WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 2000

ENROLLED

SENATE BILL NO. 652

(By Senator Plymale, et al.)

PASSED March 11, 2000
In Effect July 1, 2000
ENROLLED

Senate Bill No. 652

(By Senators Plymale, Fanning, Jackson, Walker, McCabe, Edgell and Sprouse)

[Passed March 11, 2000; to take effect July 1, 2000.]

AN ACT to amend and reenact sections three-a, thirteen, fourteen, fifteen, twenty-one, forty-two and forty-six, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto four new sections, designated sections twenty-seven-a, twenty-seven-b, twenty-seven-c and fifty-five; to amend and reenact sections two, two-a, three, four, five, nine, twelve, thirteen, eighteen, nineteen, twenty-one, twenty-three, twenty-five and twenty-seven, article fourteen-d, chapter seven of said code; to further amend said article by adding thereto four new sections, designated sections nine-a, nine-b, nine-c and thirty-one; to amend and reenact sections twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty-five, article two, chapter fifteen of said code; to further amend said article by adding thereto six new sections, designated sections forty, forty-one, forty-two, forty-three, forty-four and forty-five;
to amend and reenact sections two, three, five, fifteen and nineteen, article two-a of said chapter; to further amend said article by adding thereto five new sections, designated sections four-a, six-a, six-b, six-c and twenty; to amend article seven-a, chapter eighteen of said code by adding thereto six new sections, designated sections three-a, fourteen-b, twenty-eight-a, twenty-eight-b, twenty-eight-c and thirty-seven; to amend and reenact sections eleven, thirteen, seventeen, thirty and thirty-four of said article; to amend and reenact sections two, four, seven, twelve, thirteen and eighteen, article seven-b of said chapter; to further amend said article by adding thereto four new sections, designated sections eight-a, twelve-a, thirteen-b and nineteen; to amend and reenact sections one-a, three, four, six, six-a and fourteen, article nine, chapter fifty-one of said code; and to further amend said article by adding thereto five new sections, designated sections three-a, twelve-a, twelve-b, twelve-c and seventeen, all relating generally to the public employees retirement system, deputy sheriff retirement plan, state police death, disability and retirement fund, state police retirement system, state teachers retirement system, teachers defined contribution retirement system and retirement system for judges of courts of record; compliance of the public employment retirement system, deputy sheriff retirement plan, state police death, disability and retirement fund, state police retirement system, state teachers retirement system, teachers defined contribution retirement system and retirement system for judges of courts of record with the federal tax law qualification requirements of Section 401(a) and related sections of the Internal Revenue Code of 1986 as applicable to governmental plans; definition of leased employees and clarification of ineligibility of leased employees to participate in these retirement systems; requirements relating to retirement plan loans for members in the deputy sheriff retirement plan and state teachers retirement system and provisions for the administration of those loans by the consolidated public retirement board; making technical
corrections; eliminating certain annuity options in the
deput y sheriff retirement system; clarifying that certain
benefits in the deputy sheriff retirement system may not be
reduced upon the death of a named beneficiary; replacing
"base salary" with "annual compensation" as a factor in
determining the amount of death benefits due a surviving
spouse in the deputy sheriff retirement system; clarifying the
amount to be paid in lieu of the standard burial benefit in
certain cases in the deputy sheriff retirement system; permit-
ting members of the state teachers retirement system the
option to purchase service credit for time periods they were
absent from work and receiving temporary total disability
payments; setting forth cost to purchase such service credit
in the state teachers retirement system; establishing applica-
ble time periods; setting forth a window of time during which
such purchase must occur; relating to the public employees
retirement system; providing for "retroactive service" and
"limited credited service"; providing for application of
terms; providing for restrictions resulting from said applica-
tion and making technical corrections; relating to the teach-
ers' retirement system; providing that certain members who
are also members of the Legislature may make contributions
to the plan for time spent serving in the Legislature; relating
to public employees retirement system; clarifying that no less
than ten days of service by any member may be credited as
one month of service; clarifying that no member may receive
more than one year of credited service for any calendar year;
clarifying the definition of interim sessions; increasing the
time limit to purchase retroactive service credit; clarifying
that no interest be paid upon certain purchases of retroactive
service credit; relating to the public employees retirement
system; service credit; allowing transfer of service with the
state police; and requiring the member's employer to make
certain employer contributions to the plan for the same time
period and conforming reenacted sections to existing law
with regard to all pension and retirement plans administered
by the consolidated public retirement board.
Be it enacted by the Legislature of West Virginia:

That sections three-a, thirteen, fourteen, fifteen, twenty-one, forty-two and forty-six, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto four new sections, designated sections twenty-seven-a, twenty-seven-b, twenty-seven-c and fifty-five; that sections two, two-a, three, four, five, nine, twelve, thirteen, eighteen, nineteen, twenty-one, twenty-three, twenty-five and twenty-seven, article fourteen-d, chapter seven of said code be amended and reenacted; that said article be further amended by adding thereto four new sections, designated sections two, two-a, three, five, nine, twelve, thirteen, eighteen, nineteen, twenty-one, twenty-three, twenty-five and twenty-seven, article two, chapter fifteen of said code be amended and reenacted; that said article be further amended by adding thereto six new sections, designated sections two, two-a, three, five, nineteen, thirty, article two-a of said chapter be amended and reenacted; that said article be further amended by adding thereto five new sections, designated sections four-a, six-a, six-b, six-c and twenty; that article seven-a, chapter eighteen of said code be amended by adding thereto six new sections, designated sections three-a, fourteen-b, twenty-eight-a, twenty-eight-b, twenty-eight-c and thirty-seven; that sections eleven, thirteen, seventeen, thirty and thirty-four of said article be amended and reenacted; that sections two, four, seven, twelve, thirteen and eighteen, article seven-b of said chapter be amended and reenacted; that said article be further amended by adding thereto four new sections, designated sections eight-a, twelve-a, thirteen-b and nineteen; that sections one-a, three, four, six, six-a and fourteen, article nine, chapter fifty-one of said code be amended and reenacted; and that said article be further amended by adding thereto five new sections, designated sections three-a, twelve-a, twelve-b, twelve-c and seventeen, all to read as follows:
CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY
GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS
AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

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

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

(b) The purpose of this article is to provide a state
pension plan which supplements the federal social security
pension plan now in force and heretofore authorized by
law for members of this retirement system.

(c) The retirement system is intended to meet the federal
qualification requirements of Section 401(a) and related
sections of the Internal Revenue Code as applicable to
governmental plans. Notwithstanding any other provision
of state law, the board shall administer the retirement
system to fulfill this intent for the exclusive benefit of the
members and their beneficiaries. Any provision of this
article referencing or relating to such federal tax qualifi-
cation requirements shall be effective as of the date
required by federal law. The board may promulgate rules
and amend or repeal conflicting rules in accordance with
the authority granted to it pursuant to section one, article
ten-d of this chapter to assure compliance with this
section.
§5-10-13. Actuarial investigations and valuations; specification of actuarial assumptions.

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

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

(c) Beginning in one thousand nine hundred sixty-two, and at least once in each three-year period thereafter, the actuary shall make an actuarial valuation of the assets and liabilities of the retirement system: Provided, That until the first actuarial investigations are made, the valuations shall be based upon decrement assumptions which are, in the opinion of the actuary, applicable to the members, retirants and beneficiaries of the system.

(d) Beginning in one thousand nine hundred sixty-two, the actuary shall annually compute the annuity reserve liabilities for annuities being paid retirants and beneficiaries.

(e) The board shall specify and adopt all actuarial assumptions for the system at its first meeting of every calendar year or as soon thereafter as may be practicable, which assumptions shall become part of the terms of the system.
ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-14. Service credit; retroactive provisions.

(a) The board of trustees shall credit each member with the prior service and contributing service to which he or she is entitled based upon such rules as the board of trustees shall from time to time adopt and based upon the following:

1. In no event may less than ten days of service rendered by a member in any calendar month be credited as a month of service. Provided, That for employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, service credit of one month shall be awarded for each ten days employed in the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit;

2. Except for hourly employees, ten or more months of service credit earned in any calendar year shall be credited as a year of service. Provided, That no more than one year of service may be credited to any member for all service rendered by him or her in any calendar year and no days may be carried over by a member from one calendar year to another calendar year where the member has received a full year credit for that year; and

3. Service may be credited to a member who was employed by a political subdivision if his or her employment occurred within a period of thirty years immediately
32  preceding the date the political subdivision became a
33  participating public employer.
34  (b) The board of trustees shall grant service credit to
35  employees of boards of health, the clerk of the House of
36  Delegates and the clerk of the state Senate, or to any
37  former and present member of the state teachers retire-
38  ment system who have been contributing members for
39  more than three years, for service previously credited by
40  the state teachers retirement system and shall require the
41  transfer of the member's contributions to the system and
42  shall also require a deposit, with interest, of any with-
43  drawals of contributions any time prior to the member's
44  retirement. Repayment of withdrawals shall be as directed
45  by the board of trustees.
46  (c) Court reporters who are acting in an official capacity,
47  although paid by funds other than the county commission
48  or state auditor, may receive prior service credit for time
49  served in that capacity.
50  (d) Employees of the state Legislature whose terms of
51  employment are otherwise classified as temporary and
52  who are employed to perform services required by the
53  Legislature for its regular sessions or during the interim
54  time between regular sessions shall receive service credit
55  for the time served in that capacity in accordance with the
56  following. For purposes of this section the term "regular
57  session" means day one through day sixty of a sixty-day
58  legislative session or day one through day thirty of a
59  thirty-day legislative session. Employees of the state
60  Legislature whose term of employment is otherwise
61  classified as temporary and who are employed to perform
62  services required by the Legislature for its regular sessions
63  or during the interim time between regular sessions and
64  who have been or are employed during regular sessions or
65  during the interim time between regular sessions in seven
66  consecutive calendar years, as certified by the clerk of the
houses in which the employee served, shall receive service credit of six months for all regular sessions served, as certified by the clerk of the houses in which the employee served, or shall receive service credit of three months for each regular thirty-day session served prior to one thousand nine hundred seventy-one, as certified by the clerk of the houses in which the employee served, and shall receive service credit of one month for each ten days served during the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit. Provided, That no more than one year of service may be credited to any temporary legislative employee for all service rendered by that employee in any calendar year and no days may be carried over by a temporary legislative employee from one calendar year to another calendar year where the member has received a full year credit for that year. Service credit awarded for legislative employment pursuant to this section shall be used for the purpose of calculating that member’s retirement annuity, pursuant to section twenty-two of this article, and determining eligibility as it relates to credited service, notwithstanding any other provision of this section. Certification of employment for a complete legislative session and for interim days shall be determined by the clerk of the houses in which the employee served, based upon employment records. Service of fifty-five days of a regular session constitutes an absolute presumption of service for a complete legislative session, and service of twenty-seven days of a thirty-day regular session occurring prior to one thousand nine hundred seventy-one constitutes an absolute presumption of service for a complete legislative session. Once a legislative employee has been employed during regular sessions for seven consecutive years or has become a full-time employee of the Legislature, that employee shall receive the service credit provided in this
section for all regular and interim sessions, and interim
days worked by that employee, as certified by the clerk of
the houses in which the employee served, regardless of
when the session or interim legislative employment
occurred: Provided, however, That regular session legisla-
tive employment for seven consecutive years may be
served in either or both houses of the Legislature.

Any employee may purchase retroactive service credit
for periods of employment in which contributions were not
deducted from the employee's pay. In the purchase of
service credit for employment prior to the year one
thousand nine hundred eighty-nine in any department,
including the Legislature, which operated from the general
revenue fund and which was not expressly excluded from
budget appropriations in which blanket appropriations
were made for the state's share of public employees'
retirement coverage in the years prior to the year one
do

thousand nine hundred eighty-nine, the employee shall
pay the employee's share. Other employees shall pay the
state's share and the employee's share to purchase retroac-
tive service credit. Where an employee purchases service
credit for employment which occurred after the year one
do

thousand nine hundred eighty-eight, that employee shall
pay for the employee's share and the employer shall pay its
share for the purchase of retroactive service credit:
Provided, That no legislative employee and no current or
former member of the Legislature may be required to pay
any interest or penalty upon the purchase of retroactive
service credit in accordance with the provisions of this
section where the employee was not eligible to become a
member during the years he or she is purchasing retroac-
tive credit for or had the employee attempted to contribute
to the system during the years he or she is purchasing
retroactive service credit for and such contributions would
have been refused by the board: Provided, however, That
a legislative employee purchasing retroactive credit under
this section does so within twenty-four months of becoming a member of the system or no later than the last day of December, two thousand five, whichever occurs last:

Provided further, That once a legislative employee becomes a member of the retirement system, he or she may purchase retroactive service credit for any time he or she was employed by the Legislature and did not receive service credit. Any service credit purchased shall be credited as six months for each sixty-day session worked and three months for each thirty-day session worked, and credit for interim employment as provided in this subsection: And provided further, That this legislative service credit shall also be used for months of service in order to meet the sixty-month requirement for the payments of a temporary legislative employee member's retirement annuity: And provided further, That no legislative employee may be required to pay for any service credit beyond the actual time he or she worked regardless of the service credit which is credited to him or her pursuant to this section: And provided further, That any legislative employee may request a recalculation of his or her credited service to comply with the provisions of this section at any time.

(e) Notwithstanding any provision to the contrary, the seven consecutive calendar years requirement and the service credit requirements set forth in this section shall be applied retroactively to all periods of legislative employment prior to the passage of this section, including any periods of legislative employment occurring before the seven consecutive calendar years referenced in this section.

(f) The board of trustees shall grant service credit to any former or present member of the state police death, disability and retirement fund who has been a contributing member of this system for more than three years, for service previously credited by the state police death,
disability and retirement fund if the member transfers all
of his or her contributions to the state police death,
disability and retirement fund to the system created in this
article, including repayment of any amounts withdrawn
any time from the state police death, disability and
retirement fund by the member seeking the transfer
allowed in this subsection: Provided, That there shall be
added by the member to the amounts transferred or repaid
under this paragraph an amount which shall be sufficient
to equal the contributions he or she would have made had
the member been under the public employees retirement
system during the period of his or her membership in the
state police death, disability and retirement fund plus
interest at a rate determined by the board.

§5-10-15. Military service credit; qualified military service.

(a)(1) In addition to any benefit provided by federal law,
any member of the retirement system who has previously
served in or enters the active service of the armed forces of
the United States during any period of compulsory mili-
tary service shall receive credited service for said time
spent in the armed forces of the United States, not to
exceed five years if such member:

(A) Has been honorably discharged from the armed
forces;

(B) Substantiates by appropriate documentation or
evidence his or her active military service and entry
therein during any period of compulsory military service;
and

(C) Pays to the members' deposit fund the amount he or
she may have withdrawn therefrom, together with regular
interest from the date of withdrawal to the date of repay-
ment.
Any member of the retirement system who enters the active service of the armed forces of the United States during any period of compulsory military service shall receive the credit provided by this section regardless of whether he or she was a public employee at the time of entering the military service.

(3) No member may receive the credit described in this section for any period for which the member has received credit under section ten-b of this article.

(b) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board of trustees shall have final power to determine such period.

(c) During the period of such armed service and until the member’s return to the employ of a participating public employer, his or her contributions to the retirement system shall be suspended and any credit balance remaining in the members’ deposit fund shall be accumulated at regular interest.

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

§5-10-21. Deferred retirement and early retirement.
(a) Any member who has five or more years of credited service in force, of which at least three years are contributing service, and who leaves the employ of a participating public employer prior to his or her attaining age sixty years for any reason except his or her disability retirement or death shall be entitled to an annuity computed according to section twenty-two of this article, as that section was in force as of the date of his or her separation from the employ of a participating public employer. Provided, That he or she does not withdraw his or her accumulated contributions from the members' deposit fund. His or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the board of trustees on or after his or her attaining age sixty-two years.

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

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

(e) Notwithstanding any of the other provisions of this section or of this article, except sections twenty-seven-a and twenty-seven-b of this article, any member of the retirement system may retire with full pension rights, without reduction of benefits, if he or she is at least fifty-five years of age and the sum of his or her age plus years of contributing service and limited credited service, as defined in section two of this article, equals or exceeds eighty.

§5-10-27a. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations promulgated thereunder to the extent applicable to governmental plans so that no annuity or other benefit provided under this system shall exceed those limitations. The extent to which any annuity or other benefit payable under this retirement
system shall be reduced as compared to the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced shall be determined by the board in a manner that shall maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities required by this section.

§5-10-27b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this code. This provision applies to plan years beginning after the thirty-first day of December, one thousand nine hundred eighty-six. Notwithstanding anything in this code to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder. For this purpose, the following provisions apply:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary.

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

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system will be distributed by the thirty-first day of December of the calendar year containing the fifth anniversary of the member's death, except as follows:

(1) If a member's interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the thirty-first day of December of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) The thirty-first day of December of the calendar year following the calendar year in which the member died; or (ii) the thirty-first day of December of the calendar year following the calendar year in which the spouse died.

§5-10-27c. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article
to the contrary that would otherwise limit a distributee's election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) “Eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee’s designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution or distributions reasonably expected to total less than two hundred dollars during a year.

(2) “Eligible retirement plan” means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section
401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

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

(b) Nothing in this section may be construed as permitting rollovers into this system or any other system administered by the retirement board.

§5-10-42. Fiscal or plan year of retirement system.

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

§5-10-46. Right to benefits not subject to execution, etc.; assignments prohibited; deductions for group insurance; setoffs for fraud; exception for certain domestic relations orders.

The right of a person to any benefit provided for in this article shall not be subject to execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other process whatsoever, nor shall any assignment thereof be enforceable in any court except that the benefits or contributions under this system shall be subject
to "qualified domestic relations orders" as that term is
defined in Section 414(p) of the Internal Revenue Code as
applicable to governmental plans. Provided, That should
a member be covered by a group insurance or prepayment
plan participated in by a participating public employer,
and should he or she be permitted to, and elect to, continue
such coverage as a retirant, he or she may authorize the
board of trustees to have deducted from his or her annuity
the payments required of him or her to continue coverage
under such group insurance or prepayment plan: Provided,
however, That a participating public employer shall have
the right of setoff for any claim arising from embezzlement
by, or fraud of, a member, retirant or beneficiary.

§ 5-10-55. Benefits not to be forfeited if system terminates.

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

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§ 7-14D-2. Definitions.

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

(a) "Accrued benefit" means on behalf of any member
two and one-quarter percent of the member's final average
salary multiplied by the member's years of credited
service. A member's accrued benefit may not exceed the
limits of Section 415 of the Internal Revenue Code and is
subject to the provisions of section nine-a of this article.
(b) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member, or paid on his or her behalf pursuant to article ten-e, chapter five of this code, either pursuant to section seven of this article or section twenty-nine, article ten, chapter five of this code as a result of covered employment together with regular interest on the deducted amounts.

(c) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the national guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(d) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article.

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

(f) "Annual leave service" means accrued annual leave.
(g) "Annuity starting date" means the first day of the first period for which an amount is received as an annuity by reason of retirement.

(h) "Base salary" means a member’s cash compensation exclusive of overtime from covered employment during the last twelve months of employment. Until a member has worked twelve months, annualized base salary is used as base salary.

(i) "Board" means the consolidated public retirement board created pursuant to article ten-d, chapter five of this code.

(j) "County commission" has the meaning ascribed to it in section one, article one, chapter seven of this code.

(k) "Covered employment" means either: (1) Employment as a deputy sheriff and the active performance of the duties required of a deputy sheriff; or (2) the period of time which active duties are not performed but disability benefits are received under section thirteen or fourteen of this article; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or her employment as a deputy sheriff where such secondary employment requires the deputy sheriff to be a member of another retirement system which is administered by the consolidated public retirement board pursuant to article ten-d of chapter five of this code: Provided, That the deputy sheriff contribute to the fund created in section six of this article the amount specified as the deputy sheriff’s contribution in section seven of this article.

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

(m) "Deputy sheriff" means an individual employed as a county law-enforcement deputy sheriff in this state and
as defined by section two, article fourteen, chapter seven of this code.

(n) "Dependent child" means either:

(1) An unmarried person under age eighteen who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age twenty-three:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in subparagraph (A), (B) or (C), paragraph (l) of this subdivision.

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

(p) "Disability service" means service received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under section fourteen or fifteen of this article.
(q) "Early retirement age" means age forty or over and completion of twenty years of service.

(r) "Effective date" means the first day of July, one thousand nine hundred ninety-eight.

(s) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last ten years of service. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under section fourteen or fifteen of this article then "final average salary" means the average of the monthly salary determined paid to the member during that period as determined under section seventeen of this article multiplied by twelve.

(t) "Fund" means the West Virginia deputy sheriff retirement fund created pursuant to section six of this article.

(u) "Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof, and without regard to whether the employment relationship has terminated. Hours under this paragraph shall be calculated and credited pursuant to West Virginia
division of labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under section fourteen or fifteen of this article; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission, irrespective of mitigation of damages. The same hours of service shall not be credited both under paragraph (1) or (2) of this subdivision and under this paragraph. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

(v) "Member" means a person first hired as a deputy sheriff after the effective date of this article, as defined in subsection (r) of this section, or a deputy sheriff first hired prior to the effective date and who elects to become a member pursuant to section five or section seventeen of this article. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(w) "Monthly salary" means the portion of a member's annual compensation which is paid to him or her per month.

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

(1) Attainment of age fifty years and the completion of
twenty or more years of service;

(2) While still in covered employment, attainment of at
least age fifty years and when the sum of current age plus
years of service equals or exceeds seventy years;

(3) While still in covered employment, attainment of at
least age sixty years and completion of five years of
service; or

(4) Attainment of age sixty-two years and completion of
five or more years of service.

(z) "Partially disabled" means a member's inability to
engage in the duties of deputy sheriff by reason of any
medically determinable physical or mental impairment
that can be expected to result in death or that has lasted or
can be expected to last for a continuous period of not less
than twelve months. A member may be determined
partially disabled for the purposes of this article and
maintain the ability to engage in other gainful employ-
ment which exists within the state but which ability would
not enable him or her to earn an amount at least equal to
two thirds of the average annual compensation earned by
all active members of this plan during the plan year ending
as of the most recent thirtieth day of June, as of which
plan data has been assembled and used for the actuarial
valuation of the plan.

(aa) "Public employees retirement system" means the
West Virginia public employee's retirement system created
by article ten, chapter five of this code.
(bb) "Plan" means the West Virginia deputy sheriff death, disability and retirement plan established by this article.

(cc) "Plan year" means the twelve-month period commencing on the first day of July of any designated year and ending the following thirtieth day of June.

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

(ee) "Retirement income payments" means the annual retirement income payments payable under the plan.

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

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

(hh) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months.

For purposes of this subdivision:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as a deputy sheriff but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) the work exists in the immediate area in which the
member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques.

