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STATE OF WEST VIRGINIA
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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, EDGEILL 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 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 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 deputy 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; permitting 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 applicable 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 application and making technical corrections; relating to the teachers' 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 nine-a, nine-b, nine-c and thirty-one; that sections twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty-five, 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 forty, forty-one, forty-two, forty-three, forty-four and forty-five; that sections two, three, five, fifteen and nineteen, 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.**

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

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

13 (c) The retirement system is intended to meet the federal
14 qualification requirements of Section 401(a) and related
15 sections of the Internal Revenue Code as applicable to
16 governmental plans. Notwithstanding any other provision
17 of state law, the board shall administer the retirement
18 system to fulfill this intent for the exclusive benefit of the
19 members and their beneficiaries. Any provision of this
20 article referencing or relating to such federal tax qualifi-
21 cation requirements shall be effective as of the date
22 required by federal law. The board may promulgate rules
23 and amend or repeal conflicting rules in accordance with
24 the authority granted to it pursuant to section one, article
25 ten-d of this chapter to assure compliance with this
26 section.

§5-10-13. Actuarial investigations and valuations; specification of actuarial assumptions.

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

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

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

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

28 (e) The board shall specify and adopt all actuarial
29 assumptions for the system at its first meeting of every
30 calendar year or as soon thereafter as may be practicable,
31 which assumptions shall become part of the terms of the
32 system.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**§5-10-14. Service credit; retroactive provisions.**

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

6 (1) In no event may less than ten days of service rendered
7 by a member in any calendar month be credited as a
8 month of service: *Provided*, That for employees of the
9 state Legislature whose term of employment is otherwise
10 classified as temporary and who are employed to perform
11 services required by the Legislature for its regular sessions
12 or during the interim between regular sessions and who
13 have been or are so employed during regular sessions or
14 during the interim between regular sessions in seven
15 consecutive calendar years, service credit of one month
16 shall be awarded for each ten days employed in the interim
17 between regular sessions, which interim days shall be
18 cumulatively calculated so that any ten days, regardless of
19 calendar month or year, shall be calculated toward any
20 award of one month of service credit;

21 (2) Except for hourly employees, ten or more months of
22 service credit earned in any calendar year shall be credited
23 as a year of service: *Provided*, That no more than one year
24 of service may be credited to any member for all service
25 rendered by him or her in any calendar year and no days
26 may be carried over by a member from one calendar year
27 to another calendar year where the member has received
28 a full year credit for that year; and

29 (3) Service may be credited to a member who was
30 employed by a political subdivision if his or her employ-
31 ment 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

67 houses in which the employee served, shall receive service
68 credit of six months for all regular sessions served, as
69 certified by the clerk of the houses in which the employee
70 served, or shall receive service credit of three months for
71 each regular thirty-day session served prior to one thou-
72 sand nine hundred seventy-one, as certified by the clerk of
73 the houses in which the employee served, and shall receive
74 service credit of one month for each ten days served during
75 the interim between regular sessions, which interim days
76 shall be cumulatively calculated so that any ten days,
77 regardless of calendar month or year, shall be calculated
78 toward any award of one month of service credit: *Pro-*
79 *vided*, That no more than one year of service may be
80 credited to any temporary legislative employee for all
81 service rendered by that employee in any calendar year
82 and no days may be carried over by a temporary legislative
83 employee from one calendar year to another calendar year
84 where the member has received a full year credit for that
85 year. Service credit awarded for legislative employment
86 pursuant to this section shall be used for the purpose of
87 calculating that member's retirement annuity, pursuant to
88 section twenty-two of this article, and determining
89 eligibility as it relates to credited service, notwithstanding
90 any other provision of this section. Certification of em-
91 ployment for a complete legislative session and for interim
92 days shall be determined by the clerk of the houses in
93 which the employee served, based upon employment
94 records. Service of fifty-five days of a regular session
95 constitutes an absolute presumption of service for a
96 complete legislative session, and service of twenty-seven
97 days of a thirty-day regular session occurring prior to one
98 thousand nine hundred seventy-one constitutes an abso-
99 lute presumption of service for a complete legislative
100 session. Once a legislative employee has been employed
101 during regular sessions for seven consecutive years or has
102 become a full-time employee of the Legislature, that
103 employee shall receive the service credit provided in this

104 section for all regular and interim sessions, and interim
105 days worked by that employee, as certified by the clerk of
106 the houses in which the employee served, regardless of
107 when the session or interim legislative employment
108 occurred: *Provided, however,* That regular session legisla-
109 tive employment for seven consecutive years may be
110 served in either or both houses of the Legislature.

111 Any employee may purchase retroactive service credit
112 for periods of employment in which contributions were not
113 deducted from the employee's pay. In the purchase of
114 service credit for employment prior to the year one
115 thousand nine hundred eighty-nine in any department,
116 including the Legislature, which operated from the general
117 revenue fund and which was not expressly excluded from
118 budget appropriations in which blanket appropriations
119 were made for the state's share of public employees'
120 retirement coverage in the years prior to the year one
121 thousand nine hundred eighty-nine, the employee shall
122 pay the employee's share. Other employees shall pay the
123 state's share and the employee's share to purchase retroac-
124 tive service credit. Where an employee purchases service
125 credit for employment which occurred after the year one
126 thousand nine hundred eighty-eight, that employee shall
127 pay for the employee's share and the employer shall pay its
128 share for the purchase of retroactive service credit:
129 *Provided,* That no legislative employee and no current or
130 former member of the Legislature may be required to pay
131 any interest or penalty upon the purchase of retroactive
132 service credit in accordance with the provisions of this
133 section where the employee was not eligible to become a
134 member during the years he or she is purchasing retroac-
135 tive credit for or had the employee attempted to contribute
136 to the system during the years he or she is purchasing
137 retroactive service credit for and such contributions would
138 have been refused by the board: *Provided, however,* That
139 a legislative employee purchasing retroactive credit under

140 this section does so within twenty-four months of becom-
141 ing a member of the system or no later than the last day of
142 December, two thousand five, whichever occurs last:
143 *Provided further*, That once a legislative employee be-
144 comes a member of the retirement system, he or she may
145 purchase retroactive service credit for any time he or she
146 was employed by the Legislature and did not receive
147 service credit. Any service credit purchased shall be
148 credited as six months for each sixty-day session worked
149 and three months for each thirty-day session worked, and
150 credit for interim employment as provided in this subsec-
151 tion: *And provided further*, That this legislative service
152 credit shall also be used for months of service in order to
153 meet the sixty-month requirement for the payments of a
154 temporary legislative employee member's retirement
155 annuity: *And provided further*, That no legislative em-
156 ployee may be required to pay for any service credit
157 beyond the actual time he or she worked regardless of the
158 service credit which is credited to him or her pursuant to
159 this section: *And provided further*, That any legislative
160 employee may request a recalculation of his or her credited
161 service to comply with the provisions of this section at any
162 time.

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

170 (f) The board of trustees shall grant service credit to any
171 former or present member of the state police death,
172 disability and retirement fund who has been a contribut-
173 ing member of this system for more than three years, for
174 service previously credited by the state police death,

175 disability and retirement fund if the member transfers all
176 of his or her contributions to the state police death,
177 disability and retirement fund to the system created in this
178 article, including repayment of any amounts withdrawn
179 any time from the state police death, disability and
180 retirement fund by the member seeking the transfer
181 allowed in this subsection: *Provided*, That there shall be
182 added by the member to the amounts transferred or repaid
183 under this paragraph an amount which shall be sufficient
184 to equal the contributions he or she would have made had
185 the member been under the public employees retirement
186 system during the period of his or her membership in the
187 state police death, disability and retirement fund plus
188 interest at a rate determined by the board.

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

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

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

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

14 (C) Pays to the members' deposit fund the amount he or
15 she may have withdrawn therefrom, together with regular
16 interest from the date of withdrawal to the date of repay-
17 ment.

18 (2) Any member of the retirement system who enters the
19 active service of the armed forces of the United States
20 during any period of compulsory military service shall
21 receive the credit provided by this section regardless of
22 whether he or she was a public employee at the time of
23 entering the military service.

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

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

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

37 (d) Notwithstanding the preceding provisions of this
38 section, contributions, benefits and service credit with
39 respect to qualified military service shall be provided in
40 accordance with Section 414(u) of the Internal Revenue
41 Code. For purposes of this section, "qualified military
42 service" has the same meaning as in Section 414(u) of the
43 Internal Revenue Code. The retirement board is autho-
44 rized to determine all questions and make all decisions
45 relating to this section and, pursuant to the authority
46 granted to the retirement board in section one, article ten-
47 d of this chapter, may promulgate rules relating to contri-
48 butions, benefits and service credit to comply with Section
49 414(u) of the Internal Revenue Code.

§5-10-21. Deferred retirement and early retirement.

1 (a) Any member who has five or more years of credited
2 service in force, of which at least three years are contribut-
3 ing service, and who leaves the employ of a participating
4 public employer prior to his or her attaining age sixty
5 years for any reason except his or her disability retirement
6 or death shall be entitled to an annuity computed accord-
7 ing to section twenty-two of this article, as that section
8 was in force as of the date of his or her separation from the
9 employ of a participating public employer: *Provided*, That
10 he or she does not withdraw his or her accumulated
11 contributions from the members' deposit fund. His or her
12 annuity shall begin the first day of the calendar month
13 next following the month in which his or her application
14 for same is filed with the board of trustees on or after his
15 or her attaining age sixty-two years.

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

27 (c) Any member who qualifies for deferred retirement
28 benefits in accordance with subsection (a) of this section
29 and has twenty or more years of credited service in force
30 may elect to receive the actuarial equivalent of his or her
31 deferred retirement annuity as a reduced annuity com-
32 mencing on the first day of any calendar month between
33 his or her fifty-fifth birthday and his or her attainment of
34 age sixty-two years and payable throughout his or her life.

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

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

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

1 Notwithstanding any other provision of this article or
2 state law, the board shall administer the retirement system
3 in compliance with the limitations of Section 415 of the
4 Internal Revenue Code and regulations promulgated
5 thereunder to the extent applicable to governmental plans
6 so that no annuity or other benefit provided under this
7 system shall exceed those limitations. The extent to which
8 any annuity or other benefit payable under this retirement

9 system shall be reduced as compared to the extent to
10 which an annuity, contributions or other benefits under
11 any other defined benefit plans or defined contribution
12 plans required to be taken into consideration under
13 Section 415 of the Internal Revenue Code shall be reduced
14 shall be determined by the board in a manner that shall
15 maximize the aggregate benefits payable to the member.
16 If the reduction is under this retirement system, the board
17 shall advise affected members of any additional limitation
18 on the annuities required by this section.

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

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

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

22 (b) If a member dies after distribution to him or her has
23 commenced pursuant to this section but before his or her

24 entire interest in the retirement system has been distrib-
25 uted, then the remaining portion of that interest shall be
26 distributed at least as rapidly as under the method of
27 distribution being used at the date of his or her death.

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

33 (1) If a member's interest is payable to a beneficiary,
34 distributions may be made over the life of that beneficiary
35 or over a period certain not greater than the life expect-
36 tancy of that beneficiary, commencing on or before the
37 thirty-first day of December of the calendar year immedi-
38 ately following the calendar year in which the member
39 died; or

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

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

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

§5-10-27c. Direct rollovers.

1 (a) This section applies to distributions made on or after
2 the first day of January, one thousand nine hundred
3 ninety-three. Notwithstanding any provision of this article

4 to the contrary that would otherwise limit a distributee's
5 election under this system, a distributee may elect, at the
6 time and in the manner prescribed by the board, to have
7 any portion of an eligible rollover distribution that is
8 equal to at least five hundred dollars paid directly to an
9 eligible retirement plan specified by the distributee in a
10 direct rollover. For purposes of this section, the following
11 definitions apply:

12 (1) "Eligible rollover distribution" means any distribu-
13 tion of all or any portion of the balance to the credit of the
14 distributee, except that an eligible rollover distribution
15 does not include any of the following: (i) Any distribution
16 that is one of a series of substantially equal periodic
17 payments not less frequently than annually made for the
18 life or life expectancy of the distributee or the joint lives
19 or the joint life expectancies of the distributee and the
20 distributee's designated beneficiary, or for a specified
21 period of ten years or more; (ii) any distribution to the
22 extent such distribution is required under Section
23 401(a)(9) of the Internal Revenue Code; (iii) the portion of
24 any distribution that is not includable in gross income
25 determined without regard to the exclusion for net unreal-
26 ized appreciation with respect to employer securities; (iv)
27 any hardship distribution described in Section
28 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v)
29 any other distribution or distributions reasonably ex-
30 pected to total less than two hundred dollars during a
31 year.

