until the date of fulfilling such element of eligibility and shall retire on such date, before the temporary retirement incentive program ends on the thirtieth day of June, one thousand nine hundred eighty-nine; with proper credit to be granted for such extended period: Provided, That members eligible under the preceding paragraph and this paragraph shall have made application for retirement, including choice of their respective option, and given notice to their respective employer by the thirty-first day of December, one thousand eight hundred eighty-eight, although postponing actual retirement, as aforesaid: Provided, however, That an application for retirement under the provisions of the preceding paragraph and this paragraph shall be binding upon a member unless the member provides the retirement system and the local board of education or other educational agency with written notification of his or her decision not to retire by the first day of April, one
thousand nine hundred eighty-nine: Provided further,

That an eligible member under this paragraph or the
preceding paragraph who has a grievance or court
proceeding which is pending on the passage date of this
bill, shall be required to give final notice of decision not
to retire by the thirtieth day of June, one thousand nine
hundred eighty-nine: And provided further, That the
state teachers retirement board on or before the twenty-
fourth day of March, one thousand nine hundred eighty-
ine, shall provide calculations of anticipated retirement
benefits to those members who intend to retire pursuant
to the provisions of this section.

Eligible members other than those covered under the
provisions of the two preceding paragraphs, desiring to
retire under this incentive program shall make their
option election prior to and take their respective
retirement by the close of the thirty-first day of
December, one thousand nine hundred eighty-eight.

Any eligible member who retires hereunder during
the school year (after the first day of July, one thousand
nine hundred eighty-eight, and on any date prior to the
thirtieth day of June, one thousand nine hundred eighty-
ine) shall have included such months of such school
year and the salary in respect thereof, if ones of higher
salary, in place of and for any like number of months
in his or her five-year period for computation of
annuities as provided for in section twenty-six of this
article.

(d) Any member participating in this retirement
incentive program is not eligible to accept further
employment or accept, directly or indirectly, work on a
contract basis from a governmental entity: Provided,
That nothing in this section shall effect any contract
entered into prior to the effective date of this section:
Provided, however, That the executive director may
approve, upon written request for good cause shown, an
exception allowing a retirant to perform work on a
contract basis: Provided further, That a person may
retire under this section and thereafter serve in an
elective office: And provided further, That he or she shall
not receive an incentive option under this section during
the term of service in said office, but shall receive his or her annuity calculated on regular basis, as if originally taken not under this section but on such regular basis. At the end of such term and cessation of service in such office, such incentive option shall resume. In respect of an appointive office, as distinguished from an elective office, any person retiring under this section and thereafter serving in such appointive office shall not receive an incentive option under this section during the term of service in said office, but the same shall be suspended during such period: Provided, That at the end of such term and cessation of service in such appointive office the incentive option provided for under this section shall be resumed: Provided, however, That any person elected or appointed to office by the state or any of its political subdivisions who waives whatever salary, wage or per diem compensation he or she may be entitled to by virtue of service in such office and who does not receive any income therefrom except such reimbursement of out-of-pocket costs and expenses as may be permitted by the statutes governing such office shall continue to receive an incentive option under this section. Such service shall not be counted as contributed or credited service for purposes of computing retirement benefits.

If such elected or appointed office is a part time elected or appointed office a person electing retirement under this section may serve in such elective or appointive office with no loss of the benefits provided under this section.

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

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

Any such incentive retirants, under this section, may not thereafter receive such annuity and enter or reenter any governmental retirement system established or authorized to be established by the state, notwithstanding any provision of the code to the contrary, unless required by constitutional provision.

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

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

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

(f) Within every spending unit, department, board, corporation, commission, or any other agency or entity wherein two or multiples of two members elect to retire either under the temporary early retirement incentives set forth above, or under regular, voluntary retirement, and countable on an agency-wide or entity-wide basis, no more than one of such vacated positions may be filled, with the second position being abolished upon the effective day of the member's retirement: Provided, That county boards of education in replacing employees leaving under this temporary early retirement incentive program shall be eligible to replace in that number as authorized by the basic school aid formula and pursuant to those guidelines in respect of number of positions lost or projected to be lost due to declining enrollment, changes in statutes, changes in state appropriations and the other guidelines set forth and contained within said basic school aid formula. The vacant position abolishment requirement shall not apply to elective positions or appointed public officers whose positions are established by state constitutional or statutory provision. The retiree's employing entity shall decide as to which of the vacated positions made available through special early retirement or through regular, voluntary retirement are to be abolished and the head of such spending unit shall immediately notify the state auditor, the legislative auditor, and the commissioner of the department of finance and administration of the decisions and shall then apply and/or transfer, as aforesaid, the remaining salary and fringe benefit appropriations: Provided, however, That this vacant position abolishment provision shall not apply to any county position, other than those under the authority of county boards of education, nor to any position or positions, whether designated by spending unit, department, agency, commission, entity or otherwise, which the governor may exempt or amend under such abolishment provision upon his recommendation that such exemption or amendment is necessary to preserve the health, welfare
or safety of the people of West Virginia, and with the
prior concurrence of the joint committee on government
and finance in such recommendation, after the chairmen
thereof shall cause such committee to meet.

(g) Special rule of eighty.—Any active, contributing
member of the retirement system as of the first day of
April, one thousand nine hundred eighty-eight, who
selects one of the incentive options in this section, may
retire under the special early retirement provisions with
full pension rights, without reduction of benefits if the
sum of such member's age plus years of contributing
service equals or exceeds eighty: Provided, That such
person has at least twenty years of contributing service,
up to two years of which may be military service, or
prior service, or already paid and credited out-of-state
service (if so paid and credited by the first day of April,
one thousand nine hundred eighty-eight) or any combi-
nation thereof not exceeding an aggregate of two years.

(h) Termination of temporary retirement incentives
program.—The right to elect, choose, select or use any
of the options, special rule of eighty, or other benefits
set forth in this section shall terminate on the thirtieth
day of June, one thousand nine hundred eighty-nine.

§18-7A-35c. Termination of benefits; procedure.
1 Whenever the board determines that (1) any person
2 has knowingly made any false statement or falsified or
3 permitted to be falsified any record or records of the
4 retirement system in an attempt to defraud the system,
or (2) any person who resumes employment with any
5 governmental entity or accepts, directly or indirectly,
6 work on a contract basis from any governmental entity,
7 except as provided for under this article, the board shall
8 terminate any benefit that a person is receiving, has
9 received, or is entitled to receive under the early
10 retirement provisions of this article. Further, if any
11 person taking early retirement under this article desires
12 to revoke his or her early retirement incentive, he or she
13 shall be allowed to do so if he or she is entitled to regular
14 retirement pursuant to this article: Provided, That such
15 revocation shall be retroactive to the date of last
employment and any incentive annuity already received by the retiree be repaid to the retirement system. Any person who revokes his or her early retirement incentive shall be thereafter carried upon the records of the retirement system as a regular retiree and shall not be entitled to any enhanced benefit by reason of the early retirement options contained in this article: Provided, however, That any person who opted to retire pursuant to the early retirement provisions of this article who would not have been and is not eligible for regular retirement but for the early retirement incentive options must upon returning to the employment of a participating employer, reapply for admission to a retirement system and repay all pension benefits paid to that person since the date his previous employment ceased. Any termination of benefits may be appealed pursuant to the state administrative procedures act in chapter twenty-nine-a of this code. The board shall promulgate rules regarding the procedure for termination of benefits and the repayment of any benefit, in accordance with the provisions of article three, chapter twenty-nine-a of this code.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-1. Short title.

This article shall be known and may be cited as the "Teacher's Retirement Reform Act".

§18-7B-2. Definitions.

As used in this article, unless the context clearly requires a different meaning:

(1) "Defined contribution system" or "system" means the teachers' defined contribution retirement system created and established by this article;

(2) "Existing retirement system" means the state teachers retirement system established in article seven-a of this chapter;

(3) "Existing employer" means any employer who employed or employs a member of the existing retirement system;
(4) "Consolidated board" or "board" means the consolidated public retirement board created and established pursuant to article ten-d, chapter five of this code;

(5) "Member" or "employee" means the following persons, if regularly employed for full-time service: (a) Any person employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teacher's certificate; (f) the executive secretary of the retirement board; (g) members of the research, extension, administrative or library staffs of the public schools; (h) the state superintendent of schools, heads and assistant heads of the divisions under his supervision, or any other employee thereunder performing services of an educational nature; (i) employees of the state board of education who are performing services of an educational nature; (j) any person employed in a non-teaching capacity by the state board of education, any county board of education, the state department of education or the teachers retirement board, if such person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the department of corrections, the department of health or the department of human services; (l) any person who is regularly employed for full-time service by any county board of education, the state board of education or the teachers retirement board; and (m) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries.