A member's receipt of social security disability benefits creates a rebuttable presumption that the member is totally disabled for purposes of this plan. Substantial gainful employment rebuts the presumption of total disability.

(ii) "Year of service". A member shall, except in his or her first and last years of covered employment, be credited with year of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

<table>
<thead>
<tr>
<th>Hours of Service</th>
<th>Year of Service Credited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 500</td>
<td>0</td>
</tr>
<tr>
<td>500 to 999</td>
<td>1/3</td>
</tr>
<tr>
<td>1,000 to 1,499</td>
<td>2/3</td>
</tr>
<tr>
<td>1,500 or more</td>
<td>1</td>
</tr>
</tbody>
</table>

During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under section fourteen or fifteen of this article. Except as specifically excluded, years of
service include covered employment prior to the effective date.

Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to section thirteen of this article or section thirty, article ten, chapter five of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to section twelve of this article or had prior to the effective date made the repayment pursuant to section eighteen, article ten, chapter five of this code.

(jj) "Required beginning date" means the first day of April of the calendar year following the later of: (i) The calendar year in which the member attains age seventy and one-half; or (ii) the calendar year in which he or she retires or otherwise separates from covered employment.


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

§7-14D-3. Creation and administration of West Virginia deputy sheriff's retirement system; specification of actuarial assumptions.

There is hereby created the West Virginia deputy sheriff's retirement system. The purpose of this system is to provide for the orderly retirement of deputy sheriffs who become superannuated because of age or permanent disability and to provide certain survivor death benefits. The retirement system constitutes a body corporate. All
§7-14D-4. Article to be liberally construed; supplements federal social security; federal qualification requirements.

(a) The provisions of this article shall be liberally construed so as to provide a general retirement system for deputy sheriffs eligible to retire under the provisions of this plan. Nothing in this article may be construed to permit a county to substitute this plan for federal social security now in force in West Virginia.

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

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

§7-14D-5. Members.

(a) Any deputy sheriff first employed by a county in covered employment after the effective date of this article shall be a member of this retirement system and plan and does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment.

(b) Any deputy sheriff employed in covered employment on the effective date of this article shall within six months of that effective date notify in writing both the county commission in the county in which he or she is employed and the board of his or her desire to become a member of the plan: Provided, That this time period is extended to the thirtieth day of January, one thousand nine hundred ninety-nine, in accordance with the decision of the supreme court of appeals in West Virginia Deputy Sheriffs' Association, et al v. James L. Sims, et al, No. 25212: Provided, however, That any deputy sheriff employed in covered employment on the effective date of this article has an additional time period consisting of the ten-day period following the day after which the amended provisions of this section become law to notify in writing both the county commission in the county in which he or she is employed and the board of his or her desire to become a member of the plan. Any deputy sheriff who elects to become a member of the plan ceases to be a member or have any credit for covered employment in any other retirement system administered by the board and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the deputy sheriff remains employed in covered employment.
in this plan: Provided further, That any deputy sheriff who
elects during the time period from the first day of July, one
thousand nine hundred ninety-eight, to the thirtieth day of
January, one thousand nine hundred ninety-nine, or who
so elects during the ten-day time period occurring immedi-
ately following the day after the day the amendments
made during the one thousand nine hundred ninety-nine
legislative session become law, to transfer from the public
employees retirement system to the plan created in this
article shall contribute to the plan created in this article at
the rate set forth in section seven of this article retroactive
to the first day of July, one thousand nine hundred
ninety-eight. Any deputy sheriff who does not affirma-
tively elect to become a member of the plan continues to
be eligible for any other retirement system as is from time
to time offered to other county employees but is ineligible
for this plan regardless of any subsequent termination of
employment andrehire.

(c) Any deputy sheriff who was employed as a deputy
sheriff prior to the effective date, but was not employed on
the effective date of this article, shall become a member
upon rehire as a deputy sheriff. For purposes of this
section, the member's years of service and credited service
prior to the effective date shall not be counted for any
purposes under this plan unless: (1) The deputy sheriff has
not received the return of his or her accumulated contribu-
tions in the public employees retirement fund system
pursuant to section thirty, article ten, chapter five of this
code; or (2) the accumulated contributions returned to the
member from the public employees retirement system have
been repaid pursuant to section twelve of this article. If
the conditions of subdivision (1) or (2) of this subsection
are met, all years of the deputy sheriff's covered employ-
ment shall be counted as years of service for the purposes
of this article. Each transferring deputy sheriff shall be
given credited service for the purposes of this article for all
covered employment transferred from the public employees retirement system regardless of whether such credited service (as that term is defined in section two, article ten, chapter five of this code) was earned as a deputy sheriff. All service in the public employees retirement system accrued by a transferring deputy sheriff shall be transferred into the plan created by this article and the transferring deputy sheriff shall be given the same credit for the purposes of this article for all such covered service which is transferred from the public employees retirement system as that transferring deputy sheriff would have received from the public employees retirement system if such transfer had not occurred. In connection with each deputy sheriff receiving credit for prior employment provided in this subsection, a transfer from public employees retirement system to this plan shall be made pursuant to the procedures described in section eight of this article.

(d) Once made, the election made under this section is irrevocable. All deputy sheriffs first employed after the effective date and deputy sheriffs electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by section seven of this article.

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

§7-14D-9. Retirement; commencement of benefits.
A member may retire and commence to receive retirement income payments on the first day of the calendar month coincident with or next following the later of the date the member ceases employment and the date the member attains early or normal retirement age, in an amount as provided under section eleven of this article, by filing with the board his or her voluntary petition in writing for retirement: Provided, That retirement income payments under this plan shall be subject to the provisions of section nine-b of this article. Upon receipt of the petition, the board shall promptly provide the member with an explanation of his or her optional forms of retirement benefits and upon receipt of properly executed forms from the member, the board shall process member's request for and commence payments as soon as administratively feasible.

§7-14D-9a. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section to the extent applicable to governmental plans so that no annuity or other benefit provided under this system shall exceed those limitations. The extent to which any annuity or other benefit payable under this retirement system shall be reduced as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced shall be determined by the board in a manner that shall maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities required by this section.
§7-14D-9b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this plan. This section applies to plan years beginning after the thirty-first day of December, one thousand eight hundred eighty-six. Notwithstanding anything in the plan to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:

(a) The payment of benefits under the plan to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary.

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

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the plan shall be distributed by the thirty-first day of December of the calendar year containing the fifth anniversary of the member's death, except as follows:
(1) If a member's interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of the beneficiary, commencing on or before the thirty-first of December of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) The thirty-first day of December of the calendar year following the calendar year in which the member died; or (ii) the thirty-first day of December of the calendar year following the calendar year in which the spouse died.

§7-14D-9c. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this plan, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution
that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution or distributions reasonably expected to total less than two hundred dollars during a year.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.
"Direct rollover" means a payment by the plan to the eligible retirement plan.

(b) Nothing in this section shall be construed as permitting rollovers to this plan or any other retirement system administered by the board.

§7-14D-12. Annuity options.

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

(a) Option A – Joint and Survivor Annuity. – A life annuity payable during the joint lifetime of the member and his or her beneficiary who is a natural person with an insurable interest in the member’s life. Upon the death of either the member or his or her beneficiary, the benefit shall continue as a life annuity to the survivor in an amount equal to fifty percent, sixty-six and two-thirds percent, seventy-five percent or one hundred percent of the amount paid while both were living as selected by the member. If the retiring member is married, the spouse shall sign a waiver of benefit rights if the beneficiary is to be other than the spouse.

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

(c) **Option C – Ten Years Certain and Life Annuity.** — A life annuity payable during the member's lifetime but in any event for a minimum of ten years. If the member dies before the expiration of ten years, the remaining payments shall be made to a designated beneficiary, if any, or otherwise to the member's estate.

(d) **Option D – Level Income Annuity.** — A life annuity payable monthly in an increased amount “A” from the time of retirement until the member is social security retirement age, and then a lesser amount “B” payable for the member's lifetime thereafter, with these amounts computed actuarially to satisfy the following two conditions:

1. **Actuarial equivalence.** — The actuarial present value at the date of retirement of the member's annuity if taken in the normal form must equal the actuarial present value of the term life annuity in amount “A” plus the actual present value of the deferred life annuity in amount “B”, and

2. **Level income.** — The amount “A” equals the amount “B” plus the amount of the member's estimated monthly social security primary insurance amount that would commence at the date amount “B” becomes payable. For this calculation, the primary insurance amount is estimated when the member applies for retirement, using social security law then in effect, using assumptions established by the board.

In the case of a member who has elected the options set forth in subdivisions (a) and (b) of this section, respectively, and whose beneficiary dies prior to the member's death, the member may name an alternative beneficiary.
If an alternative beneficiary is named within eighteen months following the death of the prior beneficiary, the benefit shall be adjusted to be the actuarial equivalent of the benefit the member is receiving just after the death of the member’s named beneficiary. If the election is not made until eighteen months after the death of the prior beneficiary, the amount shall be reduced so that it is only ninety percent of the actuarial equivalent of the benefit the member is receiving just after the death of the member’s named beneficiary.

§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

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

(b) Any member who withdraws accumulated contributions from either this plan or the public employees retirement system and thereafter becomes reemployed in covered employment shall not receive any credited service for the prior employment unless following his or her return to covered employment, the member redeposits in the fund the amount of the accumulated contributions, together with interest on the accumulated contributions at the rate determined by the board from the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same credit on account of his or her former service as if no refund had been made. The repayment shall be made in a lump sum within sixty months of the deputy sheriff’s reemployment or if later, within sixty months of the effective date of this article.
(c) Every member who completes sixty months of covered employment is eligible, upon cessation of covered employment, to either withdraw his or her accumulated contributions in accordance with subsection (a) of this section, or to choose not to withdraw his or her accumulated contribution and to receive retirement income payments upon attaining early or normal retirement age.

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

§7-14D-18. Awards and benefits to surviving spouse – When member dies in performance of duty, etc.

(a) The surviving spouse of any member who, after the effective date of this article while in covered employment, has died or dies by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members, while the member was or is engaged in the performance of his or her duties as a deputy sheriff, or the survivor spouse of a member who dies from any cause while receiving benefits pursuant to section fourteen of this article, is entitled to receive and shall be paid from the fund benefits as determined in subsection (b) of this section: To the surviving spouse annually, in equal monthly installments during his or her lifetime an amount equal to the greater of: (i) Two thirds of the annual compensation received in the preceding twelve-month period by the deceased member; or (ii) if the member dies after his or her early or normal retirement age, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a one hundred percent joint and survivor
20 annuity with the spouse as the joint annuitant, and then died.
21 (b) Benefits for a surviving spouse received under this
22 section, section twenty and section twenty-one of this
23 article are in lieu of receipt of any other benefits under
24 this article for the spouse or any other person or under the
25 provisions of any other state retirement system based upon
26 the member’s covered employment.

§7-14D-19. Same – When member dies from nonservice-con-
1 nected causes.
2 (a) In any case where a member who has been a member
3 for at least ten years, while in covered employment after
4 the effective date of this article, has died or dies from any
5 cause other than those specified in section eighteen of this
6 article and not due to vicious habits, intemperance or
7 willful misconduct on his or her part, the fund shall pay
8 annually in equal monthly installments to the surviving
9 spouse during his or her lifetime, a sum equal to the
10 greater of: (i) One half of the annual compensation
11 received in the preceding twelve-month employment
12 period by the deceased member; or (ii) if the member dies
13 after his or her early or normal retirement age, the
14 monthly amount which the spouse would have received
15 had the member retired the day before his or her death,
16 elected a one hundred percent joint and survivor annuity
17 with the spouse as the joint annuitant, and then died.
18 Where the member is receiving disability benefits under
19 section fourteen of this article at the time of his or her
20 death, the most recent monthly compensation determined
21 under section seventeen of this article shall be substituted
22 for the annual compensation in (i) of this section.
23 (b) Benefits for a surviving spouse received under this
24 section, section twenty and section twenty-one of this
25 article are in lieu of receipt of any other benefits under
26 this article for the spouse or any other person or under the
provisions of any other state retirement system based upon
the member's covered employment.