32 (2) "Eligible retirement plan" means an individual
33 retirement account described in Section 408(a) of the
34 Internal Revenue Code, an individual retirement annuity
35 described in Section 408(b) of the Internal Revenue Code,
36 an annuity plan described in Section 403(a) of the Internal
37 Revenue Code or a qualified plan described in Section

38 401(a) of the Internal Revenue Code that accepts the
39 distributee's eligible rollover distribution: *Provided*, That
40 in the case of an eligible rollover distribution to the
41 surviving spouse, an eligible retirement plan is an individ-
42 ual retirement account or individual retirement annuity.

43 (3) "Distributee" means an employee or former em-
44 ployee. In addition, the employee's or former employee's
45 surviving spouse and the employee's or former employee's
46 spouse or former spouse who is the alternate payee under
47 a qualified domestic relations order, as defined in Section
48 414(p) of the Internal Revenue Code with respect to
49 governmental plans, are distributees with regard to the
50 interest of the spouse or former spouse.

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

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

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

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

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

1 The right of a person to any benefit provided for in this
2 article shall not be subject to execution, attachment,
3 garnishment, the operation of bankruptcy or insolvency
4 laws, or other process whatsoever, nor shall any assign-
5 ment thereof be enforceable in any court except that the
6 benefits or contributions under this system shall be subject

7 to "qualified domestic relations orders" as that term is
8 defined in Section 414(p) of the Internal Revenue Code as
9 applicable to governmental plans: *Provided*, That should
10 a member be covered by a group insurance or prepayment
11 plan participated in by a participating public employer,
12 and should he or she be permitted to, and elect to, continue
13 such coverage as a retirant, he or she may authorize the
14 board of trustees to have deducted from his or her annuity
15 the payments required of him or her to continue coverage
16 under such group insurance or prepayment plan: *Provided*,
17 *however*, That a participating public employer shall have
18 the right of setoff for any claim arising from embezzlement
19 by, or fraud of, a member, retirant or beneficiary.

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

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 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.

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

3 (a) "Accrued benefit" means on behalf of any member
4 two and one-quarter percent of the member's final average
5 salary multiplied by the member's years of credited
6 service. A member's accrued benefit may not exceed the
7 limits of Section 415 of the Internal Revenue Code and is
8 subject to the provisions of section nine-a of this article.

9 (b) "Accumulated contributions" means the sum of all
10 amounts deducted from the compensation of a member, or
11 paid on his or her behalf pursuant to article ten-c, chapter
12 five of this code, either pursuant to section seven of this
13 article or section twenty-nine, article ten, chapter five of
14 this code as a result of covered employment together with
15 regular interest on the deducted amounts.

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

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

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

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

43 (g) "Annuity starting date" means the first day of the
44 first period for which an amount is received as an annuity
45 by reason of retirement.

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

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

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

56 (k) "Covered employment" means either: (1) Employ-
57 ment as a deputy sheriff and the active performance of the
58 duties required of a deputy sheriff; or (2) the period of time
59 which active duties are not performed but disability
60 benefits are received under section thirteen or fourteen of
61 this article; or (3) concurrent employment by a deputy
62 sheriff in a job or jobs in addition to his or her employ-
63 ment as a deputy sheriff where such secondary employ-
64 ment requires the deputy sheriff to be a member of another
65 retirement system which is administered by the consoli-
66 dated public retirement board pursuant to article ten-d of
67 chapter five of this code: *Provided*, That the deputy sheriff
68 contribute to the fund created in section six of this article
69 the amount specified as the deputy sheriff's contribution
70 in section seven of this article.

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

74 (m) "Deputy sheriff" means an individual employed as
75 a county law-enforcement deputy sheriff in this state and

76 as defined by section two, article fourteen, chapter seven
77 of this code.

78 (n) "Dependent child" means either:

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

80 (A) A natural child of the member;

81 (B) A legally adopted child of the member;

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

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

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

88 (A) Who is enrolled as a full-time student in an accred-
89 ited college or university;

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

93 (C) Whose relationship with the member is described in
94 subparagraph (A), (B) or (C), paragraph (1) of this subdivi-
95 sion.

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

100 (p) "Disability service" means service received by a
101 member, expressed in whole years, fractions thereof or
102 both, equal to one half of the whole years, fractions
103 thereof, or both, during which time a member receives
104 disability benefits under section fourteen or fifteen of this
105 article.

106 (q) "Early retirement age" means age forty or over and
107 completion of twenty years of service.

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

110 (s) "Final average salary" means the average of the
111 highest annual compensation received for covered employ-
112 ment by the member during any five consecutive plan
113 years within the member's last ten years of service. If the
114 member did not have annual compensation for the five full
115 plan years preceding the member's attainment of normal
116 retirement age and during that period the member re-
117 ceived disability benefits under section fourteen or fifteen
118 of this article then "final average salary" means the
119 average of the monthly salary determined paid to the
120 member during that period as determined under section
121 seventeen of this article multiplied by twelve.

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

125 (u) "Hour of service" means:

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

131 (2) Each hour for which a member is paid or entitled to
132 payment for covered employment during a plan year but
133 where no duties are performed due to vacation, holiday,
134 illness, incapacity including disability, layoff, jury duty,
135 military duty, leave of absence, or any combination
136 thereof, and without regard to whether the employment
137 relationship has terminated. Hours under this paragraph
138 shall be calculated and credited pursuant to West Virginia

139 division of labor rules. A member will not be credited with
140 any hours of service for any period of time he or she is
141 receiving benefits under section fourteen or fifteen of this
142 article; and

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

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

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

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

172 (y) "Normal retirement age" means the first to occur of
173 the following:

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

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

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

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

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

199 (aa) "Public employees retirement system" means the
200 West Virginia public employee's retirement system created
201 by article ten, chapter five of this code.

202 (bb) "Plan" means the West Virginia deputy sheriff
203 death, disability and retirement plan established by this
204 article.

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

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

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

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

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

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

224 For purposes of this subdivision:

225 (1) A member is totally disabled only if his or her
226 physical or mental impairment or impairments is so severe
227 that he or she is not only unable to perform his or her
228 previous work as a deputy sheriff but also cannot, consid-
229 ering his or her age, education and work experience,
230 engage in any other kind of substantial gainful employ-
231 ment which exists in the state regardless of whether: (A)
232 The work exists in the immediate area in which the

233 member lives; (B) a specific job vacancy exists; or (C) the
234 member would be hired if he or she applied for work.

235 (2) "Physical or mental impairment" is an impairment
236 that results from an anatomical, physiological or psycho-
237 logical abnormality that is demonstrated by medically
238 accepted clinical and laboratory diagnostic techniques.

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

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

250	Hours of Service	Year of Service Credited
251	Less than 500	0
252	500 to 999	1/3
253	1,000 to 1,499	2/3
254	1,500 or more	1

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

263 service include covered employment prior to the effective
264 date.

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

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

§7-14D-2a. Meaning of terms.

1 Any term used in this article shall have the same mean-
2 ing as when used in a comparable context in the laws of
3 the United States, unless a different meaning is clearly
4 required. Any reference in this article to the Internal
5 Revenue Code means the Internal Revenue Code of 1986,
6 as amended.

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

1 There is hereby created the West Virginia deputy sher-
2 iff's retirement system. The purpose of this system is to
3 provide for the orderly retirement of deputy sheriffs who
4 become superannuated because of age or permanent
5 disability and to provide certain survivor death benefits.
6 The retirement system constitutes a body corporate. All

7 business of the system shall be transacted in the name of
8 the West Virginia deputy sheriff's retirement system. The
9 board shall specify and adopt all actuarial assumptions for
10 the plan at its first meeting of every calendar year or as
11 soon thereafter as may be practicable, which assumptions
12 shall become part of the plan.

**§7-14D-4. Article to be liberally construed; supplements federal
social security; federal qualification requirements.**

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

7 (b) The board shall administer the plan in accordance
8 with its terms and may construe the terms and determine
9 all questions arising in connection with the administra-
10 tion, interpretation and application of the plan. The board
11 may sue and be sued, contract and be contracted with and
12 conduct all the business of the system in the name of the
13 plan. The board may employ those persons it considers
14 necessary or desirable to administer the plan. The board
15 shall administer the plan for the exclusive benefit of the
16 members and their beneficiaries subject to the specific
17 provisions of the plan.

18 (c) The plan is intended to meet the federal qualification
19 requirements of Section 401(a) and related sections of the
20 Internal Revenue Code as applicable to governmental
21 plans. Notwithstanding any other provision of state law,
22 the board shall administer the plan to fulfill this intent for
23 the exclusive benefit of the members and their beneficia-
24 ries. Any provision of this article referencing or relating to
25 these federal qualification requirements shall be effective
26 as of the date required by federal law. The board may

27 promulgate rules and amend or repeal conflicting rules in
28 accordance with the authority granted to the board
29 pursuant to section one, article ten of chapter five to
30 assure compliance with the requirements of this section.

§7-14D-5. Members.

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

7 (b) Any deputy sheriff employed in covered employment
8 on the effective date of this article shall within six months
9 of that effective date notify in writing both the county
10 commission in the county in which he or she is employed
11 and the board of his or her desire to become a member of
12 the plan: *Provided*, That this time period is extended to the
13 thirtieth day of January, one thousand nine hundred
14 ninety-nine, in accordance with the decision of the su-
15 preme court of appeals in *West Virginia Deputy Sheriffs'*
16 *Association, et al v. James L. Sims, et al*, No. 25212:
17 *Provided, however*, That any deputy sheriff employed in
18 covered employment on the effective date of this article
19 has an additional time period consisting of the ten-day
20 period following the day after which the amended provi-
21 sions of this section become law to notify in writing both
22 the county commission in the county in which he or she is
23 employed and the board of his or her desire to become a
24 member of the plan. Any deputy sheriff who elects to
25 become a member of the plan ceases to be a member or
26 have any credit for covered employment in any other
27 retirement system administered by the board and shall
28 continue to be ineligible for membership in any other
29 retirement system administered by the board so long as the
30 deputy sheriff remains employed in covered employment

31 in this plan: *Provided further*, That any deputy sheriff who
32 elects during the time period from the first day of July, one
33 thousand nine hundred ninety-eight, to the thirtieth day of
34 January, one thousand nine hundred ninety-nine, or who
35 so elects during the ten-day time period occurring immedi-
36 ately following the day after the day the amendments
37 made during the one thousand nine hundred ninety-nine
38 legislative session become law, to transfer from the public
39 employees retirement system to the plan created in this
40 article shall contribute to the plan created in this article at
41 the rate set forth in section seven of this article retroactive
42 to the first day of July, one thousand nine hundred
43 ninety-eight. Any deputy sheriff who does not affirma-
44 tively elect to become a member of the plan continues to
45 be eligible for any other retirement system as is from time
46 to time offered to other county employees but is ineligible
47 for this plan regardless of any subsequent termination of
48 employment and rehire.

49 (c) Any deputy sheriff who was employed as a deputy
50 sheriff prior to the effective date, but was not employed on
51 the effective date of this article, shall become a member
52 upon rehire as a deputy sheriff. For purposes of this
53 section, the member's years of service and credited service
54 prior to the effective date shall not be counted for any
55 purposes under this plan unless: (1) The deputy sheriff has
56 not received the return of his or her accumulated contribu-
57 tions in the public employees retirement fund system
58 pursuant to section thirty, article ten, chapter five of this
59 code; or (2) the accumulated contributions returned to the
60 member from the public employees retirement system have
61 been repaid pursuant to section twelve of this article. If
62 the conditions of subdivision (1) or (2) of this subsection
63 are met, all years of the deputy sheriff's covered employ-
64 ment shall be counted as years of service for the purposes
65 of this article. Each transferring deputy sheriff shall be
66 given credited service for the purposes of this article for all

67 covered employment transferred from the public employ-
68 ees retirement system regardless of whether such credited
69 service (as that term is defined in section two, article ten,
70 chapter five of this code) was earned as a deputy sheriff.
71 All service in the public employees retirement system
72 accrued by a transferring deputy sheriff shall be trans-
73 ferred into the plan created by this article and the trans-
74 ferring deputy sheriff shall be given the same credit for the
75 purposes of this article for all such covered service which
76 is transferred from the public employees retirement system
77 as that transferring deputy sheriff would have received
78 from the public employees retirement system if such
79 transfer had not occurred. In connection with each deputy
80 sheriff receiving credit for prior employment provided in
81 this subsection, a transfer from public employees retire-
82 ment system to this plan shall be made pursuant to the
83 procedures described in section eight of this article.