(6) "Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay;

(7) "Year of employment service" means employment for at least ten months, a month being defined as twenty employment days: Provided, That no more than one year
(8) "Employer" means the agency of and within the state which has employed or employs a member;

(9) "Compensation" means the full compensation actually received by members for service whether or not a part of such compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions;

(10) "Public schools" means all publicly supported schools, including normal schools, colleges and universities in this state;

(11) "Member contribution" means an amount reduced from the employee's regular pay periods, and deposited into the member's individual annuity account within the defined contribution retirement system;

(12) "Employer contribution" means an amount deposited into the member's individual annuity account on a periodic basis coinciding with the employee's regular pay period by an employer from its own funds;

(13) "Annuity account" or "annuity" means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends or other accumulations credited on behalf of the member;

(14) "Retirement" means a member's withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement.

(15) "Permanent, total disability" means a mental or physical incapacity requiring the absence from employment service for at least six months: Provided, That such incapacity is shown by an examination by a physician or physicians selected by the board.

§18-7B-3. Defined contribution retirement system created and established; body corporate.

The teachers' defined contribution retirement system is hereby created and established to provide for the
secure, fair and orderly retirement of the teachers and related personnel of the state. The defined contribution retirement system shall constitute a body corporate and all business of the system shall be transacted in the name of the teachers' defined contribution retirement system.

§18-7B-4. Article to be liberally construed; purpose.

The provisions of this article shall be liberally construed so as to provide a general annuity based retirement system for teachers' in this state. The purpose of this article is to provide a defined contribution retirement program which is fully funded on a current basis from employer and employee contribution.

§18-7B-5. Administration of the teachers' defined contribution retirement system.

The consolidated public retirement board created pursuant to article ten-d, chapter five of this code shall administer the teachers' defined contribution retirement system. The board may sue and be sued, contract and be contracted with and conduct all the business of the defined contribution system in the name of the teachers' defined contribution retirement system.

§18-7B-6. Powers and duties of the consolidated board in the administration of the defined contribution system.

The board has all powers necessary to effectuate the purposes of this article. The board shall contract with a private pension, insurance, annuity, mutual fund or other qualified company or companies to administer the day to day operations of the system. In selecting such company or companies the board shall take into account as its highest duty, the proper safeguard and protection of the member and employer contributions and the interest dividends, or other return thereon. The board shall promulgate rules regarding the proper investment of funds notwithstanding the provisions of article six, chapter twelve of this code.

§18-7B-7. Participation in teachers' defined contribution retirement system; limiting participation in
existing teachers retirement system.

Beginning the first day of July, one thousand nine hundred ninety-one the teachers' defined contribution retirement system shall be the single retirement program for all new employees whose employment commences on or after that date. No additional new employees except as may be provided herein may be admitted to the existing retirement system. Members of the existing retirement system whose employment continues beyond the first day of July, one thousand nine hundred ninety-one are not affected by this article and shall continue to contribute and participate in the existing system without change in provisions or benefits.

Notwithstanding the provisions of section twenty-three, article seven-a of this chapter, any employee whose employment terminates after the thirtieth day of June, one thousand nine hundred ninety-one, who is later reemployed by an employer shall be eligible for membership only in the teachers defined contribution system: Provided, That if such reemployment with an existing employer occurs not more than six months after the employee's previous employment he or she shall be entitled to readmission to the existing retirement system in which he or she was originally a member: Provided, however, That if such employee has withdrawn his or her contributions from the existing retirement system then readmission shall not be permitted and the employee will be entitled only to the defined contribution system.

An employee whose employment with an employer or an existing employer is suspended as a result of an approved leave of absence, approved maternity or paternity break in service, or any other approved break in service authorized by the board, is eligible for readmission to the existing retirement system in which he or she was a member.