Any member who dies as a result of any service related
illness or injury after the effective date is entitled to a
lump sum burial benefit of five thousand dollars. If the
member is married, the burial benefit shall be paid to the
member's spouse. If the member is not married, the burial
benefit shall be paid to the member's estate for the pur-
poses of paying burial expenses, settling the member's
final affairs, or both. Any unspent balance shall be
distributed as a part of the member's estate. If the mem-
ber is not entitled to a death benefit under sections
eighteen and nineteen of this article, then if greater than
five thousand dollars, the amount payable to the member's
estate shall be his or her accumulated contributions.

§7-14D-23. Loans to members.

(a) A member who is not yet receiving disability or
retirement income benefits from the plan may borrow
from the plan no more than one time in any year an
amount up to one half of his or her accumulated contribu-
tions, but not less than five hundred dollars nor more than
eight thousand dollars. Provided, That the maximum
amount of any loan when added to the outstanding
balance of all other loans shall not exceed the lesser of the
following: (1) Fifty thousand dollars reduced by the excess
(if any) of the highest outstanding balance of loans to the
member on the date on which the loan is made; or (2) fifty
percent of his or her accumulated contributions. No loan
may be made from the plan if the board determines that
the loans constitute more than fifteen percent of the
amortized cost value of the assets of the plan as of the last
day of the preceding plan year. The board may discontinue
the loans any time it determines that cash flow problems
might develop as a result of the loans. Each loan shall be
repaid through monthly installments over periods of six
through sixty months and carry interest on the unpaid
balance and an annual effective interest rate that is two
hundred basis points higher than the most recent rate of
interest used by the board for determining actuarial
contributions levels. Monthly loan payments shall be
calculated to be as nearly equal as possible with all but the
final payment being an equal amount. An eligible member
may make additional loan payments or pay off the entire
loan balance at any time without incurring any interest
penalty. At the member's option, the monthly loan pay-
ment may include a level premium sufficient to provide
descending term insurance with the plan as beneficiary to
repay the loan in full upon the member's death. If a
member declines the insurance and dies before the loan is
repaid, the unpaid balance of the loan shall be deducted
from the lump sum insurance benefit payable under
section twenty-one of this article.

(b) A member with an unpaid loan balance who wishes
to retire may have the loan repaid in full by accepting
retirement income payments reduced by deducting from
the actuarial reserve for the accrued benefit the amount of
the unpaid balance and then converting the remaining of
the reserve to a monthly pension payable in the form of the
annuity desired by the member.

(c) The entire unpaid balance of any loan, and interest
due thereon, shall at the option of the retirement board
become due and payable without further notice or demand
upon the occurrence with respect to the borrowing mem-
ber of any of the following events of default: (1) Any
payment of principal and accrued interest on a loan
remains unpaid after the same become due and payable
under the terms of the loan or after such grace period as
may be established in the discretion of the retirement board; (2) the borrowing member attempts to make an assignment for the benefit of creditors of his or her benefit under the retirement system; or (3) any other event of default set forth in rules promulgated by the board pursuant to the authority granted in section one, article ten-d, chapter five of this code.

(d) Loans shall be evidenced by such form of obligations and shall be made upon such additional terms as to default, prepayment, security, and otherwise as the retirement board may determine.

§7-14D-25. Exemption from taxation, garnishment and other process; exception for certain qualified domestic relations orders.

The moneys in the fund and the right of a member, spouse or other beneficiary to benefits under this article, to the return of contributions, or to any retirement, death or disability payments under the provisions of this article, are exempt from any state or municipal tax; are not subject to execution, garnishment, attachment or any other process whatsoever with the exception that the benefits or contributions under the system shall be subject to "qualified domestic relations orders" as that term is defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, and are unassignable except as is provided in this article.

7-14D-27. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.

(a) Any member who has previously served on active military duty is entitled to receive additional years of service for the purpose of determining his or her years of
cried service for a period equal to the active military
duty, not to exceed five years, subject to the following:

(1) That he or she has been honorably discharged from
the armed forces;

(2) That he or she substantiates by appropriate documen-
tation or evidence his or her period of active military duty;
and

(3) That he or she is receiving no benefits from any other
retirement system for his or her active military duty.

(b) In addition, any member who while in covered
employment was commissioned, enlisted or inducted into
the armed forces of the United States or, being a member
of the reserve officers' corps, was called to active duty in
the armed forces between the first day of September, one
thousand nine hundred forty, and the close of hostilities in
World War II, or between the twenty-seventh day of June,
one thousand nine hundred fifty, and the close of the
armed conflict in Korea on the twenty-seventh day of July,
one thousand nine hundred fifty-three, between the first
day of August, one thousand nine hundred sixty-four, and
the close of the armed conflict in Vietnam, or during any
other period of armed conflict by the United States
whether sanctioned by a declaration of war by congress or
by executive or other order of the president, is entitled to
and shall receive credited service, for a period equal to the
full time that he or she has or, pursuant to that commis-
sion, enlistment, induction or call, shall have served with
the armed forces subject to the following:

(1) That he or she has been honorably discharged from
the armed forces;

(2) That within ninety days after honorable discharge
from the armed forces, he or she presented himself or
herself to the county commission and offered to resume
service as a deputy sheriff, and

(3) That he or she has made no voluntary act, whether by
reenlistment, waiver of discharge, acceptance of commis-
sion or otherwise, to extend or participate in extension of
the period of service with the armed forces beyond the
period of service for which he or she was originally
commissioned, enlisted, inducted or called.

(c) The total amount of service allowable under subsec-
tions (a) and (b) of this section may not exceed five years.

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

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

§7-14D-31. Benefits not forfeited if system terminates.

If the retirement system is terminated or contributions
are completely discontinued, the rights of all members to
benefits accrued or contributions made to the date of such
termination or discontinuance, to the extent then funded,
are not forfeited.
CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-26. Continuation of death, disability and retirement fund; designating the consolidated public retirement board as administrator of fund.

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

(b) There shall be deducted from the monthly payroll of each member of the division of public safety and paid into such fund six percent of the amount of his or her salary: Provided, That beginning on the first day of July, one thousand nine hundred ninety-four, there shall be deducted from the monthly payroll of each member and paid into the fund seven and one-half percent of the amount of his or her salary: Provided, however, That on and after the first day of July, one thousand nine hundred ninety-five, there shall be deducted from the monthly payroll of each member and paid into the fund nine percent of the amount of his or her salary. An additional twelve percent of the monthly salary of each member of the division shall be paid by the state of West Virginia monthly into such fund: Provided further, That beginning on the first day of July, one thousand nine hundred ninety-five, the state shall pay thirteen percent of the monthly salary of each member into the fund: And provided further, That beginning on the first day of July, one thousand nine hundred ninety-six, the state shall pay fourteen percent of the monthly salary of each member into the fund: And provided further, That on and after the first day of July, one thousand nine hundred ninety-seven, the state shall pay fifteen percent of the monthly salary of each member into the retirement fund. There shall also be paid into the fund amounts that
have previously been collected by the superintendent of
the division 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 the fund shall be
deposited in the state treasury and the treasurer and
auditor shall keep a separate account thereof on their
respective books.

(c) Notwithstanding any other provisions of this article,
forfeitures under the fund shall not be applied to increase
the benefits any member would otherwise receive under
the fund.

(d) 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 execution, garnishment, attachment or any
other process whatsoever, with the exception that the
benefits or contributions under the fund shall be subject to
"qualified domestic relations orders" as that term is
defined in Section 414(p) of the Internal Revenue Code
with respect to governmental plans; and shall be
unassignable except as is provided in this article. The
death, disability and retirement fund shall be administered
by the consolidated public retirement board created
pursuant to article ten-d, chapter five of this code.

(e) All moneys paid into and accumulated in the death,
disability and retirement fund, except such amounts as
shall be designated or set aside by the awards, shall be
invested by the state board of investments as provided by
law.
§15-2-27. Retirement; awards and benefits; leased employees.

(a) The retirement board shall retire any member of the division of public safety when the member has both attained the age of fifty-five years and completed twenty-five years of service as a member of the division, including military service credit granted under the provisions of section twenty-eight of this article.

(b) The retirement board shall retire any member of the division of public safety who has lodged with the secretary of the consolidated public retirement board his or her voluntary petition in writing for retirement, and:

(1) Has or shall have completed twenty-five years of service as a member of the division (including military service credit granted under the provisions of section twenty-eight of this article);

(2) Has or shall have attained the age of fifty years and has or shall have completed twenty years of service as a member of the division (excluding military service credit granted under section twenty-eight of this article); or

(3) Being under the age of fifty years has or shall have completed twenty years of service as a member of the division (excluding military service credit granted under section twenty-eight of this article).

(c) When the retirement board retires any member under any of the provisions of this section, the board shall, by order in writing, make an award directing that the member shall be entitled to receive annually and that there shall be paid to the member from the death, disability and retirement fund in equal monthly installments during the lifetime of the member while in status of retirement one or the other of two amounts, whichever is the greater:
(1) An amount equal to five and one-half percent of the aggregate of salary paid to the member during the whole period of service as a member of the division of public safety; or

(2) The sum of six thousand dollars.

When a member has or shall have served twenty years or longer but less than twenty-five years as a member of the division and shall be retired under any of the provisions of this section before he or she shall have attained the age of fifty years, payment of monthly installments of the amount of retirement award to such member shall commence on the date he or she attains the age of fifty years. Beginning on the fifteenth day of July, one thousand nine hundred ninety-four, in no event may the provisions of section thirteen, article sixteen, chapter five of this code be applied in determining eligibility to retire with either immediate or deferred commencement of benefit.

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

§15-2-28. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.

(a) For purposes of this section, the term "active military duty" means full-time active duty with the armed forces of the United States, namely, the United States air force, army, coast guard, marines or navy; and service with the
national guard or reserve military forces of any of such armed forces when the member has been called to active full-time duty and has received no compensation during the period of such duty from any person other than the armed forces.

(b) Any member of the department who has previously served on active military duty shall be entitled to and receive credit on the minimum period of service required by law for retirement pay from the service of the department of public safety under the provisions of this article for a period equal to the active military duty not to exceed five years, subject to the following:

(1) That he or she has been honorably discharged from the armed forces;

(2) That he or she substantiates by appropriate documentation or evidence his or her period of active military duty;

(3) That he or she is receiving no benefits from any other retirement system for his or her active military duty; and

(4) That, except with respect to disability retirement pay awarded under section thirty of this article, he or she has actually served with the department for twenty years exclusive of his or her active military duty.

d) The amount of retirement pay to which any such member is entitled shall be calculated and determined as if he or she had been receiving for the period of his or her active military duty a monthly salary from the department equal to the average monthly salary which he or she actually received from the department for his or her total service with the department exclusive of the active military duty. The superintendent is authorized to transfer and pay into the death, disability and retirement fund from moneys appropriated for the department a sum equal
to eighteen percent of the aggregate of the salaries on
which the retirement pay of all such members has been
calculated and determined for their periods of active
military duty. In addition, any person who while a
member of the department was commissioned, enlisted or
inducted into the armed forces of the United States or,
being a member of the reserve officers' corps, was called to
active duty in said armed forces between the first day of
September, one thousand nine hundred forty, and the close
of hostilities in World War II, or between the
twenty-seventh day of June, one thousand nine hundred
fifty, and the close of the armed conflict in Korea on the
twenty-seventh day of July, one thousand nine hundred
fifty-three, between the first day of August, one thousand
nine hundred sixty-four and the close of the armed conflict
in Vietnam, or during any other period of armed conflict
by the United States whether sanctioned by a declaration
of war by the congress or by executive or other order of the
president, shall be entitled to and receive credit on the
minimum period of service required by law for retirement
pay from the service of the department of public safety for
a period equal to the full time he or she has or shall,
pursuant to such commission, enlistment, induction or call,
have served with said armed forces subject to the follow­ing:

(1) That he or she has been honorably discharged from
the armed forces;

(2) That within ninety days after honorable discharge
from the armed forces he or she has presented himself to
the superintendent and offered to resume service as an
active member of the department; and

(3) That he or she has made no voluntary act, whether
by reenlistment, waiver of discharge, acceptance of
commission or otherwise, to extend or participate in
extension of the period of service with the armed forces beyond the period of service for which he or she was originally commissioned, enlisted, inducted or called.

(d) That amount of retirement pay to which any such member shall be entitled shall be calculated and determined as if the member has continued in the active service of the department at the rank or grade to him appertaining at the time of such commission, induction, enlistment or call, during a period coextensive with the time the member served with the armed forces pursuant to the commission, induction, enlistment or call. The superintendent of the department is authorized to transfer and pay each month into the death, disability and retirement fund from moneys appropriated for the department a sum equal to eighteen percent of the aggregate of salary which all such members would have been entitled to receive had they continued in the active service of the department during a period coextensive with the time such members served with the armed forces pursuant to the commission, induction, enlistment or call. Provided, That the total amount of military service credit allowable under this section shall not exceed five years.

(e) Notwithstanding any of the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, “qualified military service” has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in section one, article ten-D, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

(a) Any member of the division who has been or shall become physically or mentally permanently disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of members of the division and incurred pursuant to or while such member was or shall be engaged in the performance of his or her duties as a member of the division shall, if, in the opinion of the retirement board, he or she is by reason of such cause unable to perform adequately the duties required of him or her as a member of the division, but is able to engage in any other gainful employment, be retired from active service by the retirement board. The member thereafter shall be entitled to receive annually and there shall be paid to such member from the death, disability and retirement fund in equal monthly installments during the lifetime of such member, or until the member attains the age of fifty; or until such disability shall sooner terminate, one or the other of two amounts, whichever is greater:

(1) An amount equal to two thirds of the salary received in the preceding twelve-month employment period: Provided, That if the member had not been employed with the division for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or

(2) The sum of six thousand dollars.

(b) Upon attaining age fifty, the member shall receive the benefit provided for in subsection (c), section twenty-seven of this article as it would apply to his or her aggregate career earnings from the division through the day immediately preceding his or her disability. The recalculation of benefit upon a member attaining age fifty...
shall be deemed to be a retirement under the provisions of section twenty-seven of this article, for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article. If any member shall become permanently physically or mentally disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of members of the division and incurred pursuant to or while such member was or shall be engaged in the performance of his or her duties as a member of the division, to the extent that such member is or shall be incapacitated ever to engage in any gainful employment, such member shall be entitled to receive annually and there shall be paid to such member from the death, disability and retirement fund in equal monthly installments during the lifetime of such member or until such disability shall sooner terminate, an amount equal to the amount of the salary received by the member in the preceding twelve-month employment period: Provided, That in no event may such amount be less than fifteen thousand dollars per annum, unless required by section forty of this article: Provided, however, That if the member had not been employed with the division for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit.

(c) The superintendent is authorized to expend moneys from funds appropriated for the division in payment of medical, surgical, laboratory, X-ray, hospital, ambulance and dental expenses and fees, and reasonable costs and expenses incurred in the purchase of artificial limbs and other approved appliances which may be reasonably necessary for any member of the division who has or shall become temporarily, permanently or totally disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the service
required of members of the division and incurred pursuant to or while such member was or shall be engaged in the performance of duties as a member of the division. Whenever the superintendent shall determine that any disabled member is ineligible to receive any of the aforesaid benefits at public expense, the superintendent shall, at the request of such disabled member, refer such matter to the consolidated public retirement board for hearing and final decision.

(d) For the purposes of this section, the term "salary" does not include any compensation paid for overtime service.

§15-2-35. Same - When member dies after retirement or after serving twenty years.

When any member of said department has heretofore completed or hereafter shall complete twenty years of service or longer as a member of said department and has died or shall die from any cause or causes other than those specified in this article before having been retired by the retirement board, and when a member in retirement status has died or shall die after having been retired by the retirement board under the provisions of this article, there shall be paid annually in equal monthly installments from said fund to the surviving spouse of said member, commencing on the date of the death of said member and continuing during the lifetime or until remarriage of said surviving spouse an amount equal to three-fourths the retirement benefits said deceased member was receiving while in status of retirement, or would have been entitled to receive to the same effect as if such member had been retired under the provisions of this article immediately prior to the time of his or her death and in no event to be less than five thousand dollars unless otherwise required under section forty of this article and in addition thereto said surviving spouse shall be entitled to receive and there
shall be paid to such surviving spouse from said fund the
sum of one hundred dollars monthly for each dependent
child or children. If such surviving spouse die, or remarry,
or if there be no surviving spouse there shall be paid
monthly from said fund to each dependent child or chil-
dren of said deceased member a sum equal to twenty-five
percent of the surviving spouse’s entitlement. If there be
no surviving spouse or no surviving spouse eligible to
receive benefits and no dependent child or children there
shall be paid annually equal monthly installments from
said fund to the dependent parents of said deceased
member during their joint lifetimes a sum equal to the
amount which a surviving spouse without children would
have been entitled to receive: Provided, That when there
shall be but one dependent parent surviving, such parent
shall be entitled to receive during his or her lifetime one
half the amount which both parents, if living, would have
been entitled to receive.


Notwithstanding any other provision of this article or
state law, the board shall administer the fund in compli-
ance with the limitations of Section 415 of the Internal
Revenue Code and regulations under that section to the
extent applicable to governmental plans so that no annuity
or other benefit provided under this fund shall exceed
those limitations. The extent to which any annuity or
other benefit payable under this fund shall be reduced as
compared with the extent to which an annuity, contribu-
tions or other benefits under any other defined benefit
plans or defined contribution plans required to be taken
into consideration under Section 415 of the Internal
Revenue Code shall be reduced shall be determined by the
board in a manner that shall maximize the aggregate
benefits payable to the member. If the reduction is under
this fund, the board shall advise affected members of any
addition limitation on the annuities required by this section.

§ 15-2-41. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this code. This section applies to plan years beginning after the thirty-first day of December, one thousand nine hundred ninety-eight. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:

(a) The payment of benefits under the fund to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary, or over a period not extending beyond the life expectancy of the member and his or her beneficiary. For purposes of this section, the term “required beginning date” means the first day of April of the calendar year following the later of: (i) The calendar year in which the member attains age seventy and one-half, or (ii) the calendar year in which the member retires or otherwise ceases providing covered service under this fund.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be
(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the fund shall be distributed by the thirty-first day of December of the calendar year containing the fifth anniversary of the member's death, except as follows:

(1) If a member's interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of the beneficiary commencing on or before the thirty-first day of December of the calendar year immediately following the calendar year in which the participant died; or

(2) If the member's beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) The thirty-first day of December of the calendar year following the calendar year in which the member died, or (ii) the thirty-first day of December of the calendar year following the calendar year in which the spouse died.

§15-2-42. Direct Rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this fund, a distributee may elect, at the
time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution or distributions that is reasonably expected to total less than two hundred dollars during a year.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified plan described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the
surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(3) "Distributee" means a member. In addition, the member's surviving spouse and the member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

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

(b) Nothing in this section may be construed as permitting rollovers into this fund or any other retirement system administered by the board.

§15-2-43. Federal qualification requirements.

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


The board shall specify and adopt all actuarial assumptions for the fund at its first meeting of every calendar...
year or as soon thereafter as may be practicable, which assumptions shall become part of the terms of the fund.

§15-2-45. Benefits not forfeited if system terminates.

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

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.


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

3 (1) "Active military duty" means full-time active duty with the armed forces of the United States, namely, the United States air force, army, coast guard, marines or navy; and service with the national guard or reserve military forces of any of such armed forces when the member has been called to active full-time duty and has received no compensation during the period of such duty from any person other than the armed forces.

3 (2) "Base salary" means compensation paid to a member without regard to any overtime pay.

3 (3) "Board" means the consolidated public retirement board created pursuant to article ten-d, chapter five of this code.

3 (4) "Division" means the division of public safety.

3 (5) "Final average salary" means the average of the highest annual compensation received for employment with the division, including compensation paid for overtime service, received by the member during any five years within the member's last ten years of service.
(6) "Fund" means the West Virginia state police retirement fund created pursuant to section four of this article.

(7) "Member" or "employee" means a person regularly employed in the service of the division of public safety after the effective date of this article.

(8) "Salary" means the compensation of a member, excluding any overtime payments.

(9) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(10) "Plan year" means the twelve month period commencing on the first day of July of any designated year and ending the following thirtieth day of June.

(11) "Required beginning date" means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy and one-half; or (b) the calendar year in which he or she retires or otherwise separates from service with the department.

(12) "Retirement system" or "system" means the West Virginia state police retirement system created and established by this article.

§15-2A-3. Creation and administration of West Virginia state police retirement system; leased employees; federal qualification requirements.

(a) There is hereby created the West Virginia state police retirement system. Any West Virginia state trooper employed by the West Virginia state police on or after the effective date of this article shall be a member of this retirement system and may not qualify for membership in any other retirement system administered by the consolidated public retirement board, so long as he or she remains employed by the state police.
(b) Any individual who is a leased employee shall not be eligible to participate in the system. For purposes of this system, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

(c) The consolidated public retirement board created pursuant to article ten-d, chapter five of this code shall administer the West Virginia state police retirement system. The board may sue and be sued, contract and be contracted with and conduct all the business of the system in the name of the West Virginia state police retirement system.

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


1 The board shall specify and adopt all actuarial assumptions for the fund at its first meeting in each calendar year or as soon thereafter as may be practicable, which assumptions shall become part of the terms of the system.
§15-2A-5. Members' contributions; employer contributions; forfeitures.

(a) There shall be deducted from the monthly payroll of each member and paid into the fund created pursuant to section four of this article twelve percent of the amount of his or her salary. An additional twelve percent of the monthly salary of each member of the department shall be paid by the state of West Virginia monthly into such fund out of the annual appropriation for the division.

(b) Notwithstanding any other provisions of this article, forfeitures under the system shall not be applied to increase the benefits any member would otherwise receive under the system.


Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and treasury regulations under that section to the extent applicable to governmental plans so that no annuity or other benefit provided under this system shall exceed those limitations. The extent to which any annuity or other benefit payable under this retirement system shall be reduced as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced shall be determined by the board in a manner that shall maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities required by this section.

§15-2A-6b. Federal law minimum required distributions.
The requirements of this section apply to any distribution of a member's interest and take precedence over any inconsistent provisions of this retirement system. This section applies to plan years beginning after the thirty-first day of December, one thousand nine hundred eighty-six. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary.