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

90 (e) Notwithstanding any other provisions of this article,
91 any individual who is a leased employee shall not be
92 eligible to participate in the plan. For purposes of this
93 plan, a "leased employee" means any individual who
94 performs services as an independent contractor or pursu-
95 ant to an agreement with an employee leasing organization
96 or similar organization. If a question arises regarding the
97 status of an individual as a leased employee, the board has
98 final power to decide the question.

§7-14D-9. Retirement; commencement of benefits.

1 A member may retire and commence to receive retire-
2 ment income payments on the first day of the calendar
3 month coincident with or next following the later of the
4 date the member ceases employment and the date the
5 member attains early or normal retirement age, in an
6 amount as provided under section eleven of this article, by
7 filing with the board his or her voluntary petition in
8 writing for retirement: *Provided*, That retirement income
9 payments under this plan shall be subject to the provisions
10 of section nine-b of this article. Upon receipt of the
11 petition, the board shall promptly provide the member
12 with an explanation of his or her optional forms of retire-
13 ment benefits and upon receipt of properly executed forms
14 from the member, the board shall process member's
15 request for and commence payments as soon as adminis-
16 tratively feasible.

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

1 Notwithstanding any other provision of this article or
2 statelaw, the board shall administer the retirement system
3 in compliance with the limitations of Section 415 of the
4 Internal Revenue Code and regulations under that section
5 to the extent applicable to governmental plans so that no
6 annuity or other benefit provided under this system shall
7 exceed those limitations. The extent to which any annuity
8 or other benefit payable under this retirement system shall
9 be reduced as compared with the extent to which an
10 annuity, contributions or other benefits under any other
11 defined benefit plans or defined contribution plans
12 required to be taken into consideration under Section 415
13 of the Internal Revenue Code shall be reduced shall be
14 determined by the board in a manner that shall maximize
15 the aggregate benefits payable to the member. If the
16 reduction is under this retirement system, the board shall
17 advise affected members of any additional limitation on
18 the annuities required by this section.

§7-14D-9b. Federal law minimum required distributions.

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

12 (a) The payment of benefits under the plan to any
13 member shall be distributed to him or her not later than
14 the required beginning date, or be distributed to him or
15 her commencing not later than the required beginning
16 date, in accordance with regulations prescribed under
17 Section 401(a)(9) of the Internal Revenue Code, over the
18 life of the member or over the lives of the member and his
19 or her beneficiary or over a period not extending beyond
20 the life expectancy of the member and his or her benefi-
21 ciary.

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

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

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

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

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

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

§7-14D-9c. Direct rollovers.

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

12 (1) "Eligible rollover distribution" means any distribu-
13 tion of all or any portion of the balance to the credit of the
14 distributee, except that an eligible rollover distribution
15 does not include any of the following: (i) Any distribution

16 that is one of a series of substantially equal periodic
17 payments not less frequently than annually made for the
18 life or life expectancy of the distributee or the joint lives
19 or the joint life expectancies of the distributee and the
20 distributee's designated beneficiary, or for a specified
21 period of ten years or more; (ii) any distribution to the
22 extent such distribution is required under Section
23 401(a)(9) of the Internal Revenue Code; (iii) the portion of
24 any distribution that is not includable in gross income
25 determined without regard to the exclusion for net unreal-
26 ized appreciation with respect to employer securities; (iv)
27 any hardship distribution described in Section
28 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v)
29 any other distribution or distributions reasonably ex-
30 pected to total less than two hundred dollars during a
31 year.

32 (2) "Eligible retirement plan" means an individual
33 retirement account described in Section 408(a) of the
34 Internal Revenue Code, an individual retirement annuity
35 described in Section 408(b) of the Internal Revenue Code,
36 an annuity plan described in Section 403(a) of the Internal
37 Revenue Code or a qualified plan described in Section
38 401(a) of the Internal Revenue Code that accepts the
39 distributee's eligible rollover distribution: *Provided*, That
40 in the case of an eligible rollover distribution to the
41 surviving spouse, an eligible retirement plan is an individ-
42 ual retirement account or individual retirement annuity.

43 (3) "Distributee" means an employee or former em-
44 ployee. In addition, the employee's or former employee's
45 surviving spouse and the employee's or former employee's
46 spouse or former spouse who is the alternate payee under
47 a qualified domestic relations order, as defined in Section
48 414(p) of the Internal Revenue Code with respect to
49 governmental plans, are distributees with regard to the
50 interest of the spouse or former spouse.

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

53 (b) Nothing in this section shall be construed as permit-
54 ting rollovers to this plan or any other retirement system
55 administered by the board.

§7-14D-12. Annuity options.

1 Prior to the effective date of retirement, but not thereaf-
2 ter, a member may elect to receive retirement income
3 payments in the normal form, or the actuarial equivalent
4 of the normal form from the following options:

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

17 (b) *Option B – Contingent Joint and Survivor Annuity.*
18 – A life annuity payable during the joint lifetime of the
19 member and his or her beneficiary who must be a natural
20 person with an insurable interest in the member's life.
21 Upon the death of the member, the benefit shall continue
22 as a life annuity to the beneficiary in an amount equal to
23 fifty percent, sixty-six and two-thirds percent, seventy-
24 five percent or one hundred percent of the amount paid
25 while both were living as selected by the member. If the
26 beneficiary dies first, the monthly amount of benefits may
27 not be reduced, but shall be paid at the amount that was
28 in effect before the death of the beneficiary. If the retiring

29 member is married, the spouse shall sign a waiver of
30 benefit rights if the beneficiary is to be other than the
31 spouse.

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

38 (d) *Option D – Level Income Annuity.* – A life annuity
39 payable monthly in an increased amount "A" from the
40 time of retirement until the member is social security
41 retirement age, and then a lesser amount "B" payable for
42 the member's lifetime thereafter, with these amounts
43 computed actuarially to satisfy the following two condi-
44 tions:

45 (1) *Actuarial equivalence.* – The actuarial present value
46 at the date of retirement of the member's annuity if taken
47 in the normal form must equal the actuarial present value
48 of the term life annuity in amount "A" plus the actual
49 present value of the deferred life annuity in amount "B";
50 and

51 (2) *Level income.* – The amount "A" equals the amount
52 "B" plus the amount of the member's estimated monthly
53 social security primary insurance amount that would
54 commence at the date amount "B" becomes payable. For
55 this calculation, the primary insurance amount is esti-
56 mated when the member applies for retirement, using
57 social security law then in effect, using assumptions
58 established by the board.

59 In the case of a member who has elected the options set
60 forth in subdivisions (a) and (b) of this section, respec-
61 tively, and whose beneficiary dies prior to the member's
62 death, the member may name an alternative beneficiary.

63 If an alternative beneficiary is named within eighteen
64 months following the death of the prior beneficiary, the
65 benefit shall be adjusted to be the actuarial equivalent of
66 the benefit the member is receiving just after the death of
67 the member's named beneficiary. If the election is not
68 made until eighteen months after the death of the prior
69 beneficiary, the amount shall be reduced so that it is only
70 ninety percent of the actuarial equivalent of the benefit
71 the member is receiving just after the death of the mem-
72 ber's named beneficiary.

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

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

8 (b) Any member who withdraws accumulated contribu-
9 tions from either this plan or the public employees retire-
10 ment system and thereafter becomes reemployed in
11 covered employment shall not receive any credited service
12 for the prior employment unless following his or her return
13 to covered employment, the member redeposits in the fund
14 the amount of the accumulated contributions, together
15 with interest on the accumulate contributions at the rate
16 determined by the board from the date of withdrawal to
17 the date of redeposit. Upon repayment he or she shall
18 receive the same credit on account of his or her former
19 service as if no refund had been made. The repayment
20 shall be made in a lump sum within sixty months of the
21 deputy sheriff's reemployment or if later, within sixty
22 months of the effective date of this article.

23 (c) Every member who completes sixty months of
24 covered employment is eligible, upon cessation of covered
25 employment, to either withdraw his or her accumulated
26 contributions in accordance with subsection (a) of this
27 section, or to choose not to withdraw his or her accumu-
28 lated contribution and to receive retirement income
29 payments upon attaining early or normal retirement age.

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

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

1 (a) The surviving spouse of any member who, after the
2 effective date of this article while in covered employment,
3 has died or dies by reason of injury, illness or disease
4 resulting from an occupational risk or hazard inherent in
5 or peculiar to the service required of members, while the
6 member was or is engaged in the performance of his or her
7 duties as a deputy sheriff, or the survivor spouse of a
8 member who dies from any cause while receiving benefits
9 pursuant to section fourteen of this article, is entitled to
10 receive and shall be paid from the fund benefits as deter-
11 mined in subsection (b) of this section: To the surviving
12 spouse annually, in equal monthly installments during his
13 or her lifetime an amount equal to the greater of: (i) Two
14 thirds of the annual compensation received in the preced-
15 ing twelve-month period by the deceased member; or (ii)
16 if the member dies after his or her early or normal retire-
17 ment age, the monthly amount which the spouse would
18 have received had the member retired the day before his or
19 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-connected causes.

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

22 (b) Benefits for a surviving spouse received under this
23 section, section twenty and section twenty-one of this
24 article are in lieu of receipt of any other benefits under
25 this article for the spouse or any other person or under the

26 provisions of any other state retirement system based upon
27 the member's covered employment.

§7-14D-21. Burial benefit.

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

§7-14D-23. Loans to members.

1 (a) A member who is not yet receiving disability or
2 retirement income benefits from the plan may borrow
3 from the plan no more than one time in any year an
4 amount up to one half of his or her accumulated contribu-
5 tions, but not less than five hundred dollars nor more than
6 eight thousand dollars: *Provided*, That the maximum
7 amount of any loan when added to the outstanding
8 balance of all other loans shall not exceed the lesser of the
9 following: (1) Fifty thousand dollars reduced by the excess
10 (if any) of the highest outstanding balance of loans to the
11 member on the date on which the loan is made; or (2) fifty
12 percent of his or her accumulated contributions. No loan
13 may be made from the plan if the board determines that
14 the loans constitute more than fifteen percent of the
15 amortized cost value of the assets of the plan as of the last
16 day of the preceding plan year. The board may discontinue

17 the loans any time it determines that cash flow problems
18 might develop as a result of the loans. Each loan shall be
19 repaid through monthly installments over periods of six
20 through sixty months and carry interest on the unpaid
21 balance and an annual effective interest rate that is two
22 hundred basis points higher than the most recent rate of
23 interest used by the board for determining actuarial
24 contributions levels. Monthly loan payments shall be
25 calculated to be as nearly equal as possible with all but the
26 final payment being an equal amount. An eligible member
27 may make additional loan payments or pay off the entire
28 loan balance at any time without incurring any interest
29 penalty. At the member's option, the monthly loan pay-
30 ment may include a level premium sufficient to provide
31 declining term insurance with the plan as beneficiary to
32 repay the loan in full upon the member's death. If a
33 member declines the insurance and dies before the loan is
34 repaid, the unpaid balance of the loan shall be deducted
35 from the lump sum insurance benefit payable under
36 section twenty-one of this article.

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

44 (c) The entire unpaid balance of any loan, and interest
45 due thereon, shall at the option of the retirement board
46 become due and payable without further notice or demand
47 upon the occurrence with respect to the borrowing mem-
48 ber of any of the following events of default: (1) Any
49 payment of principal and accrued interest on a loan
50 remains unpaid after the same become due and payable
51 under the terms of the loan or after such grace period as

52 may be established in the discretion of the retirement
53 board; (2) the borrowing member attempts to make an
54 assignment for the benefit of creditors of his or her benefit
55 under the retirement system; or (3) any other event of
56 default set forth in rules promulgated by the board
57 pursuant to the authority granted in section one, article
58 ten-d, chapter five of this code.

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

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

1 The moneys in the fund and the right of a member,
2 spouse or other beneficiary to benefits under this article,
3 to the return of contributions, or to any retirement, death
4 or disability payments under the provisions of this article,
5 are exempt from any state or municipal tax; are not
6 subject to execution, garnishment, attachment or any other
7 process whatsoever with the exception that the benefits or
8 contributions under the system shall be subject to "quali-
9 fied domestic relations orders" as that term is defined in
10 Section 414(p) of the Internal Revenue Code with respect
11 to governmental plans, and are unassignable except as is
12 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.**

1 (a) Any member who has previously served on active
2 military duty is entitled to receive additional years of
3 service for the purpose of determining his or her years of

4 credited service for a period equal to the active military
5 duty, not to exceed five years, subject to the following:

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

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

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

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

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

34 (2) That within ninety days after honorable discharge
35 from the armed forces, he or she presented himself or

36 herself to the county commission and offered to resume
37 service as a deputy sheriff; and

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

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

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

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

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

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 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.**

1 (a) There shall be continued the death, disability and
2 retirement fund heretofore created for the benefit of
3 members of the division of public safety and any depend-
4 ent of a retired or deceased member thereof.

5 (b) There shall be deducted from the monthly payroll of
6 each member of the division of public safety and paid into
7 such fund six percent of the amount of his or her salary:
8 *Provided*, That beginning on the first day of July, one
9 thousand nine hundred ninety-four, there shall be de-
10 ducted from the monthly payroll of each member and paid
11 into the fund seven and one-half percent of the amount of
12 his or her salary: *Provided, however*, That on and after the
13 first day of July, one thousand nine hundred ninety-five,
14 there shall be deducted from the monthly payroll of each
15 member and paid into the fund nine percent of the amount
16 of his or her salary. An additional twelve percent of the
17 monthly salary of each member of the division shall be
18 paid by the state of West Virginia monthly into such fund
19 out of the annual appropriation for the division: *Provided*
20 *further*, That beginning on the first day of July, one
21 thousand nine hundred ninety-five, the state shall pay
22 thirteen percent of the monthly salary of each member into
23 the fund: *And provided further*, That beginning on the
24 first day of July, one thousand nine hundred ninety-six,
25 the state shall pay fourteen percent of the monthly salary
26 of each member into the fund: *And provided further*, That
27 on and after the first day of July, one thousand nine
28 hundred ninety-seven, the state shall pay fifteen percent
29 of the monthly salary of each member into the retirement
30 fund. There shall also be paid into the fund amounts that

31 have previously been collected by the superintendent of
32 the division of public safety on account of payments to
33 members for court attendance and mileage, rewards for
34 apprehending wanted persons, fees for traffic accident
35 reports and photographs, fees for criminal investigation
36 reports and photographs, fees for criminal history record
37 checks, fees for criminal history record reviews and
38 challenges or from any other sources designated by the
39 superintendent. All moneys payable into the fund shall be
40 deposited in the state treasury and the treasurer and
41 auditor shall keep a separate account thereof on their
42 respective books.

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

47 (d) The moneys in this fund, and the right of a member
48 to a retirement allowance, to the return of contributions,
49 or to any benefit under the provisions of this article, are
50 hereby exempt from any state or municipal tax; shall not
51 be subject to execution, garnishment, attachment or any
52 other process whatsoever, with the exception that the
53 benefits or contributions under the fund shall be subject to
54 "qualified domestic relations orders" as that term is
55 defined in Section 414(p) of the Internal Revenue Code
56 with respect to governmental plans; and shall be
57 unassignable except as is provided in this article. The
58 death, disability and retirement fund shall be administered
59 by the consolidated public retirement board created
60 pursuant to article ten-d, chapter five of this code.

61 (e) All moneys paid into and accumulated in the death,
62 disability and retirement fund, except such amounts as
63 shall be designated or set aside by the awards, shall be
64 invested by the state board of investments as provided by
65 law.

§15-2-27. Retirement; awards and benefits; leased employees.

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

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

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

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

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

23 (c) When the retirement board retires any member under
24 any of the provisions of this section, the board shall, by
25 order in writing, make an award directing that the mem-
26 ber shall be entitled to receive annually and that there
27 shall be paid to the member from the death, disability and
28 retirement fund in equal monthly installments during the
29 lifetime of the member while in status of retirement one or
30 the other of two amounts, whichever is the greater:

31 (1) An amount equal to five and one-half percent of the
32 aggregate of salary paid to the member during the whole
33 period of service as a member of the division of public
34 safety; or

35 (2) The sum of six thousand dollars.

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

48 (d) Any individual who is a leased employee shall not be
49 eligible to participate in the fund. For purposes of this
50 fund, a "leased employee" means any individual who
51 performs services as an independent contractor or pursu-
52 ant to an agreement with an employee leasing organization
53 or other similar organization. If a question arises regard-
54 ing the status of an individual as a leased employee, the
55 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.**

1 (a) For purposes of this section, the term "active military
2 duty" means full-time active duty with the armed forces of
3 the United States, namely, the United States air force,
4 army, coast guard, marines or navy; and service with the

5 national guard or reserve military forces of any of such
6 armed forces when the member has been called to active
7 full-time duty and has received no compensation during
8 the period of such duty from any person other than the
9 armed forces.

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

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

19 (2) That he or she substantiates by appropriate docu-
20 mentation or evidence his or her period of active military
21 duty;

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

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

28 (c) The amount of retirement pay to which any such
29 member is entitled shall be calculated and determined as
30 if he or she had been receiving for the period of his or her
31 active military duty a monthly salary from the department
32 equal to the average monthly salary which he or she
33 actually received from the department for his or her total
34 service with the department exclusive of the active
35 military duty. The superintendent is authorized to transfer
36 and pay into the death, disability and retirement fund
37 from monies appropriated for the department a sum equal

38 to eighteen percent of the aggregate of the salaries on
39 which the retirement pay of all such members has been
40 calculated and determined for their periods of active
41 military duty. In addition, any person who while a
42 member of the department was commissioned, enlisted or
43 inducted into the armed forces of the United States or,
44 being a member of the reserve officers' corps, was called to
45 active duty in said armed forces between the first day of
46 September, one thousand nine hundred forty, and the close
47 of hostilities in World War II, or between the
48 twenty-seventh day of June, one thousand nine hundred
49 fifty, and the close of the armed conflict in Korea on the
50 twenty-seventh day of July, one thousand nine hundred
51 fifty-three, between the first day of August, one thousand
52 nine hundred sixty-four and the close of the armed conflict
53 in Vietnam, or during any other period of armed conflict
54 by the United States whether sanctioned by a declaration
55 of war by the congress or by executive or other order of the
56 president, shall be entitled to and receive credit on the
57 minimum period of service required by law for retirement
58 pay from the service of the department of public safety for
59 a period equal to the full time he or she has or shall,
60 pursuant to such commission, enlistment, induction or call,
61 have served with said armed forces subject to the follow-
62 ing:

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

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

69 (3) That he or she has made no voluntary act, whether
70 by reenlistment, waiver of discharge, acceptance of
71 commission or otherwise, to extend or participate in

72 extension of the period of service with the armed forces
73 beyond the period of service for which he or she was
74 originally commissioned, enlisted, inducted or called.

75 (d) That amount of retirement pay to which any such
76 member shall be entitled shall be calculated and deter-
77 mined as if the member has continued in the active service
78 of the department at the rank or grade to him appertaining
79 at the time of such commission, induction, enlistment or
80 call, during a period coextensive with the time the member
81 served with the armed forces pursuant to the commission,
82 induction, enlistment or call. The superintendent of the
83 department is authorized to transfer and pay each month
84 into the death, disability and retirement fund from moneys
85 appropriated for the department a sum equal to eighteen
86 percent of the aggregate of salary which all such members
87 would have been entitled to receive had they continued in
88 the active service of the department during a period
89 coextensive with the time such members served with the
90 armed forces pursuant to the commission, induction,
91 enlistment or call: *Provided*, That the total amount of
92 military service credit allowable under this section shall
93 not exceed five years.

94 (e) Notwithstanding any of the preceding provisions of
95 this section, contributions, benefits and service credit with
96 respect to qualified military service shall be provided in
97 accordance with Section 414(u) of the Internal Revenue
98 Code. For purposes of this section, "qualified military
99 service" has the same meaning as in Section 414(u) of the
100 Internal Revenue Code. The retirement board is authorized
101 to determine all questions and make all decisions relating
102 to this section and, pursuant to the authority granted to
103 the retirement board in section one, article ten-d, chapter
104 five of this code, may promulgate rules relating to contri-
105 butions, benefits and service credit to comply with Section
106 414(u) of the Internal Revenue Code.

§15-2-29. Awards and benefits for disability - Incurred in performance of duty.

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

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

26 (2) The sum of six thousand dollars.

27 (b) Upon attaining age fifty, the member shall receive
28 the benefit provided for in subsection (c), section
29 twenty-seven of this article as it would apply to his or her
30 aggregate career earnings from the division through the
31 day immediately preceding his or her disability. The
32 recalculation of benefit upon a member attaining age fifty

33 shall be deemed to be a retirement under the provisions of
34 section twenty-seven of this article, for purposes of
35 determining the amount of annual annuity adjustment and
36 for all other purposes of this article. If any member shall
37 become permanently physically or mentally disabled by
38 injury, illness or disease resulting from any occupational
39 risk or hazard inherent in or peculiar to the services
40 required of members of the division and incurred pursuant
41 to or while such member was or shall be engaged in the
42 performance of his or her duties as a member of the
43 division, to the extent that such member is or shall be
44 incapacitated ever to engage in any gainful employment,
45 such member shall be entitled to receive annually and
46 there shall be paid to such member from the death,
47 disability and retirement fund in equal monthly install-
48 ments during the lifetime of such member or until such
49 disability shall sooner terminate, an amount equal to the
50 amount of the salary received by the member in the
51 preceding twelve-month employment period: *Provided*,
52 That in no event may such amount be less than fifteen
53 thousand dollars per annum, unless required by section
54 forty of this article: *Provided, however*, That if the mem-
55 ber had not been employed with the division for twelve
56 months prior to the disability, the amount of monthly
57 salary shall be annualized for the purpose of determining
58 the benefit.

59 (c) The superintendent is authorized to expend moneys
60 from funds appropriated for the division in payment of
61 medical, surgical, laboratory, X-ray, hospital, ambulance
62 and dental expenses and fees, and reasonable costs and
63 expenses incurred in the purchase of artificial limbs and
64 other approved appliances which may be reasonably
65 necessary for any member of the division who has or shall
66 become temporarily, permanently or totally disabled by
67 injury, illness or disease resulting from any occupational
68 risk or hazard inherent in or peculiar to the service

69 required of members of the division and incurred pursuant
70 to or while such member was or shall be engaged in the
71 performance of duties as a member of the division. When-
72 ever the superintendent shall determine that any disabled
73 member is ineligible to receive any of the aforesaid
74 benefits at public expense, the superintendent shall, at the
75 request of such disabled member, refer such matter to the
76 consolidated public retirement board for hearing and final
77 decision.

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

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

1 When any member of said department has heretofore
2 completed or hereafter shall complete twenty years of
3 service or longer as a member of said department and has
4 died or shall die from any cause or causes other than those
5 specified in this article before having been retired by the
6 retirement board, and when a member in retirement status
7 has died or shall die after having been retired by the
8 retirement board under the provisions of this article, there
9 shall be paid annually in equal monthly installments from
10 said fund to the surviving spouse of said member, com-
11 mencing on the date of the death of said member and
12 continuing during the lifetime or until remarriage of said
13 surviving spouse an amount equal to three-fourths the
14 retirement benefits said deceased member was receiving
15 while in status of retirement, or would have been entitled
16 to receive to the same effect as if such member had been
17 retired under the provisions of this article immediately
18 prior to the time of his or her death and in no event to be
19 less than five thousand dollars unless otherwise required
20 under section forty of this article and in addition thereto
21 said surviving spouse shall be entitled to receive and there

22 shall be paid to such surviving spouse from said fund the
23 sum of one hundred dollars monthly for each dependent
24 child or children. If such surviving spouse die, or remarry,
25 or if there be no surviving spouse there shall be paid
26 monthly from said fund to each dependent child or chil-
27 dren of said deceased member a sum equal to twenty-five
28 percent of the surviving spouse's entitlement. If there be
29 no surviving spouse or no surviving spouse eligible to
30 receive benefits and no dependent child or children there
31 shall be paid annually in equal monthly installments from
32 said fund to the dependent parents of said deceased
33 member during their joint lifetimes a sum equal to the
34 amount which a surviving spouse without children would
35 have been entitled to receive: *Provided*, That when there
36 shall be but one dependent parent surviving, such parent
37 shall be entitled to receive during his or her lifetime one
38 half the amount which both parents, if living, would have
39 been entitled to receive.

§15-2-40. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or
2 state law, the board shall administer the fund in compli-
3 ance with the limitations of Section 415 of the Internal
4 Revenue Code and regulations under that section to the
5 extent applicable to governmental plans so that no annuity
6 or other benefit provided under this fund shall exceed
7 those limitations. The extent to which any annuity or
8 other benefit payable under this fund shall be reduced as
9 compared with the extent to which an annuity, contribu-
10 tions or other benefits under any other defined benefit
11 plans or defined contribution plans required to be taken
12 into consideration under Section 415 of the Internal
13 Revenue Code shall be reduced shall be determined by the
14 board in a manner that shall maximize the aggregate
15 benefits payable to the member. If the reduction is under
16 this fund, the board shall advise affected members of any

17 additional limitation on the annuities required by this
18 section.

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

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

12 (a) The payment of benefits under the fund to any
13 member shall be distributed to him or her not later than
14 the required beginning date, or be distributed to him or
15 her commencing not later than the required beginning
16 date, in accordance with regulations prescribed under
17 Section 401(a)(9) of the Internal Revenue Code, over the
18 life of the member or over the lives of the member and his
19 or her beneficiary, or over a period not extending beyond
20 the life expectancy of the member and his or her benefi-
21 ciary. For purposes of this section, the term "required
22 beginning date" means the first day of April of the calen-
23 dar year following the later of: (i) The calendar year in
24 which the member attains age seventy and one-half, or (ii)
25 the calendar year in which the member retires or otherwise
26 ceases providing covered service under this fund.

27 (b) If a member dies after distribution to him or her has
28 commenced pursuant to this section but before his or her
29 entire interest in the retirement system has been distrib-
30 uted, then the remaining portion of that interest shall be

31 distributed at least as rapidly as under the method of
32 distribution being used at the date of his or her death.

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

38 (1) If a member's interest is payable to a beneficiary,
39 distributions may be made over the life of that beneficiary
40 or over a period certain not greater than the life expect-
41 tancy of the beneficiary commencing on or before the
42 thirty-first day of December of the calendar year immedi-
43 ately following the calendar year in which the participant
44 died; or

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

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

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

§15-2-42. Direct Rollovers.

1 (a) This section applies to distributions made on or after
2 the first day of January, one thousand nine hundred
3 ninety-three. Notwithstanding any provision of this article
4 to the contrary that would otherwise limit a distributee's
5 election under this fund, a distributee may elect, at the

6 time and in the manner prescribed by the board, to have
7 any portion of an eligible rollover distribution that is
8 equal to at least five hundred dollars paid directly to an
9 eligible retirement plan specified by the distributee in a
10 direct rollover. For purposes of this section, the following
11 definitions apply:

12 (1) "Eligible rollover distribution" means any distribu-
13 tion of all or any portion of the balance to the credit of the
14 distributee, except that an eligible rollover distribution
15 does not include any of the following: (i) Any distribution
16 that is one of a series of substantially equal periodic
17 payments not less frequently than annually made for the
18 life or life expectancy of the distributee or the joint lives
19 or the joint life expectancies of the distributee and the
20 distributee's designated beneficiary, or for a specified
21 period of ten years or more; (ii) any distribution to the
22 extent such distribution is required under Section
23 401(a)(9) of the Internal Revenue Code; (iii) the portion of
24 any distribution that is not includable in gross income
25 determined without regard to the exclusion for net unreal-
26 ized appreciation with respect to employer securities; (iv)
27 any hardship distribution described in Section
28 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v)
29 any other distribution or distributions that is reasonably
30 expected to total less than two hundred dollars during a
31 year.

32 (2) "Eligible retirement plan" means an individual
33 retirement account described in Section 408(a) of the
34 Internal Revenue Code, an individual retirement annuity
35 described in Section 408(b) of the Internal Revenue Code,
36 an annuity plan described in Section 403(a) of the Internal
37 Revenue Code, or a qualified plan described in Section
38 401(a) of the Internal Revenue Code, that accepts the
39 distributee's eligible rollover distribution: *Provided*, That
40 in the case of an eligible rollover distribution to the

41 surviving spouse, an eligible retirement plan is an individ-
42 ual retirement account or individual retirement annuity.

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

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

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

§15-2-43. Federal qualification requirements.

1 This retirement system is intended to meet the require-
2 ments of Section 401(a) of the Internal Revenue Code as
3 applicable to governmental plans. Notwithstanding any
4 other provision of state law, the board shall administer the
5 retirement system to fulfill this intent for the exclusive
6 benefit of the members and their beneficiaries. Any
7 provision of this article referencing or relating to these
8 federal qualification requirements shall be effective as of
9 the date required by federal law. The board may promul-
10 gate rules and amend or repeal conflicting rules in accor-
11 dance with the authority granted to the board pursuant to
12 section one, article ten-d of chapter five to assure compli-
13 ance with this section.

§15-2-44. Specification of actuarial assumptions.

1 The board shall specify and adopt all actuarial assump-
2 tions for the fund at its first meeting of every calendar

3 year or as soon thereafter as may be practicable, which
4 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
2 discontinued, the rights of all members to benefits accrued
3 or contributions made to the date of such termination or
4 discontinuance, to the extent then funded, are not for-
5 feited.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-2. Definitions.

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

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

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

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

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

17 (5) "Final average salary" means the average of the
18 highest annual compensation received for employment
19 with the division, including compensation paid for over-
20 time service, received by the member during any five years
21 within the member's last ten years of service.

22 (6) "Fund" means the West Virginia state police retire-
23 ment fund created pursuant to section four of this article.

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

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

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

31 (10) "Plan year" means the twelve month period com-
32 mencing on the first day of July of any designated year and
33 ending the following thirtieth day of June.

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

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

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

1 (a) There is hereby created the West Virginia state police
2 retirement system. Any West Virginia state trooper
3 employed by the West Virginia state police on or after the
4 effective date of this article shall be a member of this
5 retirement system and may not qualify for membership in
6 any other retirement system administered by the consoli-
7 dated public retirement board, so long as he or she remains
8 employed by the state police.

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

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

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

§15-2A-4a. Specification of actuarial assumptions.

1 The board shall specify and adopt all actuarial assump-
2 tions for the fund at its first meeting in each calendar year
3 or as soon thereafter as may be practicable, which assump-
4 tions shall become part of the terms of the system.

§15-2A-5. Members' contributions; employer contributions; forfeitures.

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

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

§15-2A-6a. Federal law maximum benefit limitations.

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

§15-2A-6b. Federal law minimum required distributions.

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

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

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

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

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

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

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

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

§15-2A-6c. Direct rollovers.

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

12 (1) "Eligible rollover distribution" means any distribu-
13 tion of all or any portion of the balance to the credit of the
14 distributee, except that an eligible rollover distribution
15 does not include any of the following: (i) Any distribution

16 that is one of a series of substantially equal periodic
17 payments not less frequently than annually made for the
18 life or life expectancy of the distributee or the joint lives
19 or the joint life expectancies of the distributee and the
20 distributee's designated beneficiary, or for a specified
21 period of ten years or more; (ii) any distribution to the
22 extent such distribution is required under Section
23 401(a)(9) of the Internal Revenue Code; (iii) the portion of
24 any distribution that is not includable in gross income
25 determined without regard to the exclusion for net unreal-
26 ized appreciation with respect to employer securities; (iv)
27 any hardship distribution described in Section
28 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v)
29 any other distribution or distributions expected to total
30 less than two hundred dollars during a year.

31 (2) "Eligible retirement plan" means an individual
32 retirement account described in Section 408(a) of the
33 Internal Revenue Code, an individual retirement annuity
34 described in Section 408(b) of the Internal Revenue Code,
35 an annuity plan described in Section 403(a) of the Internal
36 Revenue Code or a qualified plan described in Section
37 401(a) of the Internal Revenue Code that accepts the
38 distributee's eligible rollover distribution: *Provided*, That
39 in the case of an eligible rollover distribution to the
40 surviving spouse, an eligible retirement plan is an individ-
41 ual retirement account or individual retirement annuity.

42 (3) "Distributee" means an employee or former em-
43 ployee. In addition, the employee's or former employee's
44 surviving spouse and the employee's or former employee's
45 spouse or former spouse who is the alternate payee under
46 a qualified domestic relations order, as defined in Section
47 414(p) of the Internal Revenue Code with respect to
48 governmental plans, are distributees with regard to the
49 interest of the spouse or former spouse.

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

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

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

1 The moneys in the fund and the right of a member to a
2 retirement allowance, to the return of contributions, or to
3 any benefit under the provisions of this article, are hereby
4 exempt from any state or municipal tax; shall not be
5 subject to execution, garnishment, attachment or any other
6 process whatsoever except that the benefits or contribu-
7 tions under this system shall be subject to "qualified
8 domestic relations orders" as that term is defined in
9 Section 414(p) of the Internal Revenue Code with respect
10 to governmental plans; and shall be unassignable except as
11 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.**

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

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

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

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

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

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

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

40 (2) That within ninety days after honorable discharge
41 from the armed forces, he or she presented himself or

42 herself to the superintendent and offered to resume service
43 as an active member of the division; and

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

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

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

§15-2A-20. Benefits not forfeited if system terminates.

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
2 qualification requirements of Section 401(a) and related
3 sections of the Internal Revenue Code as applicable to
4 governmental plans. Notwithstanding any other provision
5 of state law, the board shall administer the retirement
6 system to fulfill this intent for the exclusive benefit of the
7 members and their beneficiaries. Any provision of this
8 article referencing or relating to these federal qualification
9 requirements shall be effective as of the date required by
10 federal law. The board may promulgate rules and amend
11 or repeal conflicting rules in accordance with the authority
12 granted to the board pursuant to section one, article ten-d
13 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
2 account with each member, showing the amount of the
3 member's contributions and the interest accumulations
4 thereon. It shall collect and keep in convenient form data
5 as may be necessary for the preparation of the required
6 mortality and service tables, and for the compilation of
7 such other information as may be needed for the actuarial
8 valuation of the funds created by this article. The retire-
9 ment board shall specify and adopt all actuarial assump-
10 tions for the system at its first meeting of every calendar
11 year or as soon thereafter as may be practicable, which
12 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
2 the following:

3 (a) New entrants, whose membership in the system shall
4 be compulsory upon employment as teachers and
5 nonteachers.

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

14 (1) Upon the withdrawal of accumulated contributions
15 after the cessation of service; or (2) upon retirement; or (3)
16 at death; or (4) if service amounts to fewer than five years
17 in any period of ten consecutive years.

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

34 (d) No member shall be eligible for prior service credit
35 unless he or she is eligible for prior service pension, as
36 prescribed by section twenty-two of this article; however,

37 a new entrant who becomes a present teacher as provided
38 in this paragraph shall be deemed eligible for prior service
39 pension upon retirement.

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

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

1 Any member who was absent from work while receiving
2 temporary total disability benefits pursuant to the provi-
3 sions of chapter twenty-three of this code as a result of a
4 compensable injury received in the course of and as a
5 result of his or her employment with the covered employer
6 during the time period beginning the first day of January,
7 one thousand nine hundred eighty-eight and the thirty-
8 first day of December, one thousand nine hundred ninety-
9 eight may purchase credited service for that time period or
10 those time periods the member was absent from work as a
11 result of a compensable injury and receiving temporary
12 total disability benefits: *Provided, That the member*
13 *returned to work with his or her covered employer within*
14 *one year following the cessation of temporary total*
15 *disability benefits. The member desiring to purchase such*
16 *credited service may do so only by lump sum payment*
17 *from personal funds: Provided, however, That the pur-*
18 *chase of service credit pursuant to the provisions of this*
19 *section shall be completed between the time period*
20 *beginning the first day of July, two thousand and ending*
21 *the thirtieth day of June, two thousand one: Provided*

22 *further*, That in order to purchase such service credit, the
23 member shall pay to the board his or her regular contribu-
24 tion and an equal amount that represents the employer's
25 contribution, based on the salary the member was receiv-
26 ing immediately prior to having sustained such compensa-
27 ble injury: *And provided further*, That the member
28 purchasing service credit under the provisions of this
29 section may not be charged interest. The maximum
30 number of years of service credit that may be purchased
31 under this section shall not exceed four.