In all cases where a question exists as to readmission to membership in the existing retirement system, the board shall decide the question.

§18-7B-8. Voluntary participation in system.
Any employee who is a member of the existing retirement system may, upon written election, voluntarily elect membership in the defined contribution system, on a prospective basis, on or after the first day of July, one thousand nine hundred ninety-one. All benefits earned by any employee making such voluntary election under the existing retirement system prior to such a voluntary election shall be frozen and made available to that employee upon retirement as provided by the existing retirement system. For the purposes of this section "frozen" means that the member's salary, years of service and any other factor to determine benefits shall be calculated as of the date that the member elected membership in the defined contribution system and after that date no increase in salary, years of service or any other factor may be used to increase the retirement benefit above that which it would be if a person retired upon the date that the election is made. After having made such election the employee may not change such election or again become a member of the existing retirement system.

§18-7B-9. Members contribution; annuity account established.

Each employee who is a member of the defined contribution system shall contribute four and one half percent of his or her gross compensation by salary reduction. Such salary reductions shall be made by the employer at the normal payroll intervals and shall be remitted within five working days to the private pension, insurance, annuity, mutual fund, or other qualified company or companies designated by the board to administer the day to day operations of the system.

All member contributions shall be immediately deposited to an account or accounts established in the name of the member and held in trust for the benefit of the member. An account agreement shall be issued to each member setting forth the terms and conditions under which contributions are received, and the investment and retirement options available to the member. The board shall promulgate by the thirtieth
day of June, one thousand nine hundred ninety-one, pursuant to section six, of this article, rules defining the minimum requirements for the investment and retirement options to be provided to the members. Such rules, to the extent not inconsistent with the applicable provisions of the Internal Revenue Code of the United States, shall provide for varied retirement options including, but not limited to:

1. Lump sum distributions;
2. Joint and survivor annuities;
3. Other annuity forms in the discretion of the board;
4. Variable annuities which gradually increase monthly retirement payments: Provided, That said increased payments are funded solely by the existing current value of the member's account at the time the member's retirement payments commencement and not, to any extent, in a manner which would require additional employer or employee contributions to any member's account after retirement or after the cessation of employment; and
5. The instances in which, if any, distributions or loans can be made to members from their annuity account balances prior to having attained the age of fifty-five.

§18-7B-10. Employer contributions.

Each participating employer shall annually make a contribution equal to seven and one half percent of each member's gross compensation whose employment commenced on or after the first day of July, one thousand nine hundred ninety-one. The pro rata share of this amount shall be paid upon each date that a member contribution is made and shall be remitted as provided for in section nine of this article for credit to the member's annuity account. Each participating employer has a fiduciary duty to its employees to insure that the employer contributions are timely made. In the case of an officer or employee of the state, any unpaid contribution shall be a state debt, contracted as a result of a

casual deficit in state revenues, to be accorded preferred status over other expenditures.

In the event that any payment is not timely made, the participating employer shall immediately give to the employee and the state auditor notice in writing of the nonpayment, in such form and accompanied by such documentation as may be required by the auditor. Notice to the auditor shall operate in the manner of a requisition, and the auditor shall transmit a warrant to the treasurer. At such time as funds are available in the appropriate account, the treasurer shall pay the employer contribution, together with appropriate daily interest.

§18-7B-11. Termination of membership.

Any member whose employment with a participating employer terminates after the completion of six complete years of employment service shall be eligible to terminate his or her annuity account and receive a distribution from the member's annuity account, in an amount equal to the member's contribution plus one third of the employer contributions and any earnings thereon. Any member whose employment with a participating employer terminates after the completion of nine complete years of employment service shall be eligible to terminate his or her annuity account and receive a distribution from the member's annuity account, in an amount equal to the member's contribution plus two thirds of the employer's contributions and any earnings thereon. Any member whose employment with a participating employer terminates after the completion of twelve complete years of employment service shall be eligible to terminate his or her annuity account and receive a distribution of all funds contributed and accumulated in his or her annuity account. Any member whose employment with a participating employer terminates prior to the completion of six complete years of employment service shall be eligible to terminate his or her annuity account and receive a distribution from the member's annuity account, in an amount equal to the member's contribution plus any earnings thereon: Provided, That on the death or
permanent, total disability of any member, that member
shall be eligible to terminate his or her annuity account
and receive all funds contributed to or accumulated in
his or her annuity account.

The remaining balance, if any, in the member's
account after the distribution shall be remitted and paid
into a suspension account, hereby created, to be
administered by the board. The board shall promulgate
rules regarding the distribution of any balance in the
special account created by this section: Provided, That
any funds in the account shall be used solely for the
purpose of reducing employer contributions in future
years.

Any account balances remitted to the suspension
account herein shall be maintained by the board in said
suspension account in the name of the terminated
employee for a period of five years following initial
remittance to the suspension account. For each said
terminated employee at the culmination of the aforesaid
five-year period the board shall certify in writing to
each contributing employer the amount of the account
balances plus earnings thereon attributable to each
separate contributing employers previously terminated
employees' accounts which have been irrevocably
forfeited due to the elapse of a five-year period since
termination pursuant to section sixteen of this article.

Upon certification to the several contributing employ-
ers of the aggregate account balances plus earnings
thereon which have been irrevocably forfeited pursuant
to this section, the several contributing employers shall
be permitted in the next succeeding fiscal year or years
to reduce their total aggregate contribution require-
ments pursuant to section seventeen of this article, for
the then current fiscal year by an amount equal to the
aggregate amounts irrevocably forfeited and certified as
such to each contributing employer.

Upon the utilization of the amounts irrevocably
forfeited to any contributing employer as a reduction in
the then current fiscal year contribution obligation and
upon notification provided by the several contributing
employers to the board of their intention to utilize irrevocably forfeited amounts, the board shall direct the distribution of said irrevocably forfeited amounts from the suspension account to be deposited on behalf of the contributing employer to the member annuity accounts of its then current employees pursuant to section seventeen of this article.

§18-7B-12. Retirement, commencement of annuity payments.

At any time after an employee reaches the age of fifty-five years, he or she may elect to take retirement by notifying the board or its designee in writing of such intention not less than sixty days prior to the effective date of retirement. Retirement payments shall commence within thirty days of the retirement date under such payment option or options as may be provided by the board and elected by the employee.


(a) The amount of annuity payments a retired member shall receive shall be based solely upon the balance in the member's annuity account at the date of retirement, the retirement option selected, or in the event of an annuity option being selected, the actuarial life expectancy of the member, and such other factors as normally govern annuity payments.

(b) The board, or its designee, is authorized upon retirement of a member, with the approval of that member, to purchase an annuity with the balance of the member's account. Upon delivery of the annuity to the member upon his or her retirement, the member shall execute a release surrendering any claim the member may have against the retirement trust.

§18-7B-14. Supplemental annuity contracts.

The board shall authorize the private pension, insurance, annuity, mutual fund or other qualified company or companies with whom it contracts to make available to members such supplemental annuity options, disability and other insurance or benefits as the board deems appropriate: Provided, That such supple-
mental annuities, insurance and benefits shall be funded solely from employee contributions.

The board shall prepare or cause to be prepared, on an annual basis, an account statement for each members' annuity account. The statement shall include but not be limited to a statement of the current market value of the members' account. The board shall prescribe the form and content of the account statement not inconsistent with the provisions of this section.

§18-7B-16.Years of employment service.
A member of the defined contribution system who terminates employment with a participating employer and does not remove any funds from his or her annuity account and becomes reemployed with a participating employer within five years shall retain his or her previous years of employment service for purposes of the provisions of section eleven of this article.

§18-7B-17. Deposits to the members' annuity accounts.
Beginning on the first day of July, one thousand nine hundred ninety-one and thereafter each county board of education shall deposit in the member's annuity account created pursuant to section nine of this article an amount equal to seven and one half percent of all compensation paid to members of the defined contribution system in excess of that authorized for minimum salaries in sections two and eight-a, article four, chapter eighteen-a of this code to the extent that the excess exceeds the amount distributed for salary equity to the county.

§18-7B-18. Right to benefits not subject to execution, etc.
The right of any person to a benefit provided for in this article shall not be subjected to execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other process whatsoever, nor shall any assignment thereof be enforceable in any court.

ARTICLE 23. POWERS AND DUTIES OF GOVERNING BOARDS.
§18-23-4a. Supplemental and additional retirement plans for employees; payroll deductions; authority to match employee contributions; retroactive curative and technical corrective action.

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

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

The board is further authorized, by way of additional compensation to such employees, to pay an amount equal to the contributions of such employees into either the supplemental or additional retirement plan from funds appropriated to it for personal services. Each participating employee shall have a full and immediate vested interest in the retirement and death benefits accrued from all the moneys paid into such supplemental or
additional retirement plan for his benefit. Upon proper requisition of the board, the auditor shall periodically issue a warrant, payable as specified in the requisition, for the total contributions so withheld from the salaries of all participating employees and for the governing board’s matching funds.

Pursuant to the provisions contained in article seven-a and article twenty-three of this chapter, once a member has elected one of the options contained in section fourteen-a, article seven-a of this chapter and section four-a, article twenty-three of this chapter, he cannot thereafter change such election. The Legislature declares that the amendment of this section in Enrolled Committee Substitute for House Bill No. 4672, enacted at the regular session, one thousand nine hundred eighty-eight was inadvertent and remained in said bill contrary to legislative intent that the same be deleted; therefore, such language is hereby retroactively deleted and expunged as of the effective date of said Enrolled Committee Substitute for House Bill No. 4672 as curative and technical corrective action. The Legislature further declares that such ambiguous and deficient language inadvertently enacted in said bill shall be given no force and effect whatsoever in any litigation involving such language.

Beginning on the first day of July, one thousand nine hundred and ninety-one, any person whose employment commences on or after that date and is eligible to participate in an additional retirement plan provided pursuant to this section shall be required to participate in said additional plan and shall not be eligible to participate in any other state retirement system.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

(a) For the purpose of providing additional revenue for municipal policemen’s and firemen’s pension and
relief funds and the teachers retirement system reserve fund and for volunteer and part volunteer fire companies and departments, there is hereby levied and imposed, on and after the first day of January, one thousand nine hundred eighty-two, an additional premium tax equal to one percent of gross direct premiums collected, less premiums returned to policyholders because of cancellation of policies, for fire insurance and casualty insurance policies. For purposes of this section, casualty insurance shall not include insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular premium tax are applicable to the levy, imposition and collection of the additional tax.

All moneys collected from this additional tax shall be received by the commissioner and paid by him into a special account in the state treasury, designated the municipal pensions and protection fund. The net proceeds of this tax after appropriation thereof by the Legislature shall be distributed in accordance with the provisions of this section.

(b) Before the first day of August, one thousand nine hundred eighty-three, and before the first day of August of each calendar year thereafter, the treasurer of each municipality in which a municipal policemen's or firemen's pension and relief fund has been established shall report to the state treasurer the average monthly number of members who worked at least one hundred hours per month of municipal policemen's or firemen's pension systems during the preceding fiscal year. Before the first day of August, one thousand nine hundred eighty-three, and before the first day of August of each calendar year thereafter, the state fire marshal shall report to the state treasurer the names and addresses of all volunteer and part volunteer fire companies and departments within the state which meet the eligibility
requirements established in section eight-a, article fifteen, chapter eight of this code.

Before the first day of September, one thousand nine hundred eighty-three, and before the first day of September of each calendar year thereafter, the state treasurer shall allocate and authorize for distribution the revenues in the municipal pensions and protection fund which were collected during the preceding calendar year for the purposes set forth in this section.

Sixty-five percent of the aforementioned revenues allocated shall be allocated to municipal policemen's and firemen's pension and relief funds; twenty-five percent of such allocated revenues shall be allocated to volunteer and part volunteer fire companies and departments, and ten percent of such allocated revenues shall be allocated to the Teachers Retirement System Reserve Fund created by section eighteen, article seven-a, chapter eighteen of this code: Provided, That in any year the actuarial report required by section twenty, article twenty-two, chapter eight of this code indicates no actuarial deficiency in the municipal policemen's or firemen's pension and relief fund, no revenues may be allocated from the municipal pensions and protection fund to that fund. The revenues from the municipal pensions and protection fund shall then be allocated to all other pension funds which have an actuarial deficiency.

(c) (1) Each municipal pension and relief fund shall have allocated and authorized for distribution a pro rata share of the revenues allocated to municipal policemen's and firemen's pension and relief funds based upon the corresponding municipality's average monthly number of members who worked at least one hundred hours per month during the preceding fiscal year. All moneys received by municipal pension and relief funds under this section may be expended only for the purposes described in sections sixteen through twenty-eight, article twenty-two, chapter eight of this code.

(2) Each volunteer fire company or department shall receive an equal share of the revenues allocated for volunteer and part volunteer fire companies and
departments.

(3) In addition to the share allocated and distributed in accordance with subdivision (1) of this subsection, each municipal fire department composed of full-time paid members and volunteers and part volunteer fire companies and departments shall receive a share equal to the share distributed to volunteer fire companies under subdivision (2) of this subsection reduced by an amount equal to such share multiplied by the ratio of the number of full-time paid fire department members who are also members of a municipal firemen’s pension system to the total number of members of such fire department.

(d) The allocation and distribution of revenues provided for in this section are subject to the provisions of section twenty, article twenty-two, and sections eight-a and eight-b, article fifteen, chapter eight of this code.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-3. Custody, permissible investment and administration of retirement system trust fund; state auditor’s authority as administrator and trust fund fiduciary; refunds required, including interest.

The state treasurer shall be the custodian of the fund and of any investment securities of the retirement system and shall give a separate and additional bond for the faithful performance of his or her duties as such custodian. The governor shall fix the amount of such bond which shall be approved as to sufficiency and form by the attorney general and shall be filed in the office of the secretary of state. The premium on such bond shall be paid from the fund.

In a manner and to an extent consonant with sound administrative principles, the state board of investments shall have authority to invest such fund in interest-bearing securities of the United States of America, of the state of West Virginia and of any political subdivi-
The state auditor shall be the primary fiscal officer, responsible for the records and administration of the trust fund, including budgetary matters incident to the authority vested in him or her with respect to judicial department appropriations under article VI, section 51 of the Constitution of West Virginia. The state auditor shall also, as trust fund fiduciary, independently determine anew, in a substantive sense and as a check and balance, any information concerning eligible service years, required money contributions, computation of judge's retirement benefit or spousal benefit or any other substantive element of qualification supplied or certified to the state auditor by any other public officer, including the supreme court administrator or the chief executive, toward proper final review before issuance of a state warrant in payment of any benefit under the judges' retirement system.

Through the thirtieth day of June, one thousand nine hundred ninety-one the state auditor shall be the primary fiscal officer, responsible for the records and administration of the trust fund, including budgetary matter incident to the authority vested in him or her with respect to judicial department appropriations under article six, section fifty-one of the Constitution of West Virginia. The state auditor shall also, as trust fund fiduciary, independently determine anew, in a substantive sense and as a check and balance, any information concerning eligible service years, required money contributions, computation of judge's retirement benefit or spousal benefit or any other substantive element of qualification supplied or certified to the state auditor by any other public officer, including the supreme court administrator or the chief executive, toward proper final review before issuance of a state warrant in payment of any benefit under the judges' retirement system. From the first day of July, one thousand nine hundred ninety-one and thereafter, the fund shall be administered by the consolidated public retirement
board created by article ten-d, chapter five of this code.

In respect of any credited service heretofore acquired under the Dostert decision and subsequent related decisions, the state auditor shall make refund to any person heretofore making payment to acquire such service credit, primary or derivative, in the amount so earlier paid, together with interest at the same rate such sum actually earned because of its investment by the auditor or treasurer, as the case may be, in the consolidated pension pool or with the interest such sum would have earned if timely invested in such pool, whichever amount of interest be greater.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick J. Parker  
Chairman Senate Committee

Bernard V. Kelly  
Chairman House Committee

Originating in the House.

Takes effect from passage.

Harrell E. Holmes  
Clerk of the Senate

Donald L. Key  
Clerk of the House of Delegates

Jim Stitt  
President of the Senate

Bob Hailer  
Speaker of the House of Delegates

The within is approved this the 11th day of September, 1990.

Winston Caperton  
Governor