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

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system shall be distributed by the thirty-first day of December of the calendar year containing the fifth anniversary of the member's death, except as follows:
(1) If a member's interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of the beneficiary commencing on or before the thirty-first of December of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) The thirty-first day of December of the calendar year following the calendar year in which the member died; or (ii) the thirty-first day of December of the calendar year following the calendar year in which the spouse died.

§15-2A-6c. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions shall apply:

(1) “Eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution
that is one of a series of substantially equal periodic
payments not less frequently than annually made for the
life or life expectancy of the distributee or the joint lives
or the joint life expectancies of the distributee and the
distributee's designated beneficiary, or for a specified
period of ten years or more; (ii) any distribution to the
extent such distribution is required under Section
401(a)(9) of the Internal Revenue Code; (iii) the portion of
any distribution that is not includable in gross income
determined without regard to the exclusion for net unreal-
ized appreciation with respect to employer securities; (iv)
any hardship distribution described in Section
401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v)
any other distribution or distributions expected to total
less than two hundred dollars during a year.

(2) "Eligible retirement plan" means an individual
retirement account described in Section 408(a) of the
Internal Revenue Code, an individual retirement annuity
described in Section 408(b) of the Internal Revenue Code,
an annuity plan described in Section 403(a) of the Internal
Revenue Code or a qualified plan described in Section
401(a) of the Internal Revenue Code that accepts the
distributee's eligible rollover distribution: Provided, That
in the case of an eligible rollover distribution to the
surviving spouse, an eligible retirement plan is an individ-
ual retirement account or individual retirement annuity.

(3) "Distributee" means an employee or former em-
ployee. In addition, the employee's or former employee's
surviving spouse and the employee's or former employee's
spouse or former spouse who is the alternate payee under
a qualified domestic relations order, as defined in Section
414(p) of the Internal Revenue Code with respect to
governmental plans, are distributees with regard to the
interest of the spouse or former spouse.
(4) "Direct rollover" means a payment by the system to
the eligible retirement plan.

(b) Nothing in this section may be construed as permit-
ting rollovers into this system or any other retirement
system administered by the board.

§15-2A-15. Exemption from taxation, garnishment and other
process; exception for certain qualified domestic
relations orders.

The moneys in the 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 execution, garnishment, attachment or any other
process whatsoever except that the benefits or contribu-
tions under this system shall be subject to "qualified
domestic relations orders" as that term is defined in
Section 414(p) of the Internal Revenue Code with respect
to governmental plans; and shall be unassignable except as
is provided in this article.

§15-2A-19. Credit toward retirement for member's prior mili-
tary service; credit toward retirement when
member has joined armed forces in time of armed
conflict; qualified military service.

(a) Any member who has previously served on active
military duty is entitled to receive additional credited
service for the purpose of determining the amount of
retirement award under the provisions of this article for a
period equal to the active military duty not to exceed five
years, subject to the following:

(1) That he or she has been honorably discharged from
the armed forces;
(2) That he or she substantiates by appropriate documentation or evidence his or her period of active military duty;

(3) That he or she is receiving no benefits from any other retirement system for his or her active military duty; and

(4) That, except with respect to disability retirement pay awarded under this article, he or she has actually served with the division for twenty years exclusive of his or her active military duty.

(b) In addition, any person who while a member of the division was commissioned, enlisted or inducted into the armed forces of the United States or, being a member of the reserve officers' corps, was called to active duty in the armed forces between the first day of September, one thousand nine hundred forty, and the close of hostilities in World War II, or between the twenty-seventh day of June, one thousand nine hundred fifty, and the close of the armed conflict in Korea on the twenty-seventh day of July, one thousand nine hundred fifty-three, between the first day of August, one thousand nine hundred sixty-four and the close of the armed conflict in Vietnam, or during any other period of armed conflict by the United States whether sanctioned by a declaration of war by congress or by executive or other order of the president, is entitled to and shall receive credit on the minimum period of service required by law for retirement pay from the service of the division of public safety, or its predecessor agency, for a period equal to the full time that he or she has or, pursuant to that commission, enlistment, induction or call, shall have served with the armed forces subject to the following:

(1) That he or she has been honorably discharged from the armed forces;

(2) That within ninety days after honorable discharge from the armed forces, he or she presented himself or
herself to the superintendent and offered to resume service
as an active member of the division; and

(3) That he or she has made no voluntary act, whether by
reenlistment, waiver of discharge, acceptance of commis-
sion or otherwise, to extend or participate in extension of
the period of service with the armed forces beyond the
period of service for which he or she was originally
commissioned, enlisted, inducted or called.

(c) The total amount of military service credit allowable
under this section may not exceed five years for any
member of the division.

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


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

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.
§18-7A-3a. Federal qualification requirements.

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

§18-7A-11. Records; actuarial data; tables; specification of actuarial assumptions.

1 The retirement board shall maintain an individual account with each member, showing the amount of the member's contributions and the interest accumulations thereon. It shall collect and keep in convenient form data as may be necessary for the preparation of the required mortality and service tables, and for the compilation of such other information as may be needed for the actuarial valuation of the funds created by this article. The retirement board shall specify and adopt all actuarial assumptions for the system at its first meeting of every calendar year or as soon thereafter as may be practicable, which assumptions shall become part of the terms of the system.

§18-7A-13. Membership in retirement system; cessation of membership; reinstatement of withdrawn service.

1 The membership of the retirement system shall consist of the following:
(a) New entrants, whose membership in the system shall be compulsory upon employment as teachers and nonteachers.

(b) The membership of the retirement system shall not include any person who is an active member of or who has been retired by the West Virginia public employees retirement system, the judge's retirement system, or the retirement system of the department of public safety or the supplemental retirement system as provided in section four-a, article twenty-three of this chapter. The membership of any person in the retirement system shall cease:

1. Upon the withdrawal of accumulated contributions after the cessation of service; or
2. Upon retirement; or
3. At death; or
4. If service amounts to fewer than five years in any period of ten consecutive years.

(c) Any former member of the retirement system who has withdrawn accumulated contributions but subsequently reenters the retirement system shall be permitted to repay to the retirement fund the amount withdrawn, plus interest at a rate of six percent, compounded annually from the date of withdrawal to the date of repayment: Provided, That no such repayment may be made until the former member has completed two years of contributory service after reentry; and such member shall be accorded all the rights to prior service and experience as were held at the time of withdrawal of such accumulated contributions: Provided, however, That no withdrawn service may be reinstated that has been transferred to another retirement system from which the member is currently or will in the future draw benefits based on the same service. The interest paid shall be deposited in the reserve fund.

(d) No member shall be eligible for prior service credit unless he or she is eligible for prior service pension, as prescribed by section twenty-two of this article; however,
a new entrant who becomes a present teacher as provided in this paragraph shall be deemed eligible for prior service pension upon retirement.

(e) Any individual who is a leased employee shall not be eligible to participate in the system. For purposes of this system, a “leased employee” means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

§18-7A-14b. Members’ option to make contributions for periods of temporary total disability.

Any member who was absent from work while receiving temporary total disability benefits pursuant to the provisions of chapter twenty-three of this code as a result of a compensable injury received in the course of and as a result of his or her employment with the covered employer during the time period beginning the first day of January, one thousand nine hundred eighty-eight and the thirty-first day of December, one thousand nine hundred ninety-eight may purchase credited service for that time period or those time periods the member was absent from work as a result of a compensable injury and receiving temporary total disability benefits: Provided, That the member returned to work with his or her covered employer within one year following the cessation of temporary total disability benefits. The member desiring to purchase such credited service may do so only by lump sum payment from personal funds: Provided, however, That the purchase of service credit pursuant to the provisions of this section shall be completed between the time period beginning the first day of July, two thousand and ending the thirtieth day of June, two thousand one: Provided
further, That in order to purchase such service credit, the member shall pay to the board his or her regular contribution and an equal amount that represents the employer's contribution, based on the salary the member was receiving immediately prior to having sustained such compensable injury: And provided further, That the member purchasing service credit under the provisions of this section may not be charged interest. The maximum number of years of service credit that may be purchased under this section shall not exceed four.

§18-7A-17. Statement and computation of teachers' service; qualified military service.

(a) Under rules adopted by the retirement board, each teacher shall file a detailed statement of his or her length of service as a teacher for which he or she claims credit. The retirement board shall determine what part of a year is the equivalent of a year of service. In computing the service, however, it shall credit no period of more than a month's duration during which a member was absent without pay, nor shall it credit for more than one year of service performed in any calendar year.

(b) For the purpose of this article, the retirement board shall grant prior service credit to new entrants and other members of the retirement system for service in any of the armed forces of the United States in any period of national emergency within which a federal Selective Service Act was in effect. For purposes of this section, "armed forces" includes women's army corps, women's appointed volunteers for emergency service, army nurse corps, spars, women's reserve and other similar units officially parts of the military service of the United States. The military service is considered equivalent to public school teaching, and the salary equivalent for each year of that service is the actual salary of the member as a teacher for his or her
first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement. Notwithstanding the preceding provisions of this subsection, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

(c) For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of that state or territory, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system double the amount he or she contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service credit granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in West Virginia. Any transfer of out-of-state service, as provided in this article, shall not be used to establish eligibility for a retirement allowance and the retirement board shall grant credit for the transferred service as additional service only: Provided, however, That a transfer of out-of-state service is prohibited if the service is used to obtain a retirement benefit from another retire-
Provided further, That salaries paid to members for service prior to entrance into the retirement system shall not be used to compute the average final salary of the member under the retirement system.

(d) Service credit for members or retired members shall not be denied on the basis of minimum income rules promulgated by the teachers retirement board: Provided, That the member or retired member shall pay to the system the amount he or she would have contributed during the year or years of public school service for which credit was denied as a result of the minimum income rules of the teachers retirement board.

(e) No members shall be considered absent from service while serving as a member or employee of the Legislature of the state of West Virginia during any duly constituted session of that body or while serving as an elected member of a county commission during any duly constituted session of that body.

(f) No member shall be considered absent from service as a teacher while serving as an officer with a statewide professional teaching association, or who has served in that capacity, and no retired teacher, who served in that capacity while a member, shall be considered to have been absent from service as a teacher by reason of that service: Provided, That the period of service credit granted for that service shall not exceed ten years: Provided, however, That a member or retired teacher who is serving or has served as an officer of a statewide professional teaching association shall make deposits to the teachers retirement board, for the time of any absence, in an amount double the amount which he or she would have contributed in his or her regular assignment for a like period of time.

The teachers retirement board shall grant service credit to any former or present member of the West Virginia
public employees retirement system who has been a contributing member for more than three years, for service previously credited by the public employees retirement system and: (1) Shall require the transfer of the member's contributions to the teachers retirement system; or (2) shall require a repayment of the amount withdrawn any time prior to the member's retirement: Provided, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the teachers retirement system during the period of his or her membership in the public employees retirement system plus interest at a rate of six percent compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.

(g) For service as a teacher in an elementary or secondary parochial school, located within this state and fully accredited by the West Virginia department of education, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system double the amount contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in the West Virginia public school system. Any transfer of parochial school service, as provided in this section, may not be used to establish eligibility for a retirement allowance and the board shall grant credit for the transfer as additional service only: Provided, however, That a transfer of parochial school service is prohibited if the service is used to obtain a retirement benefit from another retirement system.
(h) If a member is not eligible for prior service credit or pension as provided in this article, then his or her prior service shall not be considered a part of his or her total service.

(i) A member who withdrew from membership may regain his or her former membership rights as specified in section thirteen of this article only in case he or she has served two years since his or her last withdrawal.

(j) Subject to the provisions of subsection (a) through (i), inclusive, of this section, the board shall verify as soon as practicable the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible for the certificates under the provisions of this article. The certificates shall state the length of the prior service credit, but in no case shall the prior service credit exceed forty years.

Notwithstanding any provision of this article to the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office require that member to be absent from his or her teaching or administrative duties, the time served in discharge of his or her duties of the legislative office are credited as time served for purposes of computing service credit: Provided, That the board may not require any additional contributions from that member in order for the board to credit him or her with the contributing service credit earned while discharging official legislative duties: Provided, however, That nothing herein may be construed to relieve the employer from making the employer contribution at the member's regular salary rate or rate of pay from that employer on the contributing service credit earned while the member is discharging his or her official legislative duties. These employer payments shall commence as of the first day of June, two thousand: Provided, further, That any member to which the provi-
sions of this subsection apply may elect to pay to the board an amount equal to what his or her contribution would have been for those periods of time he or she was serving in the Legislature. The periods of time upon which the member paid his or her contribution shall then be included for purposes of determining his or her final average salary as well as for determining years of service: And provided further, That a member utilizing the provisions of this subsection is not required to pay interest on any contributions he or she may decide to make.


Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section to the extent applicable to governmental plans so that no annuity or other benefit provided under this system shall exceed those limitations. The extent to which any annuity or other benefit payable under this retirement system shall be reduced as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced shall be determined by the board in a manner that shall maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities required by this section.

§18-7A-28b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this retirement system. This section applies to plan years beginning
after the thirty-first day of December, one thousand eight
hundred eighty-six. Notwithstanding anything in the
retirement system to the contrary, the payment of benefits
under this article shall be determined and made in accor-
dance with Section 401(a)(9) of the Internal Revenue Code
and the regulations thereunder. For this purpose, the
following provisions apply:

(a) The payment of benefits under the retirement system
to any member shall be distributed to him or her not later
than the required beginning date, or be distributed to him
or her commencing not later than the required beginning
date, in accordance with regulations prescribed under
Section 401(a)(9) of the Internal Revenue Code, over the
life of the member or over the lives of the member and his
or her beneficiary or over a period not extending beyond
the life expectancy of the member and his or her benefi-
ciary.

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

(c) If a member dies before distribution to him or her
has commenced, then his or her entire interest in the
retirement system shall be distributed by the thirty-first
day of December of the calendar year containing the fifth
anniversary of the member’s death, except as follows:

(1) If a member’s interest is payable to a beneficiary,
distributions may be made over the life or over a period
certain not greater than the life expectancy of the benefi-
ciary commencing on or before the thirty-first of Decem-
ber of the calendar year immediately following the calen-
dar year in which the member died; or
If the member's beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) The thirty-first day of December of the calendar year following the calendar year in which the member died; or (ii) the thirty-first day of December of the calendar year following the calendar year in which the spouse died.

§18-7A-28c. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Section
401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(iv) of the Internal Revenue Code; and (v) any other distribution reasonably expected to total less than two hundred dollars during a year.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified plan described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, as applicable to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

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

(b) Nothing in this section may be construed as permitting rollovers into this system or any other retirement system administered by the board.
§18-7A-30. Exemption from taxation, garnishment and other process; exception for qualified domestic relations order.

1 The moneys in the various funds 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 municipal tax; shall not be subject to execution, garnishment, attachment or any other process whatsoever except that any benefits or contributions under this system shall be subject to “qualified domestic relations orders” as that term is defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans; and shall be unassignable except as is provided in this article.

§18-7A-34. Loans to members.

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

5 (1) Loans shall be made in multiples of ten dollars, the minimal loan being one hundred dollars and the maximum being eight thousand dollars. Provided, That the maximum amount of any loan when added to the outstanding balance of all other loans shall not exceed the lesser of the following: (a) fifty thousand dollars reduced by the excess (if any) of the highest outstanding balance of loans during the one-year period ending on the day before the date on which the loan is made, over the outstanding balance of loans to the member on the date on which the loan is made; or (b) fifty percent of the member's contributions to his or her individual account in the teachers accumulation fund: Provided, however, That if the total amount of loaned money outstanding exceeds forty million dollars, the maximum shall not exceed three thousand dollars until
the teachers retirement board determines that loans outstanding have been reduced to an extent that additional loan amounts are again authorized.

(2) 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 established 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.

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

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

(5) From his or her monthly salary as a teacher the member shall pay the loan and interest by deductions which will pay the loan and interest in substantially level payments 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.

(6) The entire unpaid balance of any loan, and interest due thereon, shall, at the option of the retirement board, become due and payable without further notice or demand upon the occurrence with respect to the borrowing mem-
ber of any of the following events of default: (A) Any payment of principal and accrued interest on a loan remains unpaid after the same becomes due and payable under the terms of the loan or after such grace period as may be established in the discretion of the retirement board; (B) the borrowing member attempts to make an assignment for the benefit of creditors of his or her refund or benefit under the retirement system; or (C) any other event of default set forth in rules promulgated by the retirement board in accordance with the authority granted pursuant to section one, article ten-d, chapter five of this code.

(7) Loans shall be evidenced by such form of obligations and shall be made upon such additional terms as to default, prepayment, security, and otherwise as the retirement board may determine.

§18-7A-37. Benefits not forfeited if system terminates.

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

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§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 or her 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 of service may be accumulated in any twelve-month period;

(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
73 member contributions and employer contributions and
74 interest, dividends or other accumulations credited on
75 behalf of the member;

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

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

84 (16) "Plan year" means the twelve-month period com-
85 mencing on the first day of July of any designated year and
86 ending on the following thirtieth day of June.

87 (17) "Required beginning date" means the first day of
88 April of the calendar year following the later of: (a) The
89 calendar year in which the member attains age seventy one
90 and one-half; or (b) the calendar year in which the member
91 retires or otherwise ceases employment with a participat-
92 ing employer.

93 (18) "Internal Revenue Code" means the Internal Reve-
94 nue Code of 1986, as amended.

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

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

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

§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 five or more years of credited service in the existing retirement system, he or she shall be entitled to readmission into the existing retirement system in which he or she was originally a member so long as he or she has not withdrawn his or her contributions from the existing retirement system: Provided further, That if such employee has withdrawn his or her contribution 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 was suspended or terminated while he or she served as an officer with a statewide professional teaching association is eligible for readmission to the existing retirement system in which he or she was a member. Any employee reemployed with an employer on or after the first day of July, one thousand nine hundred ninety-one, who had five or more years credited service in the teachers' defined benefit retirement system may elect readmission to the teachers' defined benefit retirement system in which he or she was originally a member. Any employee reemployed between the first day of July, one thousand nine hundred ninety-one, and the first day of July, one thousand nine hundred ninety-five, and who was required to participate in the teachers' defined contribution system but now elects, pursuant to the provisions of this section, readmission to the teachers' defined benefit retirement system shall pay an additional contribution to the teachers' defined benefit retirement system equal to one and one-half percent of his or her annual gross compensation earned for each year he or she participated in the teachers' defined contribution system and shall transfer all member and employer contributions and investment earnings
therefrom from the teacher defined contribution system to
the teachers' defined benefit system and shall receive
service credit for the time the member participated in the
defined contribution system as if that participation had
been in the teachers' defined benefit retirement system.
Any member making an election under the provisions of
this section to reenter the teachers' defined benefit retire-
ment system who is currently a member of the defined
contribution retirement system must do so on or before the
first day of January, one thousand nine hundred
ninety-six. Any other member reemployed must make the
election as to the retirement system that he or she will be
a member of at the time he or she is reemployed.

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.

Any individual who is a leased employee shall not be
eligible to participate in the system. For purposes of this
system, a "leased employee" means any individual who
performs services as an independent contractor or pursu-
ant to an agreement with an employee leasing organization
or other similar organization. If a question arises regard-
ing the status of an individual as a leased employee, the
board has final power to decide the question.

§18-7B-8a. Qualified military service.

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

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

At any time after an employee reaches the age of
fifty-five years, and subject to the provisions of section
twelve-a of this article, he or she may elect to take retire-
ment by notifying the board or its designee in writing of
such intention not less than sixty days prior to the effec-
tive 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.

§18-7B-12a. Federal minimum required distributions.

The requirements of this section apply to any distribu-
tion of a member's or beneficiary's interest and take
precedence over any inconsistent provisions of this defined
contribution system. This section applies to plan years
beginning after the thirty-first day of December, one
thousand eight hundred eighty-six. Notwithstanding
anything in this system to the contrary, the payment of
benefits under this article shall be determined and made in
accordance with Section 401(a)(9) of the Internal Revenue
Code and the regulations thereunder. For this purpose, the
following provisions apply:

(a) The payment of benefits under the defined contribu-
tion system to any member shall be distributed to him or
her not later than the required beginning date, or be
distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary.

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

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the system shall be distributed by the thirty-first day of December of the calendar year containing the fifth anniversary of the member's death, except as follows:

(1) If a member's interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of the beneficiary commencing on or before the thirty-first day of December of the calendar year immediately following the calendar year in which the participant died; or

(2) If the member's beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) The thirty-first day of December of the calendar year following the calendar year in which the
member died; or (ii) the thirty-first day of December of the
calendar year following the calendar year in which the
spouse died.

(d) For purposes of this section, any amount paid to a
child of a member will be treated as if it had been paid to
the surviving spouse of the member if such remaining
amount becomes payable to the surviving spouse when the
child reaches the age of majority.

§18-7B-13. Amount of annuity payments; federal law maximum
benefit limitations.

(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 retire-
ment 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.

(c) Notwithstanding any other provision of this article or
state law, the board shall administer the retirement system
in compliance with the limitations of Section 415 of the
Internal Revenue Code and treasury regulations under that
section to the extent applicable to governmental plans so
that no annuity or other benefit provided under this
system shall exceed those limitations. The extent to which
any annuity or other benefit payable under this retirement
system shall be reduced as compared to the extent which
an annuity, contributions or other benefits under any other
defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced shall be determined by the board in a manner that shall maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities required by this section.

§18-7B-13b. Direct Rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee’s election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) “Eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee’s designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv)
any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution or distributions reasonably expected to total less than two hundred dollars during a year.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

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

(b) Nothing in this section may be construed as permitting rollovers into this retirement system or any other retirement system administered by the retirement board.

§18-7B-18. Right to benefits not subject to execution, etc.; exception for qualified domestic relations orders.

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 with the exception that the benefits or contributions under this system shall be subject to "qualified domestic relations orders" as that term is defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, nor shall any assignment thereof be enforceable in any court.


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

CHAPTER 51. COURTS AND THEIR OFFICERS.

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

§51-9-1a. Definitions.

(a) As used in this article the term "judge" or "judge of any court of record" or "judge of any court of record of this state" shall mean, refer to and include judges of the several circuit courts and justices of the supreme court of appeals.

(b) "Beneficiary" means any person, except a member, who is entitled to an annuity or other benefit payable by the retirement system.

(c) "Board" means the consolidated public retirement board created pursuant to article ten-cl, chapter five of this code.

(d) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(e) "Member" means a judge participating in this system.
(f) "Plan year" means the twelve month period commencing on the first day of July of any designated year and ending the following thirtieth day of June.

(g) "Required beginning date," means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy and one-half; or (b) the calendar year in which the member retires or otherwise separates from covered employment.

(h) "Retirement system" or "system" means the judges retirement system created and established by this article.

§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; federal qualification requirements.

(a) 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.

(b) 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 subdivision thereof or such other investments as may be authorized or permitted by the provisions of article six, chapter twelve of this code.
(c) 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 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.

(d) 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 VI, 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 substantial 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 funds shall be administered by the consolidated public retire-
ment board created by article ten-d, chapter five of this code.

(e) 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.

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


The board at its first meeting in each calendar year or as soon thereafter as may be practicable shall adopt and specify actuarial assumptions for the system, which assumptions shall become part of the terms of this system.

§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to
(a) Every person who is now serving or shall hereafter serve as a judge of any court of record of this state shall pay into the judges' retirement fund six percent of the salary received by such person out of the state treasury: Provided, That when a judge becomes eligible to receive benefits from such trust fund by actual retirement, no further payment by him or her shall be required, since such employee contribution, in an equal treatment sense, ceases to be required in the other retirement systems of the state, also, only after actual retirement: Provided, however, That on and after the first day of January, one thousand nine hundred ninety-five, every person who is then serving or shall thereafter serve as a judge of any court of record in this state shall pay into the judges' retirement fund nine percent of the salary received by that person. Any prior occurrence or practice to the contrary, in any way allowing discontinuance of required employee contributions prior to actual retirement under this retirement system, is rejected as erroneous and contrary to legislative intent and as violative of required equal treatment and is hereby nullified and discontinued fully, with the state auditor to require such contribution in every instance hereafter, except where no contributions are required to be made under any of the provisions of this article.

(b) An individual who is a leased employee shall not be eligible to participate in the system. For purposes of this system, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regard-
ing the status of an individual as a leased employee, the
board has the final power to decide the question.

(c) In drawing warrants for the salary checks of judges,
the state auditor shall deduct from the amount of each
such salary check six percent thereof, which amount so
deducted shall be credited by the consolidated public
retirement board to the trust fund: \textit{Provided, That on or
after the first day of January, one thousand nine hundred
ninety-five, the amount so deducted and credited shall be
nine percent of each such salary check.}

(d) Any judge seeking to qualify military service to be
claimed as credited service, in allowable aggregate maxi-

(e) Notwithstanding the preceding provisions of this
section, contributions, benefits and service credit with
respect to qualified military service shall be provided in
accordance with Section 414(u) of the Internal Revenue
Code. For purposes of this section, "qualified military

(f) Any judge holding office as such on the effective date
of the amendments to this article adopted by the Legisla-
ture at its regular session in the year one thousand nine
hundred eighty-seven, who seeks to qualify service as a
prosecuting attorney as credited service, which service
credit must have been earned prior to the year one thou-
sand nine hundred eighty-seven, shall be required to pay
into the judges' retirement fund nine percent of the annual
salary which was actually received by such person as
prosecuting attorney during the time such prosecutorial
service was rendered prior to the year one thousand nine
hundred eighty-seven, and for which credited service is
being sought, together with applicable interest. No judge
whose term of office shall commence after the effective
date of such amendments to this article shall be eligible to
claim any credit for service rendered as a prosecuting
attorney as eligible service for retirement benefits under
this article, nor shall any time served as a prosecutor after
the year one thousand nine hundred eighty-eight be
considered as eligible service for any purposes of this
article.

(g) The Legislature finds that any increase in salary for
judges of courts of record directly affects the actuarial
soundness of the retirement system for judges of courts of
record and, therefore, an increase in the required percent-
age contributions of members of that retirement system is
the same subject for purposes of determining the single
object of this bill.

§51-9-6. Eligibility for and payment of benefits.

(a) Except as otherwise provided in sections five, twelve
and thirteen of this article, and subject to the provisions of
subsection (e) of this section, any person who is now
serving, or who shall hereafter serve, as a judge of any
court of record of this state and shall have served as such
judge for a period of not less than sixteen full years and
shall have reached the age of sixty-five years, or who has
served as judge of such court or of that court and other
courts of record of the state for a period of sixteen full
years or more (whether continuously or not and whether
said service be entirely before or after this article became
effective, or partly before and partly after said date, and
whether or not said judge shall be in office on the date he or she shall become eligible to benefits hereunder) and shall have reached the age of sixty-five years, or who is now serving, or who shall hereafter serve, as a judge of any court of record of this state and shall have served as such judge for a period of not less than twenty-four full years, regardless of age, shall, upon a determination and certification of his or her eligibility as provided in section nine hereof, be paid from the fund annual retirement benefits, so long as he or she shall live, in an amount equal to seventy-five percent of the annual salary of the office from which he or she has retired based upon such salary of such office and as such salary may be changed from time to time during the period of his or her retirement and the amount of his or her retirement benefits shall be based upon and be equal to seventy-five percent of the highest annual salary of such office for any one calendar year during the period of his or her retirement, and shall be payable in monthly installments: Provided, That such retirement benefits shall be paid only after such judge has resigned as such or, for any reason other than his or her impeachment, his or her service as such has ended: Provided, however, That every such person seeking to retire and to receive the annual retirement benefits provided by this subsection must have served a minimum of twelve years as a sitting judge of any such court of record.

(b) Notwithstanding any other provisions of this article with the exception of sections twelve-a and twelve-b, any person who is now serving or who shall hereafter serve as a judge of any court of record of this state and who shall have accumulated sixteen years or more of credited service, at least twelve years of which is as a sitting judge of a court of record, and who has attained the age of sixty-two years or more but less than the age of sixty-five years, may elect to retire from his or her office and to receive the pension to which he or she would otherwise be
entitled to receive at age sixty-five, but with an actuarial
reduction of pension benefit to be established as a reduced
annuity receivable throughout retirement. The reduced
percentage (less than seventy-five percent) actuarially
computed, determined and established at time of retire-
ment in respect of this reduced pension benefit shall also
continue and be applicable to any subsequent new annual
salary set for the office from which such judge has retired
and as such salary may be changed from time to time
during the period of his or her retirement.

(c) In determining eligibility for the benefits provided by
this section, active full-time duty (including leaves and
furloughs) in the armed forces of the United States shall be
eligible for qualification as credited military service for
the purposes of this article by any judge with twelve or
more years actual service as a sitting judge of a court of
record, such awardable military service to not exceed five
years.

(d) If a judge of a court of record who is presently sitting
as such on the effective date of the amendments to this
section enacted by the Legislature at its regular session
held in the year one thousand nine hundred eighty-seven,
and who has served for a period of not less than twelve full
years and has made payments into the judges’ retirement
fund as provided in this article for each month during
which he served as judge, following the effective date of
this section, any portion of time which he or she had
served as prosecuting attorney in any county in this state
shall qualify as years of service, if such judge shall pay
those sums required to be paid pursuant to the provisions
of section four of this article: Provided, That any term of
office as prosecuting attorney, or part thereof, commenc-
ing after the thirty-first day of December, one thousand
nine hundred eighty-eight, shall not hereafter in any way
(c) Any retirement benefit accruing under the provisions of this section shall not be paid if otherwise barred under the provisions of article ten-a, chapter five of this code.

(f) Notwithstanding any other provisions of this article, forfeitures under the system shall not be applied to increase the benefits any member would otherwise receive under the system.

§51-9-6a. Eligibility benefits; service and retirement of judges over sixty-five years of age.

Any judge of a court of record of this state, who shall have served for a period of not less than eight full years after attaining the age of sixty-five years and who shall have made payments into the judges' retirement fund as provided in this article for each month during which he or she served as such judge following the effective date of this section, shall be subject to all the applicable terms and provisions of this article, not inconsistent with the provisions hereof, and shall receive retirement benefits in an amount equal to seventy-five percent of the annual salary of the office from which he or she has retired based upon such salary of such office as such salary may be changed from time to time during the period of his or her retirement and the amount of his or her retirement benefits shall be based upon and be equal to seventy-five percent of the highest annual salary of such office for any one calendar year during the period of his or her retirement, and shall be payable in monthly installments. If such judge shall become incapacitated to perform his or her said duties before the expiration of his or her said term and after serving for six years thereof, and upon the acceptance of his or her resignation as in this article provided, he or she shall be paid the annual retirement benefits as herein provided so long as he or she shall live. The provisions of
this section shall prevail over any language to the contrary in this article contained, except those provisions of sections twelve-a and twelve-b of this article.

§51-9-12a. Federal law maximum benefit limitations.

1. Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section to the extent applicable to governmental plans so that no annuity or other benefit provided under this system shall exceed those limitations. The extent to which any annuity or other benefit payable under this retirement system shall be reduced as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced shall be determined by the board in a manner that shall maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities required by this section.

§51-9-12b. Federal minimum required distributions.

1. The requirements of this section apply to any distribution of a member's or beneficiaries interest and take precedence over any inconsistent provisions of this retirement system. This section applies to plan years beginning after the thirty-first day of December, one thousand eight hundred eighty-six. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:
(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with treasury regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary.

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

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system shall be distributed by the thirty-first day of December of the calendar year containing the fifth anniversary of the member's death, except as follows:

(1) If a member's interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of the beneficiary commencing on or before the thirty-first of December of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one-half; or
(B) The earlier of: (i) The thirty-first day of December of
the calendar year following the calendar year in which the
member died; or (ii) the thirty-first day of December of the
calendar year following the calendar year in which the
spouse died.

§51-9-12c. Direct rollovers.

(a) This section applies to distributions made on or after
the first day of January, one thousand nine hundred
ninety-three. Notwithstanding any provision of this
article to the contrary that would otherwise limit a
distributee's election under this system, a distributee may
elect, at the time and in the manner prescribed by the
board, to have any portion of an eligible rollover distribu-
tion that is equal to at least five hundred dollars paid
directly to an eligible retirement plan specified by the
distributee in a direct rollover. For purposes of this
section, the following definitions apply:

(1) “Eligible rollover distribution” means any distribu-
tion of all or any portion of the balance to the credit of the
distributee, except that an eligible rollover distribution
does not include any of the following: (i) Any distribution
that is one of a series of substantially equal periodic
payments not less frequently than annually made for the
life or life expectancy of the distributee or the joint lives
or the joint life expectancies of the distributee and the
distributee's designated beneficiary, or for a specified
period of ten years or more; (ii) any distribution to the
extent such distribution is required under Section
401(a)(9) of the Internal Revenue Code; (iii) the portion of
any distribution that is not includable in gross income
determined without regard to the exclusion for net unreal-
ized appreciation with respect to employer securities; (iv)
any hardship distribution described in Section
401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v)
any other distribution or distributions expected to total less than two hundred dollars during a year.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified plan described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(3) "Distributee" means judge or former judge. In addition, the judge's or former judge's surviving spouse and the judge's or former judge's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

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

(b) Nothing in this section may be construed as permitting rollovers into this system or any other system administered by the board.

§51-9-14. Moneys exempt from execution, etc.; unassignable and nontransferable; exception for certain domestic relations orders.

The moneys in the judges' retirement fund, the right of any judge to participate in the pay and benefits of the retirement system and the right of any judge to a refund of payments or contributions made to the fund shall not be...
subject to execution, garnishment, attachment or any other process whatsoever except that the benefits or contribu-
tions under this system shall be subject to "qualified
domestic relations orders" as that term is defined in
Section 414(p) of the Internal Revenue Code with respect
to governmental plans; and shall be unassignable and
nontransferable.

§51-9-17. Benefits not forfeited if system terminates.

If the retirement system is terminated or contributions are completely discontinued, the rights of all members to benefits accrued or contributions made to the date of such termination or discontinuance, to the extent then funded, may not be forfeited.
Enr. S. B. No. 652]

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

Chairman Senate Committee

Chairman House Committee

Originating in the Senate.

Takes effect July 1, 2000.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within Day of this the 17th Day of...

Governor
PRESENTED TO THE
GOVERNOR
Date 3/28/70
Time 3:15 pm