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

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

10 (b) For the purpose of this article, the retirement board
11 shall grant prior service credit to new entrants and other
12 members of the retirement system for service in any of the
13 armed forces of the United States in any period of national
14 emergency within which a federal Selective Service Act
15 was in effect. For purposes of this section, "armed forces"
16 includes women's army corps, women's appointed volun-
17 teers for emergency service, army nurse corps, spars,
18 women's reserve and other similar units officially parts of
19 the military service of the United States. The military
20 service is considered equivalent to public school teaching,
21 and the salary equivalent for each year of that service is
22 the actual salary of the member as a teacher for his or her

23 first year of teaching after discharge from military service.
24 Prior service credit for military service shall not exceed
25 ten years for any one member, nor shall it exceed
26 twenty-five percent of total service at the time of retire-
27 ment. Notwithstanding the preceding provisions of this
28 subsection, contributions, benefits and service credit with
29 respect to qualified military service shall be provided in
30 accordance with Section 414(u) of the Internal Revenue
31 Code. For purposes of this section, "qualified military
32 service" has the same meaning as in Section 414(u) of the
33 Internal Revenue Code. The retirement board is autho-
34 rized to determine all questions and make all decisions
35 relating to this section and, pursuant to the authority
36 granted to the retirement board in section one, article ten-
37 d, chapter five of this code, may promulgate rules relating
38 to contributions, benefits and service credit to comply with
39 Section 414(u) of the Internal Revenue Code.

40 (c) For service as a teacher in the employment of the
41 federal government, or a state or territory of the United
42 States, or a governmental subdivision of that state or
43 territory, the retirement board shall grant credit to the
44 member: *Provided*, That the member shall pay to the
45 system double the amount he or she contributed during the
46 first full year of current employment, times the number of
47 years for which credit is granted, plus interest at a rate to
48 be determined by the retirement board. The interest shall
49 be deposited in the reserve fund and service credit granted
50 at the time of retirement shall not exceed the lesser of ten
51 years or fifty percent of the member's total service as a
52 teacher in West Virginia. Any transfer of out-of-state
53 service, as provided in this article, shall not be used to
54 establish eligibility for a retirement allowance and the
55 retirement board shall grant credit for the transferred
56 service as additional service only: *Provided, however*, That
57 a transfer of out-of-state service is prohibited if the service
58 is used to obtain a retirement benefit from another retire-

59 ment system: *Provided further*, That salaries paid to
60 members for service prior to entrance into the retirement
61 system shall not be used to compute the average final
62 salary of the member under the retirement system.

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

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

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

91 The teachers retirement board shall grant service credit
92 to any former or present member of the West Virginia

93 public employees retirement system who has been a
94 contributing member for more than three years, for service
95 previously credited by the public employees retirement
96 system and: (1) Shall require the transfer of the member's
97 contributions to the teachers retirement system; or (2) shall
98 require a repayment of the amount withdrawn any time
99 prior to the member's retirement: *Provided*, That there
100 shall be added by the member to the amounts transferred
101 or repaid under this subsection an amount which shall be
102 sufficient to equal the contributions he or she would have
103 made had the member been under the teachers retirement
104 system during the period of his or her membership in the
105 public employees retirement system plus interest at a rate
106 of six percent compounded annually from the date of
107 withdrawal to the date of payment. The interest paid shall
108 be deposited in the reserve fund.

109 (g) For service as a teacher in an elementary or second-
110 ary parochial school, located within this state and fully
111 accredited by the West Virginia department of education,
112 the retirement board shall grant credit to the member:
113 *Provided*, That the member shall pay to the system double
114 the amount contributed during the first full year of current
115 employment, times the number of years for which credit is
116 granted, plus interest at a rate to be determined by the
117 retirement board. The interest shall be deposited in the
118 reserve fund and service granted at the time of retirement
119 shall not exceed the lesser of ten years or fifty percent of
120 the member's total service as a teacher in the West Vir-
121 ginia public school system. Any transfer of parochial
122 school service, as provided in this section, may not be used
123 to establish eligibility for a retirement allowance and the
124 board shall grant credit for the transfer as additional
125 service only: *Provided, however*, That a transfer of paro-
126 chial school service is prohibited if the service is used to
127 obtain a retirement benefit from another retirement
128 system.

129 (h) If a member is not eligible for prior service credit or
130 pension as provided in this article, then his or her prior
131 service shall not be considered a part of his or her total
132 service.

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

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

145 Notwithstanding any provision of this article to the
146 contrary, when a member is or has been elected to serve as
147 a member of the Legislature, and the proper discharge of
148 his or her duties of public office require that member to be
149 absent from his or her teaching or administrative duties,
150 the time served in discharge of his or her duties of the
151 legislative office are credited as time served for purposes
152 of computing service credit: *Provided*, That the board may
153 not require any additional contributions from that member
154 in order for the board to credit him or her with the con-
155 tributing service credit earned while discharging official
156 legislative duties: *Provided, however*, That nothing herein
157 may be construed to relieve the employer from making the
158 employer contribution at the member's regular salary rate
159 or rate of pay from that employer on the contributing
160 service credit earned while the member is discharging his
161 or her official legislative duties. These employer payments
162 shall commence as of the first day of June, two thousand:
163 *Provided, further*, That any member to which the provi-

164 sions of this subsection apply may elect to pay to the board
165 an amount equal to what his or her contribution would
166 have been for those periods of time he or she was serving
167 in the Legislature. The periods of time upon which the
168 member paid his or her contribution shall then be included
169 for purposes of determining his or her final average salary
170 as well as for determining years of service: *And provided*
171 *further*, That a member utilizing the provisions of this
172 subsection is not required to pay interest on any contribu-
173 tions he or she may decide to make.

§18-7A-28a. Federal law maximum benefit limitations.

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

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

1 The requirements of this section apply to any distribu-
2 tion of a member's or beneficiary's interest and take
3 precedence over any inconsistent provisions of this retire-
4 ment system. This section applies to plan years beginning

5 after the thirty-first day of December, one thousand eight
6 hundred eighty-six. Notwithstanding anything in the
7 retirement system to the contrary, the payment of benefits
8 under this article shall be determined and made in accor-
9 dance with Section 401(a)(9) of the Internal Revenue Code
10 and the regulations thereunder. For this purpose, the
11 following provisions apply:

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

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

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

33 (1) If a member's interest is payable to a beneficiary,
34 distributions may be made over the life or over a period
35 certain not greater than the life expectancy of the benefi-
36 ciary commencing on or before the thirty-first of Decem-
37 ber of the calendar year immediately following the calen-
38 dar year in which the member died; or

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

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

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

§18-7A-28c. Direct rollovers.

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

12 (1) "Eligible rollover distribution" means any distribu-
13 tion of all or any portion of the balance to the credit of the
14 distributee, except that an eligible rollover distribution
15 does not include any of the following: (i) Any distribution
16 that is one of a series of substantially equal periodic
17 payments not less frequently than annually made for the
18 life or life expectancy of the distributee or the joint lives
19 or the joint life expectancies of the distributee and the
20 distributee's designated beneficiary, or for a specified
21 period of ten years or more; (ii) any distribution to the
22 extent such distribution is required under Section

23 401(a)(9) of the Internal Revenue Code; (iii) the portion of
24 any distribution that is not includable in gross income
25 determined without regard to the exclusion for net unreal-
26 ized appreciation with respect to employer securities; (iv)
27 any hardship distribution described in Section
28 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v)
29 any other distribution reasonably or distributions ex-
30 pected to total less than two hundred dollars during a
31 year.

32 (2) "Eligible retirement plan" means an individual
33 retirement account described in Section 408(a) of the
34 Internal Revenue Code, an individual retirement annuity
35 described in Section 408(b) of the Internal Revenue Code,
36 an annuity plan described in Section 403(a) of the Internal
37 Revenue Code, or a qualified plan described in Section
38 401(a) of the Internal Revenue Code, that accepts the
39 distributee's eligible rollover distribution: *Provided, That*
40 in the case of an eligible rollover distribution to the
41 surviving spouse, an eligible retirement plan is an individ-
42 ual retirement account or individual retirement annuity.

43 (3) "Distributee" means an employee or former em-
44 ployee. In addition, the employee's or former employee's
45 surviving spouse and the employee's or former employee's
46 spouse or former spouse who is the alternate payee under
47 a qualified domestic relations order, as defined in Section
48 414(p) of the Internal Revenue Code, as applicable to
49 governmental plans, are distributees with regard to the
50 interest of the spouse or former spouse.

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

53 (b) Nothing in this section may be construed as permit-
54 ting rollovers into this system or any other retirement
55 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
2 member to a retirement allowance, to the return of contri-
3 butions, or to any benefit under the provisions of this
4 article, are hereby exempt from municipal tax; shall not be
5 subject to execution, garnishment, attachment or any other
6 process whatsoever except that any benefits or contribu-
7 tions under this system shall be subject to "qualified
8 domestic relations orders" as that term is defined in
9 Section 414(p) of the Internal Revenue Code with respect
10 to governmental plans; and shall be unassignable except as
11 is provided in this article.

§18-7A-34. Loans to members.

1 A member of the retirement system upon written appli-
2 cation may borrow from his or her individual account in
3 the teachers accumulation fund, subject to these restric-
4 tions:

5 (1) Loans shall be made in multiples of ten dollars, the
6 minimal loan being one hundred dollars and the maximum
7 being eight thousand dollars: *Provided*, That the maximum
8 amount of any loan when added to the outstanding
9 balance of all other loans shall not exceed the lesser of the
10 following: (a) fifty thousand dollars reduced by the excess
11 (if any) of the highest outstanding balance of loans during
12 the one-year period ending on the day before the date on
13 which the loan is made, over the outstanding balance of
14 loans to the member on the date on which the loan is
15 made; or (b) fifty percent of the member's contributions to
16 his or her individual account in the teachers accumula-
17 tions fund: *Provided, however*, That if the total amount of
18 loaned money outstanding exceeds forty million dollars,
19 the maximum shall not exceed three thousand dollars until

20 the teachers retirement board determines that loans
21 outstanding have been reduced to an extent that addi-
22 tional loan amounts are again authorized.

23 (2) Interest charged on the amount of the loan shall be
24 six percent per annum, or a higher rate as set by the
25 teachers retirement board. If repayable in installments, the
26 interest shall not exceed the annual rate so established
27 upon the principal amount of the loan, for the entire
28 period of the loan, and such charge shall be added to the
29 principal amount of the loan. The minimal interest charge
30 shall be for six months.

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

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

37 (5) From his or her monthly salary as a teacher the
38 member shall pay the loan and interest by deductions
39 which will pay the loan and interest in substantially level
40 payments in not more than sixty nor less than six months.
41 Upon notice of loan granted and payment due, the em-
42 ployer shall be responsible for making such salary deduc-
43 tions and reporting them to the retirement board. At the
44 option of the retirement board, loan deductions may be
45 collected as prescribed herein for the collection of mem-
46 bers' contribution, or may be collected through issuance of
47 warrant by employer. If the borrower decides to make loan
48 payments while not paid for service as a teacher, the
49 retirement board must accept such payments.

50 (6) The entire unpaid balance of any loan, and interest
51 due thereon, shall, at the option of the retirement board,
52 become due and payable without further notice or demand
53 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;

6 (2) "Existing retirement system" means the state teach-
7 ers retirement system established in article seven-a of this
8 chapter;

9 (3) "Existing employer" means any employer who
10 employed or employs a member of the existing retirement
11 system;

12 (4) "Consolidated board" or "board" means the consoli-
13 dated public retirement board created and established
14 pursuant to article ten-d, chapter five of this code;

15 (5) "Member" or "employee" means the following
16 persons, if regularly employed for full-time service: (a)
17 Any person employed for instructional service in the
18 public schools of West Virginia; (b) principals; (c) public
19 school librarians; (d) superintendents of schools and
20 assistant county superintendents of schools; (e) any county
21 school attendance director holding a West Virginia
22 teacher's certificate; (f) the executive secretary of the
23 retirement board; (g) members of the research, extension,
24 administrative or library staffs of the public schools; (h)
25 the state superintendent of schools, heads and assistant
26 heads of the divisions under his or her supervision, or any
27 other employee thereunder performing services of an
28 educational nature; (i) employees of the state board of
29 education who are performing services of an educational
30 nature; (j) any person employed in a non-teaching capacity
31 by the state board of education, any county board of
32 education, the state department of education or the
33 teachers retirement board, if such person was formerly
34 employed as a teacher in the public schools; (k) all class-
35 room teachers, principals and educational administrators
36 in schools under the supervision of the department of
37 corrections, the department of health or the department of
38 human services; (l) any person who is regularly employed
39 for full-time service by any county board of education, the
40 state board of education or the teachers retirement board;

41 and (m) the administrative staff of the public schools
42 including deans of instruction, deans of men and deans of
43 women, and financial and administrative secretaries;

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

48 (7) "Year of employment service" means employment for
49 at least ten months, a month being defined as twenty
50 employment days: *Provided*, That no more than one year
51 of service may be accumulated in any twelve-month
52 period;

53 (8) "Employer" means the agency of and within the state
54 which has employed or employs a member;

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

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

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

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

71 (13) "Annuity account" or "annuity" means an account
72 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

9 sections of the Internal Revenue Code as applicable to
10 governmental plans. Notwithstanding any other provision
11 of state law, the board shall administer the retirement
12 system to fulfill this intent for the exclusive benefit of the
13 members and their beneficiaries. Any provision of this
14 article referencing or relating to these federal qualification
15 requirements shall be effective as of the date required by
16 federal law. The board may promulgate rules and amend
17 or repeal conflicting rules in accordance with the authority
18 granted to the board pursuant to section one, article ten-d,
19 chapter five of this code to assure compliance with the
20 requirements of this section.

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

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

13 Notwithstanding the provisions of section twenty-three,
14 article seven-a of this chapter, any employee whose
15 employment terminates after the thirtieth day of June, one
16 thousand nine hundred ninety-one, who is later
17 reemployed by an employer shall be eligible for member-
18 ship only in the teachers' defined contribution system:
19 *Provided*, That if such reemployment with an existing
20 employer occurs not more than six months after the

21 employee's previous employment, he or she shall be
22 entitled to readmission to the existing retirement system
23 in which he or she was originally a member: *Provided*,
24 *however*, That if such employee has five or more years of
25 credited service in the existing retirement system, he or
26 she shall be entitled to readmission into the existing
27 retirement system in which he or she was originally a
28 member so long as he or she has not withdrawn his or her
29 contributions from the existing retirement system: *Pro-*
30 *vided further*, That if such employee has withdrawn his or
31 her contribution from the existing retirement system, then
32 readmission shall not be permitted and the employee will
33 be entitled only to the defined contribution system.

34 An employee whose employment with an employer was
35 suspended or terminated while he or she served as an
36 officer with a statewide professional teaching association
37 is eligible for readmission to the existing retirement
38 system in which he or she was a member. Any employee
39 reemployed with an employer on or after the first day of
40 July, one thousand nine hundred ninety-one, who had five
41 or more years credited service in the teachers' defined
42 benefit retirement system may elect readmission to the
43 teachers' defined benefit retirement system in which he or
44 she was originally a member. Any employee reemployed
45 between the first day of July, one thousand nine hundred
46 ninety-one, and the first day of July, one thousand nine
47 hundred ninety-five, and who was required to participate
48 in the teachers' defined contribution system but now
49 elects, pursuant to the provisions of this section, readmis-
50 sion to the teachers' defined benefit retirement system
51 shall pay an additional contribution to the teachers'
52 defined benefit retirement system equal to one and
53 one-half percent of his or her annual gross compensation
54 earned for each year he or she participated in the teachers'
55 defined contribution system and shall transfer all member
56 and employer contributions and investment earnings

57 therefrom from the teacher defined contribution system to
58 the teachers' defined benefit system and shall receive
59 service credit for the time the member participated in the
60 defined contribution system as if that participation had
61 been in the teachers' defined benefit retirement system.
62 Any member making an election under the provisions of
63 this section to reenter the teachers' defined benefit retire-
64 ment system who is currently a member of the defined
65 contribution retirement system must do so on or before the
66 first day of January, one thousand nine hundred
67 ninety-six. Any other member reemployed must make the
68 election as to the retirement system that he or she will be
69 a member of at the time he or she is reemployed.

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

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

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

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

1 Contributions, benefits and service credit with respect to
2 qualified military service will be provided in accordance
3 with Section 414(u) of the Internal Revenue Code. For

4 purposes of this section, "qualified military service" has
5 the same meaning as in Section 414(u) of the Internal
6 Revenue Code. The retirement board is authorized to
7 determine all questions and make all decisions relating to
8 this section and, pursuant to the authority granted to the
9 retirement board in section one, article ten-d, chapter five
10 of this code, may to promulgate rules relating to contribu-
11 tions, benefits and service credit to comply with Section
12 414(u) of the Internal Revenue Code.

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

1 At any time after an employee reaches the age of
2 fifty-five years, and subject to the provisions of section
3 twelve-a of this article, he or she may elect to take retire-
4 ment by notifying the board or its designee in writing of
5 such intention not less than sixty days prior to the effec-
6 tive date of retirement. Retirement payments shall
7 commence within thirty days of the retirement date under
8 such payment option or options as may be provided by the
9 board and elected by the employee.

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

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

12 (a) The payment of benefits under the defined contribu-
13 tion system to any member shall be distributed to him or
14 her not later than the required beginning date, or be

15 distributed to him or her commencing not later than the
16 required beginning date, in accordance with regulations
17 prescribed under Section 401(a)(9) of the Internal Revenue
18 Code, over the life of the member or over the lives of the
19 member and his or her beneficiary or over a period not
20 extending beyond the life expectancy of the member and
21 his or her beneficiary.

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

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

33 (1) If a member's interest is payable to a beneficiary,
34 distributions may be made over the life of that beneficiary
35 or over a period certain not greater than the life expect-
36 tancy of the beneficiary commencing on or before the
37 thirty-first day of December of the calendar year immedi-
38 ately following the calendar year in which the participant
39 died; or

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

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

46 (B) The earlier of: (i) The thirty-first day of December of
47 the calendar year following the calendar year in which the

48 member died; or (ii) the thirty-first day of December of the
49 calendar year following the calendar year in which the
50 spouse died.

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

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

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

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

15 (c) Notwithstanding any other provision of this article or
16 state law, the board shall administer the retirement system
17 in compliance with the limitations of Section 415 of the
18 Internal Revenue Code and treasury regulations under that
19 section to the extent applicable to governmental plans so
20 that no annuity or other benefit provided under this
21 system shall exceed those limitations. The extent to which
22 any annuity or other benefit payable under this retirement
23 system shall be reduced as compared to the extent which
24 an annuity, contributions or other benefits under any other

25 defined benefit plans or defined contribution plans
26 required to be taken into consideration under Section 415
27 of the Internal Revenue Code shall be reduced shall be
28 determined by the board in a manner that shall maximize
29 the aggregate benefits payable to the member. If the
30 reduction is under this retirement system, the board shall
31 advise affected members of any additional limitation on
32 the annuities required by this section.

§18-7B-13b. Direct Rollovers.

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

12 (1) "Eligible rollover distribution" means any distribu-
13 tion of all or any portion of the balance to the credit of the
14 distributee, except that an eligible rollover distribution
15 does not include any of the following: (i) Any distribution
16 that is one of a series of substantially equal periodic
17 payments not less frequently than annually made for the
18 life or life expectancy of the distributee or the joint lives
19 or the joint life expectancies of the distributee and the
20 distributee's designated beneficiary, or for a specified
21 period of ten years or more; (ii) any distribution to the
22 extent such distribution is required under Section
23 401(a)(9) of the Internal Revenue Code; (iii) the portion of
24 any distribution that is not includable in gross income
25 determined without regard to the exclusion for net unreal-
26 ized appreciation with respect to employer securities; (iv)

27 any hardship distribution described in Section
28 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v)
29 any other distribution or distributions reasonably ex-
30 pected to total less than two hundred dollars during a
31 year.

32 (2) "Eligible retirement plan" means an individual
33 retirement account described in Section 408(a) of the
34 Internal Revenue Code, an individual retirement annuity
35 described in Section 408(b) of the Internal Revenue Code,
36 an annuity plan described in Section 403(a) of the Internal
37 Revenue Code or a qualified plan described in Section
38 401(a) of the Internal Revenue Code that accepts the
39 distributee's eligible rollover distribution: *Provided*, That
40 in the case of an eligible rollover distribution to the
41 surviving spouse, an eligible retirement plan is an individ-
42 ual retirement account or individual retirement annuity.

43 (3) "Distributee" means an employee or former em-
44 ployee. In addition, the employee's or former employee's
45 surviving spouse and the employee's or former employee's
46 spouse or former spouse who is the alternate payee under
47 a qualified domestic relations order, as defined in Section
48 414(p) of the Internal Revenue Code with respect to
49 governmental plans, are distributees with regard to the
50 interest of the spouse or former spouse.

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

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

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

1 The right of any person to a benefit provided for in this
2 article shall not be subjected to execution, attachment,

3 garnishment, the operation of bankruptcy or insolvency
4 laws, or other process whatsoever with the exception that
5 the benefits or contributions under this system shall be
6 subject to "qualified domestic relations orders" as that
7 term is defined in Section 414(p) of the Internal Revenue
8 Code with respect to governmental plans, nor shall any
9 assignment thereof be enforceable in any court.

§18-7B-19. Benefits not forfeited if system terminates.

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

CHAPTER 51. COURTS AND THEIR OFFICERS.

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

§51-9-1a. Definitions.

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

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

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

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

14 (e) "Member" means a judge participating in this system.

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

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

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

**§51-9-3. Custody, permissible investment and administration of
retirement system trust fund; state auditor's author-
ity as administrator and trust fund fiduciary;
refunds required, including interest; federal qualifi-
cation requirements.**

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

10 (b) In a manner and to an extent consonant with sound
11 administrative principles, the state board of investments
12 shall have authority to invest such fund in interest-bearing
13 securities of the United States of America, of the state of
14 West Virginia and of any political subdivision thereof or
15 such other investments as may be authorized or permitted
16 by the provisions of article six, chapter twelve of this code.

17 (c) The state auditor shall be the primary fiscal officer,
18 responsible for the records and administration of the trust
19 fund, including budgetary matters incident to the author-
20 ity vested in him or her with respect to judicial department
21 appropriations under article VI, section fifty-one of the
22 constitution of West Virginia. The state auditor shall also,
23 as trust fund fiduciary, independently determine anew, in
24 a substantive sense and as a check and balance, any
25 information concerning eligible service years, required
26 money contributions, computation of judge's retirement
27 benefit or spousal benefit or any other substantive element
28 of qualification supplied or certified to the state auditor by
29 any other public officer, including the supreme court
30 administrator or the chief executive, toward proper final
31 review before issuance of a state warrant in payment of
32 any benefit under the judges' retirement system.

33 (d) Through the thirtieth day of June, one thousand nine
34 hundred ninety-one, the state auditor shall be the primary
35 fiscal officer, responsible for the records and administra-
36 tion of the trust fund, including budgetary matter incident
37 to the authority vested in him or her with respect to
38 judicial department appropriations under article VI,
39 section fifty-one of the constitution of West Virginia. The
40 state auditor shall also, as trust fund fiduciary, independ-
41 ently determine anew, in a substantive sense and as a
42 check and balance, any information concerning eligible
43 service years, required money contributions, computation
44 of judge's retirement benefit or spousal benefit or any
45 other substantial element of qualification supplied or
46 certified to the state auditor by any other public officer,
47 including the supreme court administrator or the chief
48 executive, toward proper final review before issuance of a
49 state warrant in payment of any benefit under the judges'
50 retirement system. From the first day of July, one thou-
51 sand nine hundred ninety-one and thereafter, the funds
52 shall be administered by the consolidated public retire-

53 ment board created by article ten-d, chapter five of this
54 code.

55 (e) In respect of any credited service heretofore acquired
56 under the *Dostert* decision and subsequent related deci-
57 sions, the state auditor shall make refund to any person
58 heretofore making payment to acquire such service credit,
59 primary or derivative, in the amount so earlier paid,
60 together with interest at the same rate such sum actually
61 earned because of its investment by the auditor or trea-
62 surer, as the case may be, in the consolidated pension pool
63 or with the interest such sum would have earned if timely
64 invested in such pool, whichever amount of interest be
65 greater.

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

§51-9-3a. Specification of actuarial assumptions.

1 The board at its first meeting in each calendar year or as
2 soon thereafter as may be practicable shall adopt and
3 specify actuarial assumptions for the system, which
4 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**

actual retirement disallowed; leased employees; military service credit; maximum allowable and qualified military service; qualifiable prosecutorial service.

1 (a) Every person who is now serving or shall hereafter
2 serve as a judge of any court of record of this state shall
3 pay into the judges' retirement fund six percent of the
4 salary received by such person out of the state treasury:
5 *Provided*, That when a judge becomes eligible to receive
6 benefits from such trust fund by actual retirement, no
7 further payment by him or her shall be required, since
8 such employee contribution, in an equal treatment sense,
9 ceases to be required in the other retirement systems of the
10 state, also, only after actual retirement: *Provided*, how-
11 ever, That on and after the first day of January, one
12 thousand nine hundred ninety-five, every person who is
13 then serving or shall thereafter serve as a judge of any
14 court of record in this state shall pay into the judges'
15 retirement fund nine percent of the salary received by that
16 person. Any prior occurrence or practice to the contrary,
17 in any way allowing discontinuance of required employee
18 contributions prior to actual retirement under this retire-
19 ment system, is rejected as erroneous and contrary to
20 legislative intent and as violative of required equal
21 treatment and is hereby nullified and discontinued fully,
22 with the state auditor to require such contribution in every
23 instance hereafter, except where no contributions are
24 required to be made under any of the provisions of this
25 article.

26 (b) An individual who is a leased employee shall not be
27 eligible to participate in the system. For purposes of this
28 system, a "leased employee" means any individual who
29 performs services as an independent contractor or pursu-
30 ant to an agreement with an employee leasing organization
31 or other similar organization. If a question arises regard-

32 ing the status of an individual as a leased employee, the
33 board has the final power to decide the question.

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

42 (d) Any judge seeking to qualify military service to be
43 claimed as credited service, in allowable aggregate maxi-
44 mum amount up to five years, shall be entitled to be
45 awarded the same without any required payment in
46 respect thereof to the judges' retirement fund.

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

60 (f) Any judge holding office as such on the effective date
61 of the amendments to this article adopted by the Legisla-
62 ture at its regular session in the year one thousand nine
63 hundred eighty-seven, who seeks to qualify service as a
64 prosecuting attorney as credited service, which service
65 credit must have been earned prior to the year one thou-

66 sand nine hundred eighty-seven, shall be required to pay
67 into the judges' retirement fund nine percent of the annual
68 salary which was actually received by such person as
69 prosecuting attorney during the time such prosecutorial
70 service was rendered prior to the year one thousand nine
71 hundred eighty-seven, and for which credited service is
72 being sought, together with applicable interest. No judge
73 whose term of office shall commence after the effective
74 date of such amendments to this article shall be eligible to
75 claim any credit for service rendered as a prosecuting
76 attorney as eligible service for retirement benefits under
77 this article, nor shall any time served as a prosecutor after
78 the year one thousand nine hundred eighty-eight be
79 considered as eligible service for any purposes of this
80 article.

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

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

1 (a) Except as otherwise provided in sections five, twelve
2 and thirteen of this article, and subject to the provisions of
3 subsection (e) of this section, any person who is now
4 serving, or who shall hereafter serve, as a judge of any
5 court of record of this state and shall have served as such
6 judge for a period of not less than sixteen full years and
7 shall have reached the age of sixty-five years, or who has
8 served as judge of such court or of that court and other
9 courts of record of the state for a period of sixteen full
10 years or more (whether continuously or not and whether
11 said service be entirely before or after this article became
12 effective, or partly before and partly after said date, and

13 whether or not said judge shall be in office on the date he
14 or she shall become eligible to benefits hereunder) and
15 shall have reached the age of sixty-five years, or who is
16 now serving, or who shall hereafter serve, as a judge of any
17 court of record of this state and shall have served as such
18 judge for a period of not less than twenty-four full years,
19 regardless of age, shall, upon a determination and certifi-
20 cation of his or her eligibility as provided in section nine
21 hereof, be paid from the fund annual retirement benefits,
22 so long as he or she shall live, in an amount equal to
23 seventy-five percent of the annual salary of the office from
24 which he or she has retired based upon such salary of such
25 office and as such salary may be changed from time to
26 time during the period of his or her retirement and the
27 amount of his or her retirement benefits shall be based
28 upon and be equal to seventy-five percent of the highest
29 annual salary of such office for any one calendar year
30 during the period of his or her retirement, and shall be
31 payable in monthly installments: *Provided*, That such
32 retirement benefits shall be paid only after such judge has
33 resigned as such or, for any reason other than his or her
34 impeachment, his or her service as such has ended: *Pro-*
35 *vided, however*, That every such person seeking to retire
36 and to receive the annual retirement benefits provided by
37 this subsection must have served a minimum of twelve
38 years as a sitting judge of any such court of record.

39 (b) Notwithstanding any other provisions of this article
40 with the exception of sections twelve-a and twelve-b, any
41 person who is now serving or who shall hereafter serve as
42 a judge of any court of record of this state and who shall
43 have accumulated sixteen years or more of credited
44 service, at least twelve years of which is as a sitting judge
45 of a court of record, and who has attained the age of
46 sixty-two years or more but less than the age of sixty-five
47 years, may elect to retire from his or her office and to
48 receive the pension to which he or she would otherwise be

49 entitled to receive at age sixty-five, but with an actuarial
50 reduction of pension benefit to be established as a reduced
51 annuity receivable throughout retirement. The reduced
52 percentage (less than seventy-five percent) actuarially
53 computed, determined and established at time of retire-
54 ment in respect of this reduced pension benefit shall also
55 continue and be applicable to any subsequent new annual
56 salary set for the office from which such judge has retired
57 and as such salary may be changed from time to time
58 during the period of his or her retirement.

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

67 (d) If a judge of a court of record who is presently sitting
68 as such on the effective date of the amendments to this
69 section enacted by the Legislature at its regular session
70 held in the year one thousand nine hundred eighty-seven,
71 and who has served for a period of not less than twelve full
72 years and has made payments into the judges' retirement
73 fund as provided in this article for each month during
74 which he served as judge, following the effective date of
75 this section, any portion of time which he or she had
76 served as prosecuting attorney in any county in this state
77 shall qualify as years of service, if such judge shall pay
78 those sums required to be paid pursuant to the provisions
79 of section four of this article: *Provided*, That any term of
80 office as prosecuting attorney, or part thereof, commenc-
81 ing after the thirty-first day of December, one thousand
82 nine hundred eighty-eight, shall not hereafter in any way

83 qualify as eligible years of service under this retirement system.

84 (c) Any retirement benefit accruing under the provisions
85 of this section shall not be paid if otherwise barred under
86 the provisions of article ten-a, chapter five of this code.

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

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

1 Any judge of a court of record of this state, who shall
2 have served for a period of not less than eight full years
3 after attaining the age of sixty-five years and who shall
4 have made payments into the judges' retirement fund as
5 provided in this article for each month during which he or
6 she served as such judge following the effective date of this
7 section, shall be subject to all the applicable terms and
8 provisions of this article, not inconsistent with the provi-
9 sions hereof, and shall receive retirement benefits in an
10 amount equal to seventy-five percent of the annual salary
11 of the office from which he or she has retired based upon
12 such salary of such office as such salary may be changed
13 from time to time during the period of his or her retire-
14 ment and the amount of his or her retirement benefits shall
15 be based upon and be equal to seventy-five percent of the
16 highest annual salary of such office for any one calendar
17 year during the period of his or her retirement, and shall
18 be payable in monthly installments. If such judge shall
19 become incapacitated to perform his or her said duties
20 before the expiration of his or her said term and after
21 serving for six years thereof, and upon the acceptance of
22 his or her resignation as in this article provided, he or she
23 shall be paid the annual retirement benefits as herein
24 provided so long as he or she shall live. The provisions of

25 this section shall prevail over any language to the contrary
26 in this article contained, except those provisions of
27 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
2 state law, the board shall administer the retirement system
3 in compliance with the limitations of Section 415 of the
4 Internal Revenue Code and regulations under that section
5 to the extent applicable to governmental plans so that no
6 annuity or other benefit provided under this system shall
7 exceed those limitations. The extent to which any annuity
8 or other benefit payable under this retirement system shall
9 be reduced as compared with the extent to which an
10 annuity, contributions or other benefits under any other
11 defined benefit plans or defined contribution plans
12 required to be taken into consideration under Section 415
13 of the Internal Revenue Code shall be reduced shall be
14 determined by the board in a manner that shall maximize
15 the aggregate benefits payable to the member. If the
16 reduction is under this retirement system, the board shall
17 advise affected members of any additional limitation on
18 the annuities required by this section.

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

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

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

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

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

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

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

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

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

§51-9-12c. Direct rollovers.

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

12 (1) "Eligible rollover distribution" means any distribu-
13 tion of all or any portion of the balance to the credit of the
14 distributee, except that an eligible rollover distribution
15 does not include any of the following: (i) Any distribution
16 that is one of a series of substantially equal periodic
17 payments not less frequently than annually made for the
18 life or life expectancy of the distributee or the joint lives
19 or the joint life expectancies of the distributee and the
20 distributee's designated beneficiary, or for a specified
21 period of ten years or more; (ii) any distribution to the
22 extent such distribution is required under Section
23 401(a)(9) of the Internal Revenue Code; (iii) the portion of
24 any distribution that is not includable in gross income
25 determined without regard to the exclusion for net unreal-
26 ized appreciation with respect to employer securities; (iv)
27 any hardship distribution described in Section
28 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v)

29 any other distribution or distributions expected to total
30 less than two hundred dollars during a year.

31 (2) "Eligible retirement plan" means an individual
32 retirement account described in Section 408(a) of the
33 Internal Revenue Code, an individual retirement annuity
34 described in Section 408(b) of the Internal Revenue Code,
35 an annuity plan described in Section 403(a) of the Internal
36 Revenue Code, or a qualified plan described in Section
37 401(a) of the Internal Revenue Code, that accepts the
38 distributee's eligible rollover distribution: *Provided*, That
39 in the case of an eligible rollover distribution to the
40 surviving spouse, an eligible retirement plan is an individ-
41 ual retirement account or individual retirement annuity.

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

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

52 (b) Nothing in this section may be construed as permit-
53 ting rollovers into this system or any other system admin-
54 istered by the board.

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

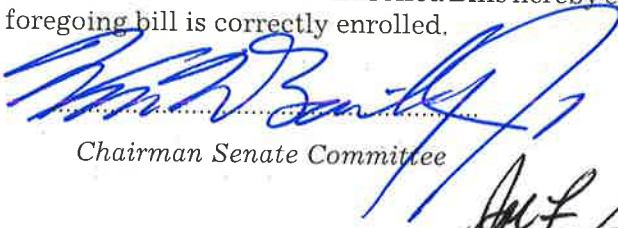
1 The moneys in the judges' retirement fund, the right of
2 any judge to participate in the pay and benefits of the
3 retirement system and the right of any judge to a refund of
4 payments or contributions made to the fund shall not be

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

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

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 may not be forfeited.

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



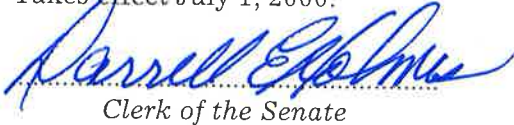
Chairman Senate Committee



Chairman House Committee

Originating in the Senate.

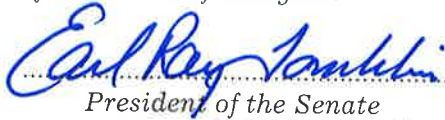
Takes effect July 1, 2000.



Clerk of the Senate



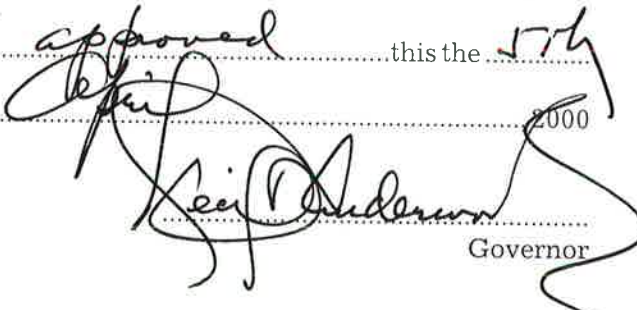
Clerk of the House of Delegates



President of the Senate



Speaker House of Delegates

The within approved this the 17th
Day of April 2000

Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/0

Time 3:15 pm