House Bill No. 2984

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

Passed April 9, 2005
In Effect from Passage
AN ACT to amend and reenact §5-5-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-10-2, §5-10-15, §5-10-17, §5-10-21, §5-10-22, §5-10-23, §5-10-26, §5-10-27, §5-10-31 and §5-10-44 of said code; to amend said code by adding thereto a new section, designated §5-10-22h; to amend and reenact §5-10A-2 and §5-10A-3 of said code; to amend said code by adding thereto a new section, designated §5-10A-11; to amend and reenact §7-14D-5, §7-14D-7, §7-14D-13 and §7-14D-23 of said code; to amend and reenact §12-8-2, §12-8-3, §12-8-4, §12-8-5, §12-8-6, §12-8-7, §12-8-8 and §12-8-10 of said code; to amend said code by adding thereto a new section designated §12-8-15; to amend and reenact §15-2-26, §15-2-27, §15-2-27a, §15-2-28, §15-2-29, §15-2-30, §15-2-31, §15-2-32, §15-2-33, §15-2-34 and §15-2-37 of said code; to amend said code by adding thereto four new sections, designated §15-2-25b, §15-2-31a, §15-2-31b and §15-2-39a; to amend and reenact §15-2A-2, §15-2A-5, §15-2A-6, §15-2A-7, §15-2A-8, §15-2A-9, §15-2A-10, §15-2A-11, §15-2A-12, §15-2A-13, §15-2A-14 and §15-2A-19 of said code; to amend said code by adding thereto four new sections,
designated §15-2A-11a, §15-2A-11b, §15-2A-21 and §15-2A-22; to amend and reenact §18-7A-3, §18-7A-14, §18-7A-17, §18-7A-18, §18-7A-18a, §18-7A-23a, §18-7A-25, §18-7A-26 and §18-7A-34 of said code; to amend said code by adding thereto three new sections, designated §18-7A-28c, §18-7A-39 and §18-7A-40; to amend and reenact §18-7B-2, §18-7B-7, §18-7B-9, §18-7B-11, §18-7B-12a and §18-7B-16 of said code; to amend and reenact said code by adding thereto two new sections, designated §18-7B-7a and §18-7B-20; to amend said code by adding thereto a new article, designated §18-7C-1, §18-7C-2, §18-7C-3, §18-7C-4, §18-7C-5, §18-7C-6, §18-7C-7, §18-7C-8, §18-7C-9, §18-7C-10, §18-7C-11, §18-7C-12, §18-7C-13 and §18-7C-14; and to amend said code by adding thereto a new section, designated §519-9-6c, all relating to state pensions and retirement generally; providing comprehensive changes to certain plans administered by the Consolidated Public Retirement Board; enacting the Governor’s Pension Reform Act of 2005; rights of members’ unused, accrued leave in final average salary in the Public Employees Retirement System; limitations on benefit increases; bond pledges and covenants regarding unfunded liabilities; limiting time for amortization; amending and adding definitions in the Public Employees Retirement System; clarifying use of restricted qualified military service credit to one retirement system; vesting of retirement benefits for those members of the armed forces accumulating nine or more years of credited service who are called from participating employment to compulsory military service or armed conflict and who die during, or as a result of, compulsory active service and prior to resumption of participating employment; setting time limit on application; restricting certain rights of members to select a plan beneficiary; establishing a cap on the amount certain persons may receive from the Public Employees Retirement System where that person is also receiving a pension from another pension or retirement system administered by the Consolidated Public Retirement Board; authorizing annual physician review and requiring an annual statement of earnings
from certain persons receiving disability retirement payments; providing for suspension of benefits upon failure of disability retiree to furnish certain information; providing that interest is to be included in the calculation of terminal benefits payable as the result of death of retired participants; addressing the correction of employer errors; clarifying use of members’ unused, accrued leave in final average salary; making technical corrections to the Public Employees Retirement System; amending the definitions of less than honorable service and retirement plan; increasing the time to issue notice to terminate benefits; requiring prosecuting attorneys to notify retirement board of any convictions or pleas to less than honorable service; declaring policy and making legislative findings regarding pension liability redemption; setting forth definitions; providing for issuance of bonds; method of bond issuance and sale of bonds; use of bond proceeds; continuation of Pension Liability Redemption Fund and disbursements therefrom; setting forth state pledges and covenants; operation of article; relating to the Deputy Sheriff Retirement System; concurrent contributions by members and employers; credit for nondeputy sheriff service in the Public Employees Retirement System prior to transfer; treatment of withdrawals not repaid prior to transfer; providing that any person becoming a member of the Deputy Sheriff Retirement System after the first day of July, two thousand five, may not borrow from that plan; relating to the West Virginia State Police Death, Disability and Retirement Fund generally; adding general definitions to the West Virginia State Police Death, Disability and Retirement Fund; adding definitions of “law-enforcement officer”, “partially disabled”, “totally disabled” and “physical or mental impairment” to the West Virginia State Police Death, Disability and Retirement Fund; making technical changes in to the West Virginia State Police Death, Disability and Retirement Fund; providing for probable permanent disability status; specifying that total disability now is inability to perform any substantial gainful employment and that partial disability is inability to perform law enforcement duties;
specifying limitation on compensation rendered to health care providers; providing that member receiving annuity for partial disability incurred in performance of duty may be employed as an elected sheriff or appointed chief of police if it is shown to the Board that such employment is not inconsistent with the partial disability; allowing application for disability to be made by person acting on member’s behalf; allowing Superintendent to petition Board for member’s disability when he or she deems the member disabled; authorizing rules; judicial review; allowing Board to withhold payment pending judicial review; requiring disability recipient to file annual statement of earnings and setting forth penalty for refusal or failure to do so; annual report of employer’s disability retirement experience in to the West Virginia State Police Death, Disability and Retirement Fund; limitation on benefit increases; relating to amending definitions in the West Virginia State Police Retirement System; determination of contributions; acquiring retirement credited service through member’s use of accrued annual or sick leave days in the West Virginia State Police Retirement System; establishing starting date for payment of annuity in the West Virginia State Police Retirement System; clarifying disability provisions and technical corrections in the West Virginia State Police Retirement System; annual report of employer’s disability retirement experience in to the West Virginia State Police Retirement System; limitation on benefit increases; amending provisions relating to the State Teachers Retirement System; amending, adding and alphabetizing the definitions; providing for the use of qualified military service in the State Teachers Retirement System; providing that in the case of deceased retired participants that interest is to be included in the calculation of terminal benefits payable and making other technical modifications in the State Teachers Retirement System; clarifying provisions for loan repayment in the State Teachers Retirement System; replacing earnable compensation with gross salary in the State Teachers Retirement System; clarifying maximum loan amount and making
technical corrections in the State Teachers Retirement System; making technical corrections to the Teachers Retirement System; creating the Teachers Employers Contribution Collection Account; monies to be deposited and transfer of monies in account; continuing the Teachers Retirement System Fund; monies to be deposited and use of monies in fund; discontinuing the loan program participation of teachers and nonteachers who become members of the Teachers Retirement System on or after the first day of July, two thousand five; limitation on benefits; creating Employee Pension and Health Care Benefits Fund; moneys to be deposited; use of moneys in fund; amending certain definitions in the Teachers' Defined Contribution System; clarifying participation requirement in the Teachers' Defined Contribution System; providing employer deadlines for deposit of contributions in the Teachers Defined Contribution System; establishing when payments are to be made into and out of the suspension account in the Teachers Defined Contribution System; adding the Internal Revenue Service provisions concerning incidental death benefits in the Teachers Defined Contribution System; clarifying that all years of employee service will be counted for vesting purposes in the Teachers Defined Contribution System; prohibiting involuntary cash-outs effective the thirtieth day of June, two thousand five; making technical corrections in the Teachers Defined Contribution System; requiring River Valley Child Development Services to offer pension plan for employees; allowing employees to withdraw from PERS; requiring notice; relating to the merger and consolidation of the Teachers Defined Contribution Retirement System and the State Teachers Retirement System generally; closing the Teachers Defined Contribution Retirement System to newly hired personnel; providing legislative findings and purpose; providing definitions; providing for merger and consolidation of the Teachers Defined Contribution Retirement System and the State Teachers Retirement System upon election; providing responsibilities of the Consolidated Public Retirement Board; setting forth
dates and time periods for transition and election; requiring that increase of or new benefits to the Teachers Retirement System be amortized over a ten-year time period; providing for education about election and merger for members; requiring legal notice to members; providing for transfer of assets from the Teachers Defined Contribution Retirement System to the State Teachers Retirement System upon favorable vote for consolidation and merger; providing that the Teachers Defined Contribution Retirement System shall not exist upon favorable vote for consolidation and merger; setting forth terms of merger and consolidation of the Teachers Defined Contribution Retirement System and the State Teachers Retirement System; providing for service credit in the State Teachers Retirement; requiring members of Teachers Defined Contribution Plan to pay additional amount to receive credit upon merger; providing options and loans for members moving to the remaining plan; providing service credit for transferring member; addressing withdrawals and cash outs; providing for election on the question of merger and consolidation of the Teachers Defined Contribution Retirement System and the State Teachers Retirement System; setting forth requirements of election; allowing Consolidated Public Retirement Board to contract directly for professional services for purposes of performing its responsibilities related to the merger and consolidation and conducting the election; permitting only one election; addressing qualified domestic relations orders; providing for vesting of members and minimum guarantees of benefits for them; providing for due process and right to appeal; providing for nonseverability of the new article; and limitation on benefit increases in Judges’ Retirement System.

Be it enacted by the Legislature of West Virginia:

That §5-5-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5-10-2, §5-10-15, §5-10-17, §5-10-21, §5-10-22, §5-10-23, §5-10-26, §5-10-27, §5-10-31 and §5-10-44 of said code be amended and reenacted; that said code be amended by
adding thereto a new section, designated §5-10-22h; that §5-10A-2 and §5-10A-3 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §5-10A-11; that §7-14D-5, §7-14D-7, §7-14D-13 and §7-14D-23 of said code be amended and reenacted; that §12-8-2, §12-8-3, §12-8-4, §12-8-5, §12-8-6, §12-8-7, §12-8-8 and §12-8-10 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §12-8-15; that §15-2-26, §15-2-27, §15-2-27a, §15-2-28, §15-2-29, §15-2-30, §15-2-31, §15-2-32, §15-2-33, §15-2-34 and §15-2-37 of said code be amended and reenacted; that said code be amended by adding thereto four new sections, designated §15-2-25b, §15-2-31a, §15-2-31b and §15-2-39a; that §15-2A-2, §15-2A-5, §15-2A-6, §15-2A-7, §15-2A-8, §15-2A-9, §15-2A-10, §15-2A-11, §15-2A-12, §15-2A-13, §15-2A-14 and §15-2A-19 of said code be amended and reenacted; that said code be amended by adding thereto four new sections, designated §15-2A-11a, §15-2A-11b, §15-2A-21 and §15-2A-22; that §18-7A-3, §18-7A-14, §18-7A-17, §18-7a-18, §18-7a-18a, §18-7A-23a, §18-7A-25, §18-7A-26 and §18-7A-34 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §18-7A-28e, §18-7A-39 and §18-7A-40; that §18-7B-2, §18-7B-7, §18-7B-9, §18-7B-11, §18-7B-12a and §18-7B-16 of said code be amended and reenacted; that said code be further amended and reenacted by adding thereto two new sections, designated §18-7B-7a and §18-7B-20; that said code be amended by adding thereto a new article, designated §18-7C-1, §18-7C-2, §18-7C-3, §18-7C-4, §18-7C-5, §18-7C-6, §18-7C-7, §18-7C-8, §18-7C-9, §18-7C-10, §18-7C-11, §18-7C-12, §18-7C-13 and §18-7C-14; and that said code be amended by adding thereto a new section, designated §51-9-6c, 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 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-3. Optional payment to employee in lump sum amount for accrued and unused leave at termination of employment; no withholding of any employee contribution deduction; exception.

Every eligible employee, as defined in section one of this article, at the time his or her active employment ends due to resignation, death, retirement or otherwise, may be paid in a lump sum amount, at his or her option, for accrued and unused annual leave at the employee's usual rate of pay at the time. The lump sum payment shall be made by the time of what would have been the employee's next regular payday had his or her employment continued. In determining the amount of leave entitlement, weekends, holidays or other periods of normal, noncountable time shall be excluded, and no deductions may be made for contributions toward retirement from lump sum payments for unused, accrued leave of any kind or character, since no period of service credit is granted in relation thereto; however, lump sum payment for unused, accrued leave of any kind or character may not be a part of final average salary computation; and where any deduction of employee contribution may have been made previously, a refund of the amount deducted shall be granted the former employee and made by the head of the respective former employer spending unit: Provided, That the Superintendent of the West Virginia State Police shall make deductions for retirement contributions of members of the State Police Death, Disability and Retirement Fund created and continued in section twenty-six, article two, chapter fifteen of this code since retirement benefits are based on cumulative earnings rather than period of service.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.
Unless a different meaning is clearly indicated by the
context, the following words and phrases as used in this article,
have the following meanings:

(1) “Accumulated contributions” means the sum of all
amounts deducted from the compensations of a member and
credited to his or her individual account in the members’
deposit fund, together with regular interest on the contributions;

(2) “Accumulated net benefit” means the aggregate amount
of all benefits paid to or on behalf of a retired member;

(3) “Actuarial equivalent” means a benefit of equal value
computed upon the basis of a mortality table and regular
interest adopted by the board of trustees from time to time;

(4) “Annuity” means an annual amount payable by the
retirement system throughout the life of a person. All annuities
shall be paid in equal monthly installments, rounding to the
upper cent for any fraction of a cent;

(5) “Annuity reserve” means the present value of all
payments to be made to a retiree or beneficiary of a retiree on
account of any annuity, computed upon the basis of mortality
and other tables of experience, and regular interest, adopted by
the Board of Trustees from time to time;

(6) “Beneficiary” means any person, except a retiree, who
is entitled to, or will be entitled to, an annuity or other benefit
payable by the retirement system;

(7) “Board of Trustees” or “Board” means the Board of
Trustees of the West Virginia Consolidated Public Retirement
System;

(8) “Compensation” means the remuneration paid a
member by a participating public employer for personal
services rendered by the member to the participating public employer. In the event a member’s remuneration is not all paid in money, his or her participating public employer shall fix the value of the portion of the remuneration which is not paid in money;

(9) "Contributing service" means service rendered by a member within this state and for which the member made contributions to a public retirement system account of this state, to the extent credited him or her as provided by this article;

(10) "Credited service" means the sum of a member’s prior service credit, military service credit, workers’ compensation service credit and contributing service credit standing to his or her credit as provided in this article;

(11) "Employee" means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, in whole or in part, by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia National Guard whose compensation, in whole or in part, is paid by the federal government: Provided, That an employee of the Legislature whose term of employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is employed during regular sessions or during the interim between regular sessions in seven or more consecutive calendar years, as certified by the Clerk of the House in which the employee served, is an employee, any provision to the contrary in this article notwithstanding, and is entitled to credited service in accordance with provisions of section fourteen, article ten,
chapter five of this code, and: Provided further, That members
of the legislative body of any political subdivision and judges
of the State Court of Claims are employees receiving one year
of service credit for each one year term served and pro rated
service credit for any partial term served, anything contained in
this article to the contrary notwithstanding. In any case of doubt
as to who is an employee within the meaning of this article, the
board of trustees shall decide the question;

(12) “Employer error” means an omission, misrepresentation,
or violation of relevant provisions of the West Virginia
Code or of the West Virginia Code of State Regulations or the
relevant provisions of both the West Virginia Code and of the
West Virginia Code of State Regulations by the participating
public employer that has resulted in an underpayment or
overpayment of contributions required. A deliberate act
contrary to the provisions of this section by a participating
public employer does not constitute employer error.

(13) “Final average salary” means either:

(A) The average of the highest annual compensation
received by a member, (including a member of the Legislature
who participates in the retirement system in the year one
thousand nine hundred seventy-one or thereafter), during any
period of three consecutive years of credited service contained
within the member’s ten years of credited service immediately
preceding the date his or her employment with a participating
public employer last terminated; or

(B) If the member has less than five years of credited
service, the average of the annual rate of compensation received
by the member during his or her total years of credited service;
and in determining the annual compensation, under either
paragraph (A) or (B) of this subdivision, of a member of the
Legislature who participates in the retirement system as a
member of the Legislature in the year one thousand nine
hundred seventy-one, or in any year thereafter, his or her actual
legislative compensation, (the total of all compensation paid
under sections two, three, four and five, article two-a, chapter
four of this code), in the year one thousand nine hundred
seventy-one, or in any year thereafter, plus any other compensa-
tion he or she receives in any year from any other participating
public employer including the State of West Virginia, without
any multiple in excess of one times his or her actual legislative
compensation and other compensation, shall be used: Provided,
That “final average salary” for any former member of the
Legislature or for any member of the Legislature in the year one
thousand nine hundred seventy-one, who, in either event, was
a member of the Legislature on the thirtieth day of November,
one thousand nine hundred sixty-eight, or the thirtieth day of
November, one thousand nine hundred sixty-nine, or the
thirtieth day of November, one thousand nine hundred seventy,
or on the thirtieth day of November in any one or more of those
three years and who participated in the retirement system as a
member of the Legislature in any one or more of those years
means: (i) Either (notwithstanding the provisions of this
subdivision preceding this proviso) one thousand five hundred
dollars multiplied by eight, plus the highest other compensation
the former member or member received in any one of the three
years from any other participating public employer including
the State of West Virginia; or (ii) “final average salary”
determined in accordance with paragraph (A) or (B) of this
subdivision, whichever computation produces the higher final
average salary (and in determining the annual compensation
under (ii) of this proviso, the legislative compensation of the
former member shall be computed on the basis of one thousand
five hundred dollars multiplied by eight, and the legislative
compensation of the member shall be computed on the basis set
forth in the provisions of this subdivision immediately preced-
ing this proviso or on the basis of one thousand five hundred
dollars multiplied by eight, whichever computation as to the member produces the higher annual compensation);

(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, codified at Title 26 of the United States Code;

(15) "Limited credited service" means service by employees of the West Virginia Educational Broadcasting Authority, in the employment of West Virginia University, during a period when the employee made contributions to another retirement system, as required by West Virginia University, and did not make contributions to the Public Employees Retirement System: Provided, That while limited credited service can be used for the formula set forth in subsection (e), section twenty-one of this article, it may not be used to increase benefits calculated under section twenty-two of this article;

(16) "Member" means any person who has accumulated contributions standing to his or her credit in the members' deposit fund;

(17) "Participating public employer" means the State of West Virginia, any board, commission, department, institution or spending unit, and includes any agency created by rule of the Supreme Court of Appeals having full-time employees, which for the purposes of this article is considered a department of state government; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Public Employees Retirement System;

(18) "Plan year" means the same as referenced in section forty-two of this article;

(19) "Political subdivision" means the State of West Virginia, a county, city or town in the state; a school corpora-
tion or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: Provided, That any mental health agency participating in the Public Employees Retirement System before the first day of July, one thousand nine hundred ninety-seven, is considered a political subdivision solely for the purpose of permitting those employees who are members of the Public Employees Retirement System to remain members and continue to participate in the retirement system at their option after the first day of July, one thousand nine hundred ninety-seven: Provided, however, That the Regional Community Policing Institute which participated in the Public Employees Retirement System before the first day of July, two thousand, is considered a political subdivision solely for the purpose of permitting those employees who are members of the Public Employees Retirement System to remain members and continue to participate in the Public Employees Retirement System after the first day of July, two thousand;

(20) "Prior service" means service rendered prior to the first day of July, one thousand nine hundred sixty-one, to the extent credited a member as provided in this article;

(21) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board of trustees adopts from time to time;

(22) "Required beginning date" means the first day of April of the calendar year following the later of: (A) The calendar year in which the member attains age seventy and one-half years of age; or (B) the calendar year in which a member who has attained the age seventy and one-half years of age and who
ceases providing service covered under this system to a 
participating employer;

(23) “Retirant” means any member who commences an 
anuity payable by the retirement system;

(24) “Retirement” means a member’s withdrawal from the 
employ of a participating public employer and the commence- 
ment of an annuity by the retirement system;

(25) “Retirement system” or “system” means the West 
Virginia Public Employees Retirement System created and 
established by this article;

(26) “Retroactive service” means: (1) Service between the 
first day of July, one thousand nine hundred sixty-one, and the 
date an employer decides to become a participating member of 
the Public Employees Retirement System; (2) service prior to 
the first day of July, one thousand nine hundred sixty-one, for 
which the employee is not entitled to prior service at no cost in 
accordance with 162 CSR 5.13; and (3) service of any member 
of a legislative body or employees of the State Legislature 
whose term of employment is otherwise classified as temporary 
for which the employee is eligible, but for which the employee 
did not elect to participate at that time;

(27) “Service” means personal service rendered to a 
participating public employer by an employee of a participating 
public employer; and

(28) “State” means the State of West Virginia.

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

(a) (1) The Legislature recognizes the men and women of 
this state who have served in the Armed Forces of the United 
States during times of war, conflict and danger. It is the intent
of this section to confer military service credit upon persons
who are eligible at any time for public employees retirement
benefits for any time served in active duty in the Armed Forces
of the United States when the duty was during any period of
compulsory military service or during a period of armed
conflict, as defined in this section.

(2) In addition to any benefit provided by federal law, any
member of the retirement system who has previously served in
or enters the active service of the Armed Forces of the United
States during any period of compulsory military service or
during a period of armed conflict shall receive credited service
for the time spent in the Armed Forces of the United States, not
to exceed five years if the member:

(A) Has been honorably discharged from the Armed Forces;

and

(B) Substantiates by appropriate documentation or evidence
his or her active military service and entry into military service
during any period of compulsory military service or during
periods of armed conflict.

(3) Any member of the retirement system who enters the
active service of the Armed Forces of the United States during
any period of compulsory military service or during a period of
armed conflict shall receive the credit provided by this section
regardless of whether he or she was a public employee at the
time of entering the military service.

(4) If a member of the Public Employees Retirement
System enters the active service of the United States and serves
during any period of compulsory military service or during any
period of armed conflict, during the period of the armed service
and until the member’s return to the employ of a participating
public employer, the member’s contributions to the retirement
system is suspended and any credit balance remaining in the
36 member’s deposit fund shall be accumulated at regular interest: 
37 Provided, That notwithstanding any provision in this article to 
38 the contrary, if an employee of a participating political subdivi-
39 sion serving in the military service during any period of 
40 compulsory military service or armed conflict has accumulated 
41 credited service prior to the last entry into military service, in 
42 an amount that, added to the time in active military service 
43 while an employee equals nine or more years, and the member 
44 is unable to resume employment with a participating employer 
45 upon completion of duty due to death during or as a result of 
46 active service, all time spent in active military service, up to 
47 and including a total of five years, is considered to be credited 
48 service and death benefits are vested in the member: Provided, 
49 however, That the active service during the time the member is 
50 an employee must be as a result of an order or call to duty, and 
51 not as a result of volunteering for assignment or volunteering to 
52 extend the time in service beyond the time required by order or 
53 call.

(5) No member may receive duplicate credit for service for 
54 a period of compulsory military service which falls under a 
55 period of armed conflict.

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

(7) The Board may consider a petition by any member 
59 whose tour of duty, in a territory that would reasonably be 
60 considered hostile and dangerous, was extended beyond the 
61 period in which an armed conflict was officially recognized, if 
62 that tour of duty commenced during a period of armed conflict, 
63 and the member was assigned to duty stations within the hostile 
64 territory throughout the period for which service credit is being 
65 sought. The Board has the authority to evaluate the facts and 
66 circumstances peculiar to the petition, and rule on whether
granting service credit for the extended tour of duty is consistent with the objectives of this article. In that determination, the Board may grant full credit for the period under petition subject to the limitations otherwise applicable, or to grant credit for any part of the period as the board considers appropriate, or to deny credit altogether.

(8) The Board of Trustees may propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to administer the provisions of this section.

(b) For purposes of this section, the following definitions apply:

(1) “Period of armed conflict” means the Spanish-American War, the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era, the Persian Gulf War and any other period of armed conflict by the United States, including, but not limited to, those periods sanctioned by a declaration of war by the United States Congress or by executive or other order of the President.

(2) “Spanish-American War” means the period beginning on the twenty-first day of April, one thousand eight hundred ninety-eight, and ending on the fourth day of July, one thousand nine hundred two, and includes the Philippine Insurrection, the Boxer Rebellion, and in the case of a veteran who served with the United States military forces engaged in hostilities in the Moro Province, means the period beginning on the twenty-first day of April, one thousand eight hundred ninety-eight, and ending on the fifteenth day of July, one thousand nine hundred three.

(3) “The Mexican border period” means the period beginning on the ninth day of May, one thousand nine hundred sixteen, and ending on the fifth day of April, one thousand nine...
hundred seventeen, in the case of a veteran who during the period served in Mexico, on its borders or in the waters adjacent to it.

(4) "World War I" means the period beginning on the sixth day of April, one thousand nine hundred seventeen, and ending on the eleventh day of November, one thousand nine hundred eighteen, and in the case of a veteran who served with the United States military forces in Russia, means the period beginning on the sixth day of April, one thousand nine hundred seventeen, and ending on the first day of April, one thousand nine hundred twenty.

(5) "World War II" means the period beginning on the seventh day of December, one thousand nine hundred forty-one, and ending on the thirty-first day of December, one thousand nine hundred forty-six.

(6) "Korean conflict" means the period beginning on the twenty-seventh day of June, one thousand nine hundred fifty, and ending on the thirty-first day of January, one thousand nine hundred fifty-five.

(7) "The Vietnam era" means the period beginning on the twenty-eighth day of February, one thousand nine hundred sixty-one, and ending on the seventh day of May, one thousand nine hundred seventy-five, in the case of a veteran who served in the Republic of Vietnam during that period; and the fifth day of August, one thousand nine hundred sixty-four, and ending on the seventh day of May, one thousand nine hundred seventy-five, in all other cases.

(8) "Persian Gulf War" means the period beginning on the second day of August, one thousand nine hundred ninety, and ending on the eleventh day of April, one thousand nine hundred ninety-one.
§5-10-17. Retirement system membership.

The membership of the retirement system consists of the following persons:

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

(b) The membership of the Public Employees Retirement System shall not include any person who is an active contributing member of, or who has been retired by, any of the State Teachers retirement systems, the Judges Retirement System, any Retirement System of the West Virginia State Police, the

(c) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. No military service credit may be used in more than one retirement system administered by the Consolidated Public Retirement Board and once used in any system, may not be used again in any other system. The Board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the Board in section one, article ten-d of this chapter, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.
Deputy Sheriff Retirement System or any municipal retirement system for either, or both, police or firefighter; and the Bureau of Employment Programs, by the Commissioner of the Bureau, may elect whether its employees will accept coverage under this article or be covered under the authorization of a separate enactment: Provided, That the exclusions of membership do not apply to any member of the State Legislature, the Clerk of the House of Delegates, the Clerk of the State Senate or to any member of the legislative body of any political subdivision provided he or she once becomes a contributing member of the retirement system: Provided, however, That any retired member of the State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System, the Deputy Sheriff Retirement System and any retired member of any municipal retirement system for either, or both, police or firefighter may on and after the effective date of this section become a member of the retirement system as provided in this article, without receiving credit for prior service as a municipal police officer or firefighter or as a member of the State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System or the Deputy Sheriff Retirement System: Provided further, That any retired member of the State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System, the Deputy Sheriff Retirement System and any retired member of any municipal retirement system for either, or both, police or firefighters, who begins participation in the retirement system established in this article on or after the first day of July, two thousand five, may not receive a combined retirement benefit in excess of one hundred five percent of the member’s highest annual salary earned while either a member of the retirement system established in this article or while a member of the other retirement system or systems from which he or she previously retired when adding the retirement benefit from the retirement system created in this article to the retirement benefit received by that
member from the other retirement system or systems set forth
herein from which he or she previously retired: And provided
further, That the membership of the retirement system does not
include any person who becomes employed by the Prestera
Center for Mental Health Services, Valley Comprehensive
Mental Health Center, Westbrook Health Services or Eastern
Panhandle Mental Health Center on or after the first day of
July, one thousand nine hundred ninety-seven: And provided
further, That membership of the retirement system does not
include any person who becomes a member of the federal
railroad retirement act on or after the first day of July, two
thousand.

(c) Any member of the State Legislature, the Clerk of the
House of Delegates, the Clerk of the State Senate and any
employee of the State Legislature whose employment is
otherwise classified as temporary and who is employed to
perform services required by the Legislature for its regular
sessions or during the interim between regular sessions and who
has been or is employed during regular sessions or during the
interim between sessions in seven consecutive calendar years,
as certified by the Clerk of the House in which the employee
served, or any member of the legislative body of any other
political subdivision shall become a member of the retirement
system provided he or she notifies the retirement system in
writing of his or her intention to be a member of the system and
files a membership enrollment form as prescribed by the Board
of Trustees, and each person, upon filing his or her written
notice to participate in the retirement system, shall by that act
authorize the Clerk of the House of Delegates or the Clerk of
the State Senate or such person or legislative agency as the
legislative body of any other political subdivision shall design-
ate to deduct the member’s contribution, as provided in
subsection (b), section twenty-nine of this article, and after the
deductions have been made from the member’s compensation,
the deductions shall be forwarded to the retirement system.
(d) If question arises regarding the membership status of any employee, the Board of Trustees has the final power to decide the question.

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

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

(a) Any member who has five or more years of credited service in force, of which at least three years are contributing service, and who leaves the employ of a participating public employer prior to his or her attaining age sixty years for any reason except his or her disability retirement or death, is entitled to an annuity computed according to section twenty-two of this article, as that section was in force as of the date of his or her separation from the employ of a participating public employer: Provided, That he or she does not withdraw his or her accumulated contributions from the members’ deposit fund: Provided, however, That on and after the first day of July, two thousand two, any person who becomes a new member of this retirement system shall, in qualifying for retirement under this section, have five or more years of service, all of which years shall be actual, contributory ones. His or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the Board of Trustees on or after his or her attaining age sixty-two years.

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

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

(d) Notwithstanding any of the other provisions of this
section or of this article, except sections twenty-seven-a and
twenty-seven-b of this article, and pursuant to rules promul-
gated by the Board, any member who has thirty or more years
of credited service in force, at least three of which are contrib-
uting service, and who elects to take early retirement, which for
the purposes of this subsection means retirement prior to age
sixty, whether an active employee or a separated employee at
the time of application, is entitled to the full computation of
annuity according to section twenty-two of this article, as that
section was in force as of the date of retirement application, but
with the reduced actuarial equivalent of the annuity the member
would have received if his or her benefit had commenced at age
sixty when he or she would have been entitled to full computa-
tion of benefit without any reduction.

(e) Notwithstanding any of the other provisions of this
section or of this article, except sections twenty-seven-a and
twenty-seven-b of this article, any member of the retirement
system may retire with full pension rights, without reduction of
benefits, if he or she is at least fifty-five years of age and the
sum of his or her age plus years of contributing service and
limited credited service, as defined in section two of this article,
equals or exceeds eighty. The member’s annuity shall begin the
first day of the calendar month immediately following the
calendar month in which his or her application for the annuity
is filed with the Board.

§5-10-22. Retirement annuity.

(a) Upon a member’s retirement, as provided in this article,
he or she shall receive a straight life annuity equal to one and
five-tenths percent of his or her final average salary multiplied
by the number of years, and fraction of a year, of his or her
credited service in force at the time of his or her retirement:
Provided, That the final average salary used in his calculation
does not include any lump sum payment for unused, accrued
leave of any kind or character. The credited service used for this
calculation may not include any period of limited credited
service: Provided, however, That after March one, one thousand
nine hundred seventy, all members retired and all members
retiring shall receive a straight life annuity equal to two percent
of his or her final average salary multiplied by the number of
years, and fraction of a year, of his or her credited service,
exclusive of limited credited service in force at the time of his
or her retirement. In either event, upon his or her retirement he
or she has the right to elect an option provided in section
twenty-four of this article. All annuity payments shall com-
mence effective the first day of the month following the month
in which a member retires or a member dies leaving a benefi-
ciary entitled to benefits and shall continue to the end of the
month in which the retirant or beneficiary dies, and the annuity
payments may not be prorated for any portion of a month in
which a member retires or retirant or beneficiary dies. Any
25 member receiving an annuity based in part upon limited
26 credited service is not eligible for the supplements provided in
27 sections twenty-two-a through twenty-two-d, inclusive, of this
28 article.
29 
30 (b) The annuity of any member of the Legislature who
31 participates in the retirement system as a member of the
32 Legislature and who retires under this article or of any former
33 member of the Legislature who has retired under this article
34 (including any former member of the Legislature who has
35 retired under this article and whose annuity was readjusted as
36 of the first day of March, one thousand nine hundred seventy,
37 under the former provisions of this section) shall be increased
38 from time to time during the period of his or her retirement
39 when and if the legislative compensation paid under section
40 two, article two-a, chapter four of this code, to a member of the
41 Legislature shall be increased to the point where a higher
42 annuity would be payable to the retiree if he or she were
43 retiring as of the effective date of the latest increase in legisla-
44 tive compensation, but on the basis of his or her years of
45 credited service to the date of his or her actual retirement.

§5-10-22h. Limitations on benefit increases.

1 (a) The state shall not increase any existing benefits or
2 create any new benefits for any retirees or beneficiaries
3 currently receiving monthly benefit payments from the system,
4 other than an increase in benefits or new benefits effected by
5 operation of law in effect on the effective date of this article, in
6 an amount that would exceed more than one percent of the
7 accrued actuarial liability of the system as of the last day of the
8 preceding fiscal year as determined in the annual actuarial
9 valuation for the plan completed for the Consolidated Public
10 Retirement Board as of the first day of the following fiscal year
11 as of the date the improvement is adopted by the Legislature.
(b) If any increase of existing benefits or creation of new benefits for any retirees or beneficiaries currently receiving monthly benefit payments under the system, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, causes any additional unfunded actuarial accrued liability in the system as calculated in the annual actuarial valuation for the plan during any fiscal year, the additional unfunded actuarial accrued liability of that pension system shall be fully amortized over no more than the six consecutive fiscal years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. The Consolidated Public Retirement Board shall include the six year amortization in the determination of the adequacy of the employer contribution percentage for the system.

(c) The state will not increase any existing benefits or create any new benefits for active members due to retirement, death or disability of the system unless the actuarial accrued liability of the plan is at least eighty-five percent funded as of the last day of the prior fiscal year as determined in the actuarial valuation for the plan completed for the Consolidated Public Retirement Board as of the first day of the following fiscal year as of the date the improvement is adopted by the Legislature. Any additional unfunded actuarial accrued liability due to any improvement in active members benefits shall be fully amortized over not more than ten years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. The Consolidated Public Retirement Board shall include the ten year amortization in the determination of the adequacy of the employer contribution percentage for the system.

§5-10-23. Terminal payment following retirement.
(a) This section provides for the payment of the balance in a retired member’s account in the event that all claims to benefits payable to, or on behalf of, a member expire before his or her member account has been fully exhausted. The expiration of the rights to benefits would be on the occasion of either the death of the retired member drawing benefits under a straight life annuity, or the death of a survivor annuitant drawing benefits under any optional form of benefit selected by the retired member, whichever occurs later.

(b) In the event that all claims to benefits payable to, or on behalf of, a retired member expire, and the accumulated contributions exceed the accumulated net benefit payments paid to or on behalf of the retired member, the balance in the retired member’s account shall be paid to the person or persons as the retired member has nominated by written designation duly executed and filed with the board of trustees. If there is no designated person or persons surviving the retired member following the expiration of claims, the excess of the accumulated contributions over the accumulated net benefit, if any, shall be paid to the retired member’s estate.

§5-10-26. Reexamination of disability retirants; reemployment; adjustment of annuity for earnings.

(a) At least once each year during the first five years following the retirement of a member on account of disability, as provided in section twenty-five of this article, and at least once in each three-year period thereafter, the Board may require a disability retiree, who has not attained age sixty years, to undergo a medical examination to be made by or under the direction of a physician designated by the board, or to submit a statement signed by the disability retiree’s physician certifying continued disability, or both, and a copy of the disability retirant’s annual statement of earnings. If the retiree refuses to submit to the medical examination or provide the certifica-
tion or statement in any period, his or her disability annuity may be discontinued by the Board until the retirant complies. If the refusal continues for one year, all the retirant’s rights in and to the annuity may be revoked by the board. If, upon medical examination of a disability retirant, the physician reports to the board that the retirant is physically able and capable of resuming employment with a participating public employer, the retirant shall be returned to the employ of the participating public employer from whose employment he or she retired and his or her disability annuity shall terminate: Provided, That the Board concurs in the physician’s report.

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

c) If a review of the disability retirant’s annual statement of earnings or other financial information as required by the Board determines that the disability retirant’s earned income for the preceding year exceeds the substantial gainful activity amount as defined by the United States Social Security Administration, the disability retirant’s annuity shall be terminated by the Board, upon recommendation of the Board’s disability review committee, on the first day of the month following the Board’s action. Any person who wishes to reapply for disability retirement and whose disability retirement annuity has been terminated by the Board may do so within ninety days of the effective date of termination by requesting an examination at the applicant’s expense by an appropriate medical professional chosen by the Board.

§5-10-27. Preretirement death annuities.

(a) In the event any member who has ten or more years of credited service or any former member with ten or more years
3 of credited service and who is entitled to a deferred annuity, 
4 pursuant to section twenty-one of this article: (1) Dies without 
5 leaving a surviving spouse; but (2) leaves surviving him or her 
6 a child who is financially dependent on the member by virtue 
7 of a permanent mental or physical disability upon evidence 
8 satisfactory to the Board; and (3) has named the disabled child 
9 as sole beneficiary, the disabled child shall immediately receive 
10 an annuity computed in the same manner in all respects as if the 
11 member had: (1) Retired the day preceding the date of his or her 
12 death, notwithstanding that he or she might not have attained 
13 age sixty or sixty-two years, as the case may be; (2) elected 
14 option A provided for in section twenty-four of this article; and 
15 (3) nominated his or her disabled child as beneficiary. A 
16 member or former member with ten or more years of credited 
17 service, who does not leave surviving him or her a spouse or a 
18 disabled child, may elect to have the preretirement death benefit 
19 paid as a return of accumulated contributions in a lump sum 
20 amount to any beneficiary or beneficiaries he or she chooses.

21 (b) In the event any member who has ten or more years of 
22 credited service, or any former member with ten or more years 
23 of credited service and who is entitled to a deferred annuity, 
24 pursuant to section twenty-one of this article: (1) Dies; and (2) 
25 leaves a surviving spouse, the surviving spouse shall immedi-
26 ately receive an annuity computed in the same manner in all 
27 respects as if the the member had: (1) Retired the day preceding 
28 the date of his or her death, notwithstanding that he or she 
29 might not have attained age sixty or sixty-two years, as the case 
30 may be; (2) elected option A provided in section twenty-four of 
31 this article; and (3) nominated his or her surviving spouse as 
32 beneficiary. However, the surviving spouse shall have the right 
33 to waive the annuity provided in this section: Provided, That he 
34 or she executes a valid and notarized waiver on a form provided 
35 by the Board and that the member or former member attests to 
36 the waiver. If the waiver is presented to and accepted by the
Board, the member or former member, may nominate a
beneficiary who has an insurable interest in the member's or
former member's life. As an alternative to annuity option A, the
member or former member may elect to have the preretirement
death benefit paid as a return of accumulated contributions in
a lump sum amount to any beneficiary or beneficiaries he or she
chooses in the event a waiver, as provided in this section, has
been presented to and accepted by the Board.

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

(d) In the event any member or former member does not
have ten or more years of credited service, no preretirement
death annuity may be authorized, owed or awarded under this
section.
§5-10-31. Employers accumulation fund; employers contributions.

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

(b) Based upon the provisions of section thirteen of this article, the participating public employers’ contributions to the retirement system, as determined by the Consolidated Public Retirement Board by legislative rule promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code, shall be a percent of the members’ total annual compensation related to benefits under this retirement system. In determining the amount, the Board shall give consideration to setting the amount at a sum equal to an amount which, if paid annually by the participating public employers, will be sufficient to provide for the total normal cost of the benefits expected to become payable to all members and to amortize any unfunded liability found by application of the actuarial funding method chosen for that purpose by the Consolidated Public Retirement Board, over a period of years determined actuarially appropriate. When proposing a rule for promulgation which relates to the amount of employer contribution, the Board may promulgate emergency rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, if the inability of the board to increase employer contributions will detrimentally affect the actuarial soundness of the retirement system. A signed statement from the state actuary shall accompany the statement of facts and circumstances constituting an emergency which shall be filed in the State Register. For purposes of this section, subdivision (2), subsection (b), section fifteen-a, article three, chapter twenty-nine-a of this code is not applicable to the Secretary of State’s determination of whether an emergency rule should be approved.
§5-10-44. Correction of errors.

If any change or employer error in the records of any participating public employer or the retirement system results in any person receiving from the system more or less than he or she would have been entitled to receive had the records been correct, the Board shall correct the error, and as far as is practicable shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the person was correctly entitled shall be paid. Any employer error resulting in an underpayment to the retirement system may be corrected by the employee remitting the required employee contribution and the participating public employer remitting the required employer contribution. Interest shall accumulate in accordance with the Legislative Rule 162 CSR 7 concerning retirement board refund, reinstatement and loan interest factors, and any accumulating interest owed on the employee and employer contributions resulting from the employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employer reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred.

ARTICLE 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN BENEFITS.

§5-10A-2. Definitions.

As used in this article:

(a) "Retirement plan" or "plan" means the Public Employees Retirement Act, pursuant to article ten, chapter five of this code; each municipal employees retirement plan, pursuant to article twenty-two, chapter eight of this code; each policemen's and firemen's pension and relief fund, pursuant to article twenty-two, chapter eight of this code; the West Virginia State Police Death, Disability and Retirement Fund, pursuant to
article two, chapter fifteen of this code; the West Virginia State
Police Retirement System, pursuant to article two-a, chapter
fifteen of this code; the State Teachers Retirement System,
pursuant to article seven-a, chapter eighteen of this code; the
Teachers’ Defined Contribution Retirement System, pursuant
to article seven-b, chapter eighteen of this code; the Deputy
Sheriff Retirement System, pursuant to article fourteen-d,
chapter seven of this code; supplemental and additional
retirement plans, pursuant to section four-a, article twenty-
three, chapter eighteen of this code; the Judges’ Retirement
System, pursuant to article nine, chapter fifty-one of this code;
and any other plan established pursuant to this code for the
payment of pension, annuity, disability or other benefits to any
person by reason of his or her service as an officer or employee
of this state or of any political subdivision, agency or instru-
mentality thereof, whenever the plan is supported in whole or
in part by public funds.

(b) “Beneficiary” means any person eligible for or receiv-
ing benefits on account of the service for a public employer by
a participant in a retirement plan.

(c) “Benefits” means pension, annuity, disability or any
other benefits granted pursuant to a retirement plan.

(d) “Conviction” means a conviction on or after the
effective date of this article in any federal or state court of
record whether following a plea of guilty, not guilty or nolo
contendere, and whether or not the person convicted was
serving as an officer or employee of a public employer at the
time of the conviction.

(e) “Less than honorable service” means:

(1) Impeachment and conviction of a participant under the
provisions of section nine, article four of the Constitution of
West Virginia, except for a misdemeanor;
(2) Conviction of a participant of a felony for conduct related to his or her office or employment which he or she committed while holding the office or during the employment; or

(3) Conduct of a participant which constitutes all of the elements of a crime described in either of the foregoing subdivisions (1) or (2) but for which the participant was not convicted because:

(i) Having been indicted or having been charged in an information for the crime, he or she made a plea bargaining agreement pursuant to which he or she pleaded guilty to or nolo contendere to a lesser crime: Provided, That the lesser crime is a felony containing all the elements described in subdivisions (1) or (2) of this subsection; or

(ii) Having been indicted or having been charged in an information for the crime, he or she was granted immunity from prosecution for the crime.

(f) “Participant” means any person eligible for or receiving any benefit under a retirement plan on account of his or her service as an officer or employee for a public employer.

(g) “Public employer” means the State of West Virginia and any political subdivision, agency, or instrumentality thereof for which there is established a retirement plan.

(h) “Supervisory board” or “Board” means the Consolidated Public Retirement Board; the board of trustees of any municipal retirement fund; the board of trustees of any policemen’s or firemen’s retirement plan; the governing board of any supplemental retirement plan instituted pursuant to authority granted by section four-a, article twenty-three, chapter eighteen of this code, and any other board, commission or public body having the duty to supervise and operate any retirement plan.
§5-10A-3. Notice of intention to terminate benefits; waiver; failure to reply.

(a) Whenever a supervisory board, upon receipt of a verified complaint or otherwise, has reasonable cause to believe that a participant rendered less than honorable service as defined in section two of this article, it shall notify the affected participant or beneficiary that it believes that the participant rendered less than honorable service and that the participant or beneficiary is thereby ineligible to receive benefits. No supervisory board may issue a notice:

(1) If more than two years have elapsed since the judgment of conviction upon which the notice is based became final; or

(2) In cases described in paragraph (3), subsection (e), section two of this article, if more than two years have elapsed since, as the case may be: the plea bargaining agreement or the grant of immunity; or

(3) With respect to conduct which occurred prior to the effective date of this article.

(b) The notice shall contain a concise statement of the reasons why the Board believes that the participant rendered less than honorable service and shall be made either by personal service or by certified mail, return receipt requested, to the address which the participant or beneficiary maintains for purposes of corresponding with the Board. If notice is made by certified mail, service shall be considered complete upon mailing and a completed receipt constitute proofs of the receipt of the notice. The notice shall inform the participant or beneficiary that he or she has the right to demand that the Board seek a determination in circuit court of his or her eligibility for benefits and membership in the retirement plan by notifying the Board of the demand within forty days. The notice shall also inform the participant or beneficiary that the Board will
terminate the benefits in accordance with section four of this
article and refund the participant's contributions with interest
less benefits previously paid as provided in section six thereof
if the participant or beneficiary either waives the right to
demand that the Board take the matter before the circuit court
or fails to respond to the Board's notice within forty days after
service.

§5-10A-11. Notification from prosecuting attorneys.

The prosecuting attorneys of the counties of this state shall,
within sixty days of a conviction or a plea agreement meeting
the definition of less than honorable service, report the convic-
tion or plea agreement to the executive director of the Board,
including with the report the indictment, plea agreement and
any order finding the defendant guilty.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-5. Members.

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

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

(c) Any deputy sheriff employed in covered employment on the effective date of this article who has timely elected to transfer into this plan as provided in subsection (b) of this
section shall be given credited service at the time of transfer for
all credited service then standing to the deputy sheriff’s service
credit in the Public Employees Retirement System regardless of
whether the credited service (as that term is defined in section
two, article ten, chapter five of this code) was earned as a
deputy sheriff. All the credited service standing to the transfer-
ing deputy sheriff’s credit in the Public Employees Retirement
Fund System at the time of transfer into this plan shall be
transferred into the plan created by this article, and the transfer-
ing deputy sheriff shall be given the same credit for the
purposes of this article for all service transferred from the
Public Employees Retirement System as that transferring
deputy sheriff would have received from the Public Employees
Retirement System as if the transfer had not occurred. In
connection with each transferring deputy sheriff receiving
credit for prior employment as provided in this subsection, a
transfer from the Public Employees Retirement System to this
plan shall be made pursuant to the procedures described in
section eight of this article: Provided, That a member of this
plan who has elected to transfer from the Public Employees
Retirement System into this plan pursuant to subsection (b) of
this section may not, after having transferred into and become
an active member of this plan, reinstate to his or her credit in
this plan any service credit relating to periods of nondeputy
sheriff service which were withdrawn from the Public Employ-
ees Retirement System prior to his or her elective transfer into
this plan.

(d) Any deputy sheriff who was employed as a deputy
sheriff prior to the effective date of this article, but was not
employed as a deputy sheriff on the effective date of this
article, shall become a member upon rehire as a deputy sheriff.
For purposes of this subsection, the member’s years of service
and credited service in the Public Employees Retirement
System prior to the effective date of this article shall not be
counted for any purposes under this plan unless: (1) The deputy
sheriff has not received the return of his or her accumulated
contributions in the Public Employees Retirement System
pursuant to section thirty, article ten, chapter five of this code;
or (2) the accumulated contributions returned to the member
from the Public Employees Retirement System have been
repaid pursuant to section thirteen of this article. If the condi-
tions of subdivision (1) or (2) of this subsection are met, all
years of the deputy sheriff’s covered employment shall be
counted as years of service for the purposes of this article.

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

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

§7-14D-7. Members’ contributions; employer contributions.

(a) There shall be deducted from the monthly salary of each
member and paid into the Fund an amount equal to eight and
one-half percent of his or her monthly salary. An additional
amount shall be paid to the Fund by the county commission of
the county in which the member is employed in covered
employment in an amount determined by the Board: Provided,
That in no year may the total of the contributions provided in
this section, to be paid by the county commission, exceed ten
and one-half percent of the total payroll for the members in the employ of the county commission for the preceding fiscal year. If the Board finds that the benefits provided by this article can be actually funded with a lesser contribution, then the Board shall reduce the required member or employer contributions or both. The sums withheld each calendar month shall be paid to the Fund no later than fifteen days following the end of the calendar month.

(b) Any active member who has concurrent employment in an additional job or jobs and the additional employment requires the deputy sheriff to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code shall make an additional contribution to the Fund of eight and one-half percent of his or her monthly salary earned from any additional employment which requires the deputy sheriff to be a member of another retirement which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code. An additional amount shall be paid to the Fund by the concurrent employer for which the member is employed in an amount determined by the Board: Provided, That in no year may the total of the contributions provided in this section, to be paid by the concurrent employer, exceed ten and one-half percent of the monthly salary of the employee. If the Board finds that the benefits provided by this article can be funded with a lesser contribution, then the Board shall reduce the required member or employer contributions or both. The sums withheld each calendar month shall be paid to the Fund no later than fifteen days following the end of the calendar month.

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

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

(b) Any member of this plan who ceases employment in
covered employment and active participation in this plan, and
who thereafter becomes reemployed in covered employment
may not receive any credited service for any prior withdrawn
accumulated contributions from either this plan or the Public
Employees Retirement System relating to the prior covered
employment unless following his or her return to covered
employment and active participation in this plan, the member
redeposits in this plan the amount of the withdrawn accumu-
lated contributions submitted on salary earned while a deputy
sheriff, together with interest on the accumulated contributions
at the rate determined by the Board from the date of withdrawal
to the date of redeposit. Upon repayment he or she shall receive
the same credit on account of his or her former service in
covered employment as if no refund had been made. The
repayment authorized by this subsection shall be made in a
lump sum within sixty months of the deputy sheriff's
reemployment in covered employment or if later, within sixty
months of the effective date of this article.

(c) A member of this plan who has elected to transfer from
the Public Employees Retirement System into this plan pursu-
ant to subsection (b) of section five of this article may not, after
having transferred into and become an active member of this
plan, reinstate to his or her credit in this plan any service credit
relating to periods of nondeputy sheriff service which were
withdrawn from the Public Employees Retirement System plan
prior to his or her elective transfer into this plan.
(d) Every member who completes sixty months of covered employment is eligible, upon cessation of covered employment, to either withdraw his or her accumulated contributions in accordance with subsection (a) of this section, or to choose not to withdraw his or her accumulated contribution and to receive retirement income payments upon attaining normal retirement age.

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

§7-14D-23. Loans to members.

(a) A member who is not yet receiving disability or retirement income benefits from the plan may borrow from the plan no more than one time in any year an amount up to one half of his or her accumulated contributions, but not less than five hundred dollars nor more than eight thousand dollars: Provided, That the maximum amount of any loan shall not exceed the lesser of the following: (1) Eight thousand dollars; or (2) fifty percent of his or her accumulated contributions. No member is eligible for more than one outstanding loan at any time. No loan may be made from the plan if the Board determines that the loans constitute more than fifteen percent of the amortized cost value of the assets of the plan as of the last day of the preceding plan year. The Board may discontinue the loans any time it determines that cash flow problems might develop as a result of the loans. Each loan shall be repaid through monthly installments over periods of six through sixty months and carry interest on the unpaid balance and an annual effective interest rate that is two hundred basis points higher than the most recent rate of interest used by the Board for determining actuarial contributions levels: Provided, however, That interest charged shall be commercially reasonable in accordance with the provisions of Section 72(p)(2) of the
Internal Revenue Code and federal regulations issued thereunder. Monthly loan payments shall be calculated to be as nearly equal as possible with all but the final payment being an equal amount. An eligible member may make additional loan payments or pay off the entire loan balance at any time without incurring any interest penalty. At the member’s option, the monthly loan payment may include a level premium sufficient to provide declining term insurance with the plan as beneficiary to repay the loan in full upon the member’s death. If a member declines the insurance and dies before the loan is repaid, the unpaid balance of the loan shall be deducted from the lump sum insurance benefits payable under section twenty-one of this article.

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

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

(d) Loans shall be evidenced by such form of obligations 
and shall be made upon such additional terms as to default, 
prepayment, security, and otherwise as the Board may deter-
mine.

(e) Notwithstanding anything in this section to the contrary, 
the loan program authorized by this section shall comply with 
the provisions of Section 72(p)(2) and Section 401 of the 
Internal Revenue Code and the federal regulations issued 
thereunder. The Board may: (a) Apply and construe the 
provisions of this section and administer the plan loan program 
in such a manner as to comply with the provisions of Sections 
72(p)(2) and Section 401 of the Internal Revenue Code; (b) 
adopt plan loan policies or procedures consistent with these 
federal law provisions; and (c) take any actions it considers 
necessary or appropriate to administer the plan loan program 
created under this section in accordance with these federal law 
provisions. The Board is further authorized in connection with 
the plan loan program to take any actions that may at any time 
be required by the Internal Revenue Service regarding compli-
ance with the requirements of Section 72(p)(2) or Section 401 
of the Internal Revenue Code, notwithstanding any provision in 
this article to the contrary.

(f) Notwithstanding anything in this article to the contrary, 
the loan program authorized by this section shall not be 
available to any deputy sheriff who becomes a member of the 
Deputy Sheriff Retirement System on or after the first day of 
July, two thousand five.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 8. PENSION LIABILITY REDEMPTION.
§12-8-2. Declaration of policy; legislative findings; legislative intent.

1 The Legislature finds and declares that:

2 (a) The Legislature has established a number of pension systems, including the death, disability and retirement fund of the West Virginia State Police established in article two, chapter fifteen of this code; the Judges' Retirement System established in article nine, chapter fifty-one of this code; and the Teachers Retirement System established in article seven-a, chapter eighteen of this code, each of which is a trust for the benefit of the participating public employees.

(b) This article provides for the redemption of the unfunded actuarial accrued liability of each pension system through the issuance of bonds for the purpose of: (i) Providing for the safety and soundness of the pension systems; and (ii) realizing savings over the remaining term of the amortization schedules of the unfunded actuarial accrued liabilities and thereby achieve budgetary savings.

§12-8-3. Definitions.

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

3 (1) "Bonds" means bonds, notes, refunding notes and bonds, or other obligations of the state issued by the Governor pursuant to this article.

6 (2) "Consolidated Public Retirement Board" means the Board created to administer all public retirement plans in this state under article ten-d, chapter five of this code and any board or agency that succeeds to the powers and duties of the Consolidated Public Retirement Board.
(3) “Costs” include, but are not limited to, amounts necessary to fund any capitalized interest funds and any reserve funds, any costs relating to the issuance and determination of the validity of the bonds, fees for obtaining bond insurance, credit enhancements or liquidity facilities, administrative costs, fees incurred pursuant to subsection (f), section five of this article and costs attributable to the agreements described in section six of this article.

(4) “Death, Disability and Retirement Fund” means the Death, Disability and Retirement Fund of the West Virginia State Police created by article two, chapter fifteen of this code.

(5) “Department of administration” means the Department established pursuant to article one, chapter five-a of this code and any board or agency that succeeds to the powers and duties of the Department of Administration.

(6) “Executive order” means an executive order issued by the Governor to authorize the issuance of bonds as provided in this article.

(7) “Investment management board” means the Board established under article six, chapter twelve of this code, and any board or agency that succeeds to the powers and duties of the Investment Management Board.

(8) “Judges’ Retirement System” means the Judicial Retirement System created under article nine, chapter fifty-one of this code.

(9) “Obligation holders” means any holder or owner of any bond, any trustee or other fiduciary for any holder, or any provider of a letter of credit, policy of bond insurance, surety, or other credit enhancement or liquidity facility or swap relating to any bond.
(10) "Pension Liability Redemption Fund" means the special account in the State Treasury created pursuant to subsection (a), section eight of this article.

(11) "Pension Liability Redemption Payments" means: (a) The principal of, premium, if any, and interest on any outstanding bonds issued pursuant to this article; and (b) any other amounts required to be paid pursuant to the terms of any outstanding bonds, any indenture authorized pursuant to this article and any other agreement entered into between the Governor and any obligation holder.

(12) "Pension systems" means the Judges' Retirement System, the Death, Disability and Retirement Fund and the Teachers Retirement System.

(13) "Refund" or "refunding" means the issuance and sale of bonds the proceeds of which are used or are to be used for the payment, defeasance or redemption of outstanding bonds upon or prior to maturity.

(14) "Refunding bonds" means bonds issued for the payment, defeasance or redemption of outstanding bonds upon or prior to maturity.

(15) "Teachers Retirement System" means the retirement system established in article seven-a, chapter eighteen of this code.

(16) "Normal cost" means the value of benefits accruing for the current valuation year under the actuarial cost method.

(17) "Actuarial cost method" means a mathematical process in which the cost of benefits projected to be paid after a period of active employment has ended is allocated over the period of active employment during which the benefits are earned.
(18) "Unfunded actuarial accrued liability" means the aggregate of the unfunded actuarial accrued liabilities of the pension systems, with the unfunded actuarial accrued liability of each pension system being calculated in an actuarial valuation report provided by the Consolidated Public Retirement Board to the Department of Administration pursuant to section four of this article.

(19) "West Virginia State Police Retirement System" means the retirement system established in article two-a, chapter fifteen of this code.

(20) "West Virginia Public Employees Retirement System" means the retirement system established in article ten, chapter five of this code.

(21) "West Virginia State Sponsored Pension Systems" means the pension systems as defined in subdivision twelve of this subsection, the West Virginia Public Employees Retirement System and the West Virginia State Police Retirement System.

§12-8-4. Issuance of bonds; determination of unfunded actuarial accrued liability.

(a) The Governor may, as provided by this article, issue the bonds authorized in this section at a time or times as provided by a resolution adopted by the Legislature to fund all or a portion of the unfunded actuarial accrued liability, the bonds to be payable from and secured by moneys deposited in the Pension Liability Redemption Fund. Any bonds issued pursuant to this article, other than refunding bonds, shall be issued no later than five years after the date of adoption of the resolution of the Legislature authorizing the issuance of the bonds referred to in this section.

(b) The aggregate principal amount of bonds issued pursuant to the provisions of this article is limited to no more
than the lesser of the following: (1) The principal amount necessary, after deduction of costs, underwriter’s discount and original issue discount, if any, to fund not in excess of one hundred percent of the unfunded actuarial accrued liability of the Death, Disability and Retirement Fund of the West Virginia State Police established in article two, chapter fifteen of this code, one hundred percent of the unfunded actuarial accrued liability of the Judges’ Retirement System established in article nine, chapter fifty-one of this code, and ninety-five percent of the unfunded actuarial accrued liability of the Teachers Retirement System established in article seven-a, chapter eighteen of this code, as certified by the Consolidated Public Retirement Board to the Department of Administration pursuant to subsection (e) of this section; or (2) five billion five hundred million dollars; but in no event shall the aggregate principal amount of bonds issued exceed the principal amount necessary, after deduction of costs, underwriter’s discount and original issue discount, if any, to fund not in excess of the total unfunded actuarial accrued liability, as certified by the Consolidated Public Retirement Board to the Department of Administration pursuant to subsection (e) of this section.

(c) The costs of issuance, excluding fees for ratings, bond insurance, credit enhancements and liquidity facilities, plus underwriter’s discount and any other costs associated with the issuance shall not exceed, in the aggregate, the sum of one percent of the aggregate principal amount of bonds issued.

(d) The limitation on the aggregate principal amount of bonds provided in this section shall not preclude the issuance of bonds from time to time or in one or more series.

(e) No later than ten days after receipt of a request from the Department of Administration, the Consolidated Public Retirement Board shall provide the Department of Administration with a certified statement of the amount of each pension
system's unfunded actuarial accrued liability calculated in an actuarial valuation report that establishes the amount of the unfunded actuarial accrued liability as of a date specified by the Department of Administration, based upon each pension system's most recent actuarial valuation as completed by the Consolidated Public Retirement Board.

(f) No later than fifteen days after receipt of a request from the Governor, the Department of Administration shall provide the Governor with a certification of the maximum aggregate principal amount of bonds that may be issued at that time pursuant to subsection (b) of this section.

§12-8-5. Method of bond issuance; manner of sale of bonds; authority of department of administration.

(a) Upon the adoption of a resolution by the Legislature authorizing the issuance of the bonds in the amount and upon the terms specified in the resolution, the bonds shall be authorized by an executive order issued by the Governor. The executive order shall be received by the Secretary of State and filed in the State Register pursuant to section three, article two, chapter twenty-nine-a of this code. The Governor, either in the executive order authorizing the issuance of the bonds or by the execution and delivery by the Governor of a trust indenture or agreement authorized in the executive order, shall stipulate the form of the bonds, whether the bonds are to be issued in one or more series, the date or dates of issue, the time or times of maturity, the rate or rates of interest payable on the bonds, which may be at fixed rates or variable rates and which interest may be current interest or may accrue, the denomination or denominations in which the bonds are issued, the conversion or registration privileges applicable to some or all of the bonds, the sources and medium of payment and place or places of payment, the terms of redemption, any privileges of exchangeability or interchangeability applicable to the bonds,
and the entitlement of obligation holders to priorities of payment or security in the amounts deposited in the pension liability redemption fund. Bonds shall be signed by the Governor and attested by the Secretary of State, by either manual or facsimile signatures.

(b) The bonds may be sold at public or private sale at a price or prices determined by the Governor. The Governor may enter into any agreements necessary or desirable to effectuate the purposes of this section, including agreements to sell bonds to any person and to comply with the laws of any jurisdiction relating thereto.

(c) The Governor, in the executive order authorizing the issuance of bonds or by the execution and delivery by the Governor of a trust indenture or agreement authorized in the executive order, may covenant as to the use and disposition of or pledge of funds made available for pension liability redemption payments or any reserve funds established pursuant to the executive order or established pursuant to any indenture authorized by the executive order. All costs may be paid by or upon the order of the Governor from amounts received from the proceeds of the bonds and from amounts received pursuant to section eight of this article.

(d) Bonds may be issued by the Governor upon resolution adopted by the Legislature authorizing the same.

(e) Neither the Governor, the Secretary of State, nor any other person executing or attesting the bonds or any agreement authorized in this article are personally liable with respect to payment of any pension liability redemption payments.

(f) Notwithstanding any other provision of this code, the Department of Administration, in the Department's discretion:

(i) Shall select, employ and compensate one or more persons or firms to serve as bond counsel or cobond counsel who shall be
responsible for the issuance of a final approving opinion regarding the legality of the bonds issued pursuant to this article; (ii) may select, employ and compensate one or more persons or firms to serve as underwriter or counseller for any issuance of bonds pursuant to this article; and (iii) may select, employ and compensate one or more fiduciaries, financial advisors and experts, other legal counsel, placement agents, appraisers, actuaries and any other advisors, consultants and agents necessary to effectuate the purposes of this article. Notwithstanding the provisions of article three, chapter five of this code, bond counsel may represent the state in court, render advice and provide other legal services as may be requested by the Governor or the Department of Administration regarding any bond issuance pursuant to this article and all other matters relating to the bonds.

§12-8-6. Contracts with obligation holders; provisions of bonds and trust indentures and other agreements.

(a) The Governor may enter into contracts with obligation holders and the Governor shall comply fully with the terms and provisions of any contracts made with obligation holders.

(b) In addition and not in limitation to the other provisions of this section, in connection with any bonds issued pursuant to this article, the Governor may enter into: (i) commitments to purchase or sell bonds and bond purchase or sale agreements; (ii) agreements providing for credit enhancement or liquidity, including revolving credit agreements, agreements establishing lines of credit or letters of credit, insurance contracts, surety bonds and reimbursement agreements; (iii) agreements to manage interest rate exposure and the return on investments, including interest rate exchange agreements, interest rate cap, collar, corridor, ceiling and floor agreements, option, rate spread or similar exposure agreements, float agreements and forward agreements; (iv) stock exchange listing agreements;
and (v) any other commitments, contracts or agreements approved by the Governor.

c) The Governor may covenant as to the bonds to be issued and as to the issuance of the bonds, in escrow or otherwise, provide for the replacement of lost, destroyed or mutilated bonds, covenant against extending the time for the payment of bonds or interest on the bonds and covenant for the redemption of bonds and provide the terms and conditions of the redemption.

d) Except as otherwise provided in any executive order or in this article, the terms of the executive order and of this article in effect on the date the bonds are issued constitute a contract between the state and obligation holders. Any representation, warranty or covenant made by the Governor in the executive order, any indenture of trust or trust agreement authorized by the executive order, any bond or any other contract entered into pursuant to this article with any obligation holder shall be a representation, warranty or covenant made by the state.

e) The Governor may vest in the obligation holders, or any portion of them, the right to enforce the payment of the bonds or agreements authorized in this article or any covenants securing or relating to the bonds or the agreements. The Governor may prescribe the procedure, if any, by which the terms of any contract with obligation holders may be supplemented, amended or abrogated, prescribe which supplements or amendments will require the consent of obligation holders and the portion of obligation holders required to effect the consent and prescribe the manner in which the consent may be given.

§12-8-7. Proceeds from the sale of bonds.

(a) The proceeds from the sale of bonds, other than refunding bonds, issued pursuant to this article, after payment of any costs payable at time of issuance of the bonds, shall be paid to
the Consolidated Public Retirement Board to fund the amount
of the unfunded actuarial accrued liability for the pension
systems provided for by the bonds.

(b) Prior to the time of issuance, when requested by the
Department of Administration, the Investment Management
Board shall prepare and submit to the Governor, the Speaker of
the House of Delegates, the President of the Senate and the
Department of Administration the short-term and long-term
investment strategies that the Investment Management Board
intends to follow for investment of the plan assets of the
pension systems, as adjusted by the deposit of the proceeds of
bonds issued pursuant to this article, which bond proceeds shall
be invested pursuant to section six of article ten of the Constitu-
tion of West Virginia and otherwise as provided by law.

§12-8-8. Continuation of Pension Liability Redemption Fund;
disbursements to pay pension liability redemption
payments.

(a) There is hereby continued a special account in the State
Treasury to be administered by the State Treasurer, which is
designated and known as the “Pension Liability Redemption
Fund,” into which shall be deposited any and all amounts
appropriated by the Legislature or funds from any other source
whatsoever which are made available by law for the purpose of
making pension liability redemption payments. All funds
deposited to the credit of the Pension Liability Redemption
Fund shall be held in a separate account and all money belong-
ing to the Fund shall be deposited in the State Treasury to the
credit of the Pension Liability Redemption Fund.

(b) On or before the first day of November of each year, the
Department of Administration shall certify to the Governor and
the State Treasurer and deliver to the Speaker of the House of
Delegates and the President of the Senate a certification as to
the amount of pension liability redemption payments to be
appropriated for the next fiscal year in order to pay in full when
due all pension liability redemption payments that will become
due during the next fiscal year. The certification shall include
the amount and due date of each pension liability redemption
payment. All moneys appropriated by the Legislature in
accordance with a certification made pursuant to this subsection
shall be deposited into the Pension Liability Redemption Fund.

(c) The State Treasurer shall pay to the trustee under the
trust indenture or agreement executed by the Governor all
pension liability redemption payments as and when due. The
payments shall be transferred by electronic funds transfer,
unless some other manner of funds transfer is specified by the
Governor. No payments shall be required for bonds that are
defeased or bonds for which a deposit sufficient to provide for
all payments on the bonds has been made.

§12-8-10. State pledges and covenants.

(a) The state of West Virginia covenants and agrees with
the obligation holders, and the indenture shall so state, that the
bonds issued pursuant to this article are a direct and general
obligation of the state of West Virginia; that the pension
liability redemption payments will be included in each budget
along with all other amounts for payment and discharge of the
principal of and interest on state debt; that the full faith and
credit of the state is hereby pledged to secure the payment of
the principal of and interest on the bonds; and that annual state
taxes shall be collected in an amount sufficient to pay the
pension liability redemption payments as they become due and
payable from the Pension Liability Redemption Fund.

(b) The state hereby pledges and covenants with the
obligation holders, and the indenture shall so state, that the state
will not limit or alter the rights, powers or duties vested in any
state official, or that state official’s successors or assigns, and
the obligation holders in a way that will inhibit any state
official, or that state official’s successors or assigns, from
carrying out the state official’s rights, powers or duties under
this article, nor limit or alter the rights, powers or duties of any
state official, or that state official’s successors or assigns, in any
manner which would jeopardize the interest of any obligation
holder, or inhibit or prevent performance or fulfillment by any
state official, or that state official’s successors or assigns, with
respect to the terms of any agreement made with any obligation
holder pursuant to section six of this article.

(c) The state hereby pledges and covenants with the
obligation holders, and the indenture shall state, that, while any
of the bonds are outstanding, any changes in unfunded actuarial
accrued liability in any of the West Virginia state sponsored
pension systems resulting from the actual experience for that
system occurring during any fiscal year due to net differences
between the expected and actual experience for that year will be
fully amortized over no more than the ten consecutive fiscal
years following the date the Consolidated Public Retirement
Board certifies the net actuarial gain or loss to the Governor.
The certification shall be made on or before the thirty-first day
of January of each year. The net actuarial gain or loss for the
fiscal year shall be determined from the actuarial valuation
authorized by the Consolidated Public Retirement Board for
each plan completed as of the first day of the following fiscal
year. Following the receipt of the certification of net actuarial
gain or loss, the Governor shall submit the amount of the
amortization payment or credit each year for the pension
systems as part of the annual budget submission or in an
executive message to the Legislature. The Consolidated Public
Retirement Board shall include the ten year amortization in the
determination of the adequacy of the employer contribution
percentage for the West Virginia Public Employees Retirement
System and West Virginia State Police Retirement System.
(d) The state hereby pledges and covenants with the obligation holders, and the indenture shall state, that, while any of the bonds are outstanding, if the unfunded actuarial accrued liability of any of the West Virginia state sponsored pension systems increases or decreases due to changes in actuarial assumptions adopted by the Consolidated Public Retirement Board for completion of the annual actuarial valuation for any plan, the change shall be fully amortized over no more than the ten consecutive fiscal years following the date the Consolidated Public Retirement Board certifies the net change due to changes in assumptions to the Governor. The certification shall be made on or before the thirty-first day of January of each year. Following the receipt of the certification of change due to changes in actuarial assumptions, the Governor shall submit the amount of the amortization payment each year for the pension systems as part of the annual budget submission or in an executive message to the Legislature. The Consolidated Public Retirement Board shall include the ten year amortization in the determination of the adequacy of the employer contribution percentage for the Public Employees Retirement System and West Virginia State Police Retirement System.

(e) The state hereby pledges and covenants with the obligation holders, and the indenture shall state, that, while any of the bonds are outstanding (1) the state will not increase any existing benefits or create any new benefits for any retirees or beneficiaries currently receiving monthly benefit payments from any of the West Virginia state sponsored pension systems, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, in an amount that would exceed more than one percent of the accrued actuarial liability of the system as of the last day of the preceding fiscal year as determined in the annual actuarial valuation for each plan completed for the Consolidated Public Retirement Board as of the first day of the following fiscal year as of the date the improvement is adopted by the Legislature;
and (2) if any increase of existing benefits or creation of new
benefits for any retirees or beneficiaries currently receiving
monthly benefit payments under any of the West Virginia state
sponsored pension systems, other than an increase in benefits
or new benefits effected by operation of law in effect on the
effective date of this article, causes any additional unfunded
actuarial accrued liability in any of the West Virginia state
sponsored pension systems as calculated in the annual actuarial
valuation for each plan during any fiscal year, the additional
unfunded actuarial accrued liability of that pension system will
be fully amortized over no more than the six consecutive fiscal
years following the date the increase in benefits or new benefits
become effective as certified by the Consolidated Public
Retirement Board. Following the receipt of the certification of
additional actuarial accrued liability, the Governor shall submit
the amount of the amortization payment each year for the
pension systems as part of the annual budget submission or in
an executive message to the Legislature. The Consolidated
Public Retirement Board shall include the six year amortization
in the determination of the adequacy of the employer contribu-
tion percentage for the West Virginia Public Employees
Retirement System and West Virginia State Police Retirement
System.

(f) The state hereby pledges and covenants with the
obligation holders, and the indenture shall state, that, while any
of the bonds are outstanding that the computation of annuities
or benefits for active members due to retirement, death or
disability as provided for in the pension systems shall not be
amended in any manner that increases any existing benefits or
provides for new benefits.

(g) The state hereby pledges and covenants with the
obligation holders, and the indenture shall state, that, while any
of the bonds are outstanding, the state will not increase any
existing benefits or create any new benefits for active members
due to retirement, death or disability of the West Virginia
Public Employees Retirement System or the West Virginia
State Police Retirement System unless the actuarial accrued
liability of the plan is at least eighty-five percent funded as of
the last day of the prior fiscal year as determined in the actuar-
ial valuation for the plan completed for the Consolidated Public
Retirement Board as of the first day of the following fiscal year
as of the date the improvement is adopted by the Legislature.
Any additional unfunded actuarial accrued liability due to any
improvement in active members benefits shall be fully amor-
tized over not more than ten years following the date the
increase in benefits or new benefits become effective as
certified by the Consolidated Public Retirement Board. The
Consolidated Public Retirement Board shall include the ten year
amortization in the determination of the adequacy of the
employer contribution percentage for the West Virginia Public
Employees Retirement System and West Virginia State Police
Retirement System.

§12-8-15. Operation of article.

Notwithstanding the effective date of this act of the
Legislature, this article shall not become operational and shall
have no force and effect until the day the people ratify an
amendment to the constitution of this state authorizing pension
obligation bonds.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.


As used in this article, unless the context clearly requires a
different meaning:
(a) "Board" means the Consolidated Public Retirement Board created pursuant to article ten-d, chapter five of this code.

(b) "Department" means the West Virginia State Police.

(c) "Fund," "plan," or "system," means the West Virginia Death, Disability and Retirement Fund.

(d) "Law-enforcement officer" means an individual employed or otherwise engaged in either a public or private position which involves the rendition of services relating to enforcement of federal, state or local laws for the protection of public or private safety, including, but not limited to, positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any other law-enforcement position which requires certification, but excluding positions held by elected sheriffs or appointed chiefs of police whose duties are determined by the Board to be purely administrative in nature.

(e) "Member" means an employee of the West Virginia State Police who is an active participant in the fund.

(f) "Partially disabled" means a member's inability, on a probable permanent basis, to perform the essential duties of a law-enforcement officer by reason of any medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than twelve months, but which impairment does not preclude the member from engaging in other types of nonlaw-enforcement employment.

(g) "Physical or mental impairment" means an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques.
(h) "Totally disabled" means a member’s probable permanent inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. For purposes of this subsection, a member is totally disabled only if his or her physical or mental impairments are so severe that he or she is not only unable to perform his or her previous work as a member of the Department but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (1) The work exists in the immediate area in which the member lives; (2) a specific job vacancy exists; or (3) the member would be hired if he or she applied for work.

§15-2-26. Continuation of death, disability and retirement fund; designating the Consolidated Public Retirement Board as administrator of fund.

(a) There is continued the Death, Disability and Retirement Fund created for the benefit of members of the Department and any dependent of a retired or deceased member of the Department.

(b) There shall be deducted from the monthly payroll of each member of the Department and paid into the fund six percent of the amount of his or her salary: Provided, That beginning on the first day of July, one thousand nine hundred ninety-four, there shall be deducted from the monthly payroll of each member and paid into the Fund seven and one-half percent of the amount of his or her salary: Provided, however, That on and after the first day of July, one thousand nine hundred ninety-five, there shall be deducted from the monthly payroll of each member and paid into the Fund nine percent of the amount of his or her salary. An additional twelve percent of
the monthly salary of each member of the Department shall be
paid by the State of West Virginia monthly into the fund out of
the annual appropriation for the Department: Provided further,
That beginning on the first day of July, one thousand nine
hundred ninety-five, the State shall pay thirteen percent of the
monthly salary of each member into the Fund: And provided
further, That beginning on the first day of July, one thousand
nine hundred ninety-six, the State shall pay fourteen percent of
the monthly salary of each member into the Fund: And provided
further, That on and after the first day of July, one thousand
nine hundred ninety-seven, the State shall pay fifteen percent of
the monthly salary of each member into the Retirement Fund.
There shall also be paid into the Fund amounts that have
previously been collected by the Superintendent of the Depart-
ment on account of payments to members for court attendance
and mileage, rewards for apprehending wanted persons, fees for
traffic accident reports and photographs, fees for criminal
investigation reports and photographs, fees for criminal history
record checks, fees for criminal history record reviews and
challenges or from any other sources designated by the Superin-
tendent. All moneys payable into the Fund shall be deposited in
the State Treasury and the Treasurer and Auditor shall keep a
separate account thereof on their respective books.

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

(d) The moneys in this Fund, and the right of a member to
a retirement allowance, to the return of contributions, or to any
benefit under the provisions of this article, are exempt from any
state or municipal tax; shall not be subject to execution,
garnishment, attachment or any other process whatsoever, with
the exception that the benefits or contributions under the Fund
shall be subject to "qualified domestic relations orders" as that
term is defined in Section 414(p) of the Internal Revenue Code
with respect to governmental plans; and shall be unassignable
except as is provided in this article. The Death, Disability and
Retirement Fund shall be administered by the Consolidated
Public Retirement Board created pursuant to article ten-d,
chapter five of this code.

(e) All moneys paid into and accumulated in the Death,
Disability and Retirement Fund, except amounts designated or
set aside by the awards, shall be invested by the State Board of
Investments as provided by law.

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

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

(b) The Retirement Board shall retire any member of the
Department who has lodged with the Executive Director of the
Consolidated Public Retirement Board his or her voluntary
petition in writing for retirement, and:

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

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

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

(c) When the Retirement Board retires any member under any of the provisions of this section, the Board shall, by order in writing, make an award directing that the member is entitled to receive annually and that there shall be paid to the member from the Death, Disability and Retirement Fund in equal monthly installments during the lifetime of the member while in status of retirement, one or the other of two amounts, whichever is the greater:

(1) An amount equal to five and one-half percent of the aggregate of salary paid to the member during the whole period of service as a member of the Department; or

(2) The sum of six thousand dollars.

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

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


(a) Every member of the Department who is fifty-five years
of age or older and who is retired by the Retirement Board
under the provisions of section twenty-seven of this article;
every member of the Department who is retired by the Retire-
ment Board under the provisions of section twenty-nine or
thirty of this article; and every surviving spouse or other
beneficiary receiving a benefit pursuant to section thirty-three
or thirty-four of this article, is eligible to receive an annual
retirement annuity adjustment equal to three and seventy-five
hundredths percent of his or her retirement award or surviving
spouse award: Provided, That for any person retiring on and
after the fifteenth day of September, one thousand nine hundred
ninety-four, the annual retirement annuity adjustment shall be
equal to two percent of his or her retirement award or award
paid to a surviving spouse or other beneficiary. The adjustments
may not be retroactive. Yearly adjustments shall begin upon the
first day of July of each year. The annuity adjustments shall be
awarded and paid to the members from the Death, Disability
and Retirement Fund in equal monthly installments while the
member is in status of retirement. The annuity adjustments shall
supplement the retirement awards and benefits as provided in
this article.

(b) Any member or beneficiary who receives a benefit
pursuant to the provisions of section twenty-nine, thirty, thirty-
three or thirty-four of this article shall begin to receive the
annual annuity adjustment one year after the commencement of
the benefit on the next July first: Provided, That if the member
has been retired for less than one year when the first annuity
adjustment is given on that July first, that first annuity adjust-
ment will be a pro rata share of the full year’s annuity adjust-
ment.
§15-2-28. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.

(a) For purposes of this section, the term “active military duty” means full-time active duty with the Armed Forces of the United States, namely, the United States Air Force, Army, Coast Guard, Marines or Navy; and service with the National Guard or reserve military forces of any of such Armed Forces when the member has been called to active full-time duty and has received no compensation during the period of such duty from any person other than the Armed Forces.

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

1. That he or she has been honorably discharged from the Armed Forces;

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

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

4. That, except with respect to disability retirement pay awarded under section thirty of this article, he or she has actually served with the Department for twenty years exclusive of his or her active military duty.
(c) The amount of retirement pay to which any member is entitled shall be calculated and determined as if he or she had been receiving for the period of his or her active military duty a monthly salary from the Department equal to the average monthly salary which he or she actually received from the Department for his or her total service with the Department exclusive of the active military duty. The Superintendent shall transfer and pay into the Death, Disability and Retirement Fund from moneys appropriated for the Department, a sum equal to eighteen percent of the aggregate of the salaries on which the retirement pay of all members has been calculated and determined for their periods of active military duty. In addition, any person who, while a member of the Department was commissioned, enlisted or inducted into the Armed Forces of the United States or, being a member of the reserve officers’ corps, was called to active duty in the Armed Forces between the first day of September, one thousand nine hundred forty, and the close of hostilities in World War II, or between the twenty-seventh day of June, one thousand nine hundred fifty, and the close of the armed conflict in Korea on the twenty-seventh day of July, one thousand nine hundred fifty-three, between the first day of August, one thousand nine hundred sixty-four and the close of the armed conflict in Vietnaam, or during any other period of armed conflict by the United States whether sanctioned by a declaration of war by the Congress or by executive or other order of the President, is entitled to and shall receive credit on the minimum period of service required by law for retirement pay from the service of the West Virginia State Police for a period equal to the full time he or she has or shall, pursuant to the commission, enlistment, induction or call, have served with the Armed Forces subject to the following:

(1) That he or she has been honorably discharged from the Armed Forces;
(2) That within ninety days after honorable discharge from
the Armed Forces he or she has presented himself or herself to
the Superintendent and offered to resume service as an active
member of the Department; and

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

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

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


(a) Any member of the Department who has not yet entered retirement status on the basis of age and service and who becomes partially disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of members of the Department and incurred pursuant to or while the member was engaged in the performance of his or her duties as a member of the Department shall, if, in the opinion of the Retirement Board, he or she is by reason of that cause probably permanently unable to perform adequately the duties required of him or her as a member of the Department, but is able to engage in any other gainful employment in a field other than law enforcement, be retired from active service by the Retirement Board. The member thereafter is entitled to receive annually and there shall be paid to the member from the Death, Disability and Retirement Fund in equal monthly installments during the lifetime of the member; or until the member attains the age of fifty; or until the disability sooner terminates, one or the other of two amounts, whichever is greater:

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

(b) Upon attaining age fifty, the member shall receive the benefit provided in subsection (c), section twenty-seven of this article as it would apply to his or her aggregate career earnings from the Department through the day immediately preceding his or her disability. The recalculation of benefit upon a member attaining age fifty shall be considered to be a retirement under the provisions of section twenty-seven of this article, for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article: Provided, That a member who is partially disabled under this article may not, while in receipt of benefits for partial disability, be employed as a law-enforcement officer: Provided, however, That a member retired on partial disability under this article may serve as an elected sheriff or appointed chief of police in the state without a loss of disability retirement benefits so long as the elected or appointed position is shown, to the satisfaction of the Board, to require the performance of administrative duties and functions only, as opposed to the full range of duties of a law-enforcement officer.

(c) If any member not yet in retirement status on the basis of age and service is found by the Board to be permanently and totally disabled as the result of a physical or mental impairment resulting from any occupational risk or hazard inherent in or peculiar to the services required of members of the Department and incurred pursuant to or while the member was engaged in the performance of his or her duties as a member of the Department, the member is entitled to receive annually and there shall be paid to the member from the Death, Disability and Retirement Fund in equal monthly installments during the lifetime of the member or until the disability sooner terminates, an amount equal to the amount of the salary received by the member in the preceding twelve-month employment period: Provided, That in no event may the amount be less than fifteen
thousand dollars per annum, unless required by section forty of
this article: Provided, however, That if the member had not
been employed with the Department for twelve months prior to
the disability, the amount of monthly salary shall be annualized
for the purpose of determining the benefit.

(d) The Superintendent may expend moneys from funds
appropriated for the Department in payment of medical,
surgical, laboratory, X-ray, hospital, ambulance and dental
expenses and fees, and reasonable costs and expenses incurred
in the purchase of artificial limbs and other approved appliances
which may be reasonably necessary for any member of the
Department who has or becomes temporarily, permanently or
totally disabled by injury, illness or disease resulting from any
occupational risk or hazard inherent in or peculiar to the service
required of members of the Department and incurred pursuant
to or while such member was or shall be engaged in the
performance of duties as a member of the Department. Whenever
the Superintendent determines that any disabled member
is ineligible to receive any of the aforesaid benefits at public
expense, the Superintendent shall, at the request of the disabled
member, refer the matter to the Consolidated Public Retirement
Board for hearing and final decision. In no case will the
compensation rendered to health care providers for medical and
hospital services exceed the then current rate schedule in use by
the Workers’ Compensation Commission.

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

§15-2-30. Same — Due to other causes.

If any member while in active service of the Department
has, in the opinion of the Retirement Board, become perma-
nently partially or totally disabled to the extent that the member
cannot adequately perform the duties required of a member of
the Department from any cause other than those set forth in the
preceding section and not due to vicious habits, intemperance
or willful misconduct on his or her part, the member shall be
retired by the Retirement Board. The member is entitled to
receive annually and there shall be paid to the member while in
status of retirement, from the Death, Disability and Retirement
Fund in equal monthly installments during the lifetime of such
member or until the disability sooner terminates, a sum equal
to one-half the salary received in the preceding twelve-month
period: Provided, That if the member had not been employed
with the Department for twelve months prior to the disability,
the amount of monthly salary shall be annualized for the
purpose of determining the benefit. If the member, at the time
of retirement under the terms of this section, has served twenty
years or longer as a member of the Department, the member is
entitled to receive annually and there shall be paid to the
member from the Death, Disability and Retirement Fund in
equal monthly installments, commencing on the date the
member is retired and continuing during the lifetime of the
member, until the member attains the age of fifty, while in
status of retirement, an amount equal to one-half the salary
received by the member in the preceding twelve-month period:
Provided, however, That if the member had not been employed
with the Department for twelve months prior to the disability,
the amount of monthly salary shall be annualized for the
purpose of determining the benefit.

For the purposes of this section, the term “salary” does not
include any compensation paid for overtime service.

Upon attaining age fifty, the member shall receive the
benefit provided in subsection (e), section twenty-seven of this
article as it would apply to his or her aggregate career earnings
from the Department through the day immediately preceding
his or her disability. The recalculation of benefit upon a
member attaining age fifty shall be considered to be a retire-
ment under the provisions of section twenty-seven of this article, for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article.

§15-2-31. Same – Physical examinations; termination.

The Consolidated Public Retirement Board may require any member who has been retired with compensation on account of disability to submit to a physical and/or mental examination by a physician or physicians selected or approved by the Board and cause all costs incident to the examination including hospital, laboratory, X ray, medical and physicians’ fees to be paid out of funds appropriated to defray the current expense of the Department, and a report of the findings of the physician or physicians shall be submitted in writing to the Consolidated Public Retirement Board for its consideration. If, from the report or from the report and hearing on the report, the Retirement Board is of opinion and finds that the disabled member has recovered from the disability to the extent that he or she is able to perform adequately the duties of a law-enforcement officer, the Board shall order that all payments from the Death, Disability and Retirement Fund be terminated. If, from the report or the report and hearing on the report, the Board is of the opinion and finds that the disabled member has recovered from his or her previously determined probable permanent disability to the extent that he or she is able to engage in gainful employment but remains unable to adequately perform the duties of a law-enforcement officer, the Board shall order the payment, in monthly installments of an amount equal to two thirds of the salary, in the case of a member retired under the provisions of section twenty-nine of this article, or equal to one half of the salary, in the case of a member retired under the provisions of section thirty of this article, excluding any compensation paid for overtime service, for the twelve-month employment period preceding the disability. Provided, That if the member had not been employed with the Department for
twelve months prior to the disability, the amount of monthly
salary shall be annualized for the purpose of determining the
benefit.

§15-2-31a. Application for disability benefit; determinations.

(a) Application for a disability benefit may be made by a
member or, if the member is under an incapacity, by a person
acting with legal authority on the member’s behalf. After
receiving an application for a disability benefit from a member
or a person acting with legal authority on behalf of the member,
the Board shall notify the Superintendent of the Department
that an application has been filed: Provided. That when, in the
judgment of the Superintendent, a member is no longer physi-

cally or mentally fit for continued duty as a member of the
West Virginia State Police and the member has failed or refused
to make application for disability benefits under this article, the
Superintendent may petition the Board to retire the member on
the basis of disability pursuant to rules which may be estab-
lished by the Board. Within thirty days of the Superintendent’s
receipt of the notice from the Board or the filing of the Superin-
tendent’s petition with the Board, the Superintendent shall
forward to the Board a statement certifying the duties of the
member’s employment, information relating to the Superinten-
dent’s position on the work relatedness of the member’s alleged
disability, complete copies of the member’s medical file and
any other information requested by the Board in its processing
of the application, if this information is requested timely.

(b) The Board shall propose legislative rules in accordance
with the provisions of article three, chapter twenty-nine-a of
this code relating to the processing of applications and petitions
for disability retirement under this article.

(c) The Board shall notify a member and the Superintendent
of its final action on the disability application or petition within
ten days of the Board’s final action. The notice shall be sent by
certified mail, return receipt requested. If either the member or
the Superintendent is aggrieved by the decision of the Board
and intends to pursue judicial review of the Board’s decision as
provided in section four, article five, chapter twenty-nine-a of
this code, the party so aggrieved shall notify the Board within
twenty days of the member’s or Superintendent’s receipt of the
Board’s notice that they intend to pursue judicial review of the
Board’s decision.

(d) The Board may require a disability benefit recipient to
file an annual statement of earnings and any other information
required in rules which may be adopted by the Board. The
Board may waive the requirement that a disability benefit
recipient file the annual statement of earnings if the Board’s
physician certifies that the recipient’s disability is ongoing. The
Board shall annually examine the information submitted by the
recipient. If a disability retiree refuses to file a statement and
information, the disability benefit shall be suspended until the
statement and information are filed.

§15-2-31b. Annual report on each employer’s disability retire-
ment experience.

Not later than the first day of January, two thousand six,
and each first day of January thereafter, the Board shall prepare
a report for the preceding fiscal year of the disability retirement
experience of the State Police. The report shall specify the total
number of disability applications submitted, the status of each
application as of the last day of the fiscal year, total applica-
tions granted or denied, and the percentage of disability benefit
recipients to the total number of State Police employees who
are members of the Fund. The report shall be submitted to the
Governor and the chairpersons of the standing committees of
the Senate and House of Delegates with primary responsibility
for retirement legislation.
§15-2-32. Retired member not to exercise police authority; retention of group insurance.

A member who is retired may not, while in retirement status, exercise any of the powers conferred upon active members by section twelve of this article; but is entitled to receive free of cost to the member and retain as his or her separate property one complete standard uniform prescribed by section nine of this article: Provided, That the uniform may be worn by a member in retirement status only on occasions prescribed by the Superintendent. The Superintendent shall maintain at public expense for the benefit of all members in retirement status that group life insurance mentioned in section ten of this article. The Superintendent, when he or she is of opinion that the public safety shall require, may recall to active duty during any period determined by the Superintendent, any member who is retired under the provisions of section twenty-seven of this article, provided the consent of the member to reassume duties of active membership shall first be had and obtained. When any member in retirement resumes status of active membership the member, during the period the member remains in active status, is not entitled to receive retirement pay or benefits, but in lieu thereof, is entitled to receive that rate of salary and allowance pertinent to the rank or grade held by the member when retired. When the member is released from active duty he or she shall reassume the status of retirement and shall thereupon be entitled to receive appropriate benefits as provided by this article: Provided, That the amount of the benefits shall in no event be less than the amount made in his or her behalf.

§15-2-33. Awards and benefits to dependents of member — When member dies in performance of duty, etc.; dependent child scholarship and amount.
(a) The surviving spouse or the dependent child or children or dependent parent or parents of any member who has lost or loses his or her life by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members while the member was or is engaged in the performance of his or her duties as a member of the Department, or if the member dies from any cause after having been retired pursuant to the provisions of section twenty-nine of this article, the surviving spouse or other dependent is entitled to receive and shall be paid from the Death, Disability and Retirement Fund benefits as follows: To the surviving spouse annually, in equal monthly installments during his or her lifetime one or the other of two amounts, which shall become immediately available and which shall be the greater of:

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

(2) The sum of six thousand dollars.

(b) In addition thereto the surviving spouse is entitled to receive and there shall be paid to the surviving spouse one hundred dollars monthly for each dependent child or children. If the surviving spouse dies or if there is no surviving spouse, there shall be paid monthly to each dependent child or children from the Death, Disability and Retirement Fund a sum equal to twenty-five percent of the surviving spouse’s entitlement. If there is no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the Death, Disability and Retirement Fund to the dependent parents of the deceased member during their joint lifetimes a
sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is but one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive.

(c) Any person qualified as a surviving dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum up to but not exceeding seven thousand five hundred dollars shall be paid from the Death, Disability and Retirement Fund to any university or college in this state or to any trade or vocational school or other entity in this state approved by the Board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of those institutions so long as the recipient makes application to the Board on an approved form and under rules as provided by the Board, and maintains scholastic eligibility as defined by the institution or the Board. The Board may by appropriate rules define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.

(d) Awards and benefits for a member’s surviving spouse or dependents received under any section or any of the provisions of this retirement system shall be in lieu of receipt of any benefits for those persons under the provisions of any other state retirement system. Receipt of benefits under any other state retirement system shall be in lieu of any right to receive any benefits under this retirement system, so that only a single receipt of retirement benefits occurs.

(e) For the purposes of this section, the term “salary” does not include any compensation paid for overtime service.
§15-2-34. Same — When member dies from nonservice-connected causes.

(a) In any case where a member while in active service of the Department, before having completed twenty years of service as a member of the Department, dies from any cause other than those specified in this article and not due to vicious habits, intemperance or willful misconduct on his or her part, there shall be paid annually in equal monthly installments from the Death, Disability and Retirement Fund to the surviving spouse of the member during his or her lifetime, or until such time as the surviving spouse remarries, a sum equal to one half of the salary received in the preceding twelve-month employment period by the deceased member: Provided, That if the member had not been employed with the Department for twelve months prior to his or her death, the amount of monthly salary shall be annualized for the purpose of determining the benefit. The benefit shall become immediately available upon the death of the member. If there is no surviving spouse, or the surviving spouse dies or remarries, there shall be paid monthly to each dependent child or children, from the Death, Disability and Retirement Fund, a sum equal to twenty-five percent of the surviving spouse's entitlement. If there is no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the Fund to the dependent parents of the deceased member during their joint lifetimes, a sum equal to the amount which a surviving spouse would have been entitled to receive: Provided, however, That when there is but one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive.

(b) For the purposes of this section, the term “salary” does not include compensation paid for overtime service.
§15-2-37. Refunds to certain members upon discharge or resignation; deferred retirement.

(a) Any member who is discharged by order of the Superintendent or otherwise terminates employment with the Department, at the written request of the member to the Retirement Board, is entitled to receive from the Retirement Fund a sum equal to the aggregate of the principal amount of moneys deducted from his or her salary and paid into the Death, Disability and Retirement Fund plus four percent interest compounded thereon calculated annually as provided and required by this article.

(b) Any member who has ten or more years of service with the Department and who withdraws his or her contributions may thereafter be reenlisted as a member of the Department, but may not receive any prior service credit on account of former service, unless following reenlistment the member redeposits in the Fund established in article two-a of this chapter the amount of the refund, together with interest thereon at the rate of seven and one-half percent per annum from the date of withdrawal to the date of redeposit, in which case he or she shall receive the same credit on account of his or her former service as if no refund had been made. He or she shall become a member of the Retirement System established in article two-a of this chapter.

(c) Every member who completes ten years of service with the Department is eligible, upon separation of employment with the Department, either to withdraw his or her contributions in accordance with subsection (a) of this section or to choose not to withdraw his or her accumulated contributions with interest. Upon attainment of age sixty-two, a member who chooses not to withdraw his or her contributions is eligible to receive a retirement annuity. Any member choosing to receive the deferred annuity under this subsection is not eligible to receive
the annual annuity adjustment provided in section twenty-
seven-a of this article. When the Retirement Board retires any
member under any of the provisions of this section, the Board
shall, by order in writing, make an award directing that the
member is entitled to receive annually and that there shall be
paid to the member from the Death, Disability and Retirement
Fund in equal monthly installments during the lifetime of the
member while in status of retirement one or the other of two
amounts, whichever is greater:

(1) An amount equal to five and one-half percent of the
aggregate of salary paid to the member during the whole period
of service as a member of the Department; or

(2) The sum of six thousand dollars.

The annuity shall be payable during the lifetime of the
member. The retiring member may choose, in lieu of a life
annuity, an annuity in reduced amount payable during the
member’s lifetime, with one half of the reduced monthly
amount paid to his or her surviving spouse if any, for the
spouse’s remaining lifetime after the death of the member.
Reduction of this monthly benefit amount shall be calculated to
be of equal actuarial value to the life annuity the member could
otherwise have chosen.


(a) The state shall not increase any existing benefits or
create any new benefits for any retirees or beneficiaries
currently receiving monthly benefit payments from the system,
other than an increase in benefits or new benefits effected by
operation of law in effect on the effective date of this article, in
an amount that would exceed more than one percent of the
accrued actuarial liability of the system as of the last day of the
preceding fiscal year as determined in the annual actuarial
valuation for the plan completed for the Consolidated Public
Retirement Board as of the first day of the following fiscal year as of the date the improvement is adopted by the Legislature.

(b) If any increase of existing benefits or creation of new benefits for any retirees or beneficiaries currently receiving monthly benefit payments under the system, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, causes any additional unfunded actuarial accrued liability in any of the West Virginia state sponsored pension systems as calculated in the annual actuarial valuation for the plan during any fiscal year, the additional unfunded actuarial accrued liability of the system shall be fully amortized over no more than the six consecutive fiscal years following the date the increase in benefits or new benefits become effective as certified by the consolidated public retirement board. Following the receipt of the certification of additional actuarial accrued liability, the Governor shall submit the amount of the amortization payment each year for the system as part of the annual budget submission or in an executive message to the Legislature.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the computation of annuities or benefits for active members due to retirement, death or disability as provided for in the system shall not be amended in such a manner as to increase any existing benefits or to provide for new benefits.

(d) The provisions of this section terminate effective the first day of July, two thousand twenty-five: Provided, That if bonds are issued pursuant to article eight, chapter twelve of this code, the provisions of this section shall not terminate while any of the bonds are outstanding.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

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

(1) “Active military duty” means full-time active duty with the Armed Forces of the United States, namely, the United States Air Force, Army, Coast Guard, Marines or Navy; and service with the National Guard or reserve military forces of any of the Armed Forces when the member has been called to active full-time duty and has received no compensation during the period of duty from any person other than the Armed Forces.

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

(3) “Board” means the Consolidated Public Retirement Board created pursuant to article ten-d, chapter five of this code.

(4) “Department” means the West Virginia State Police.

(5) “Final average salary” means the average of the highest annual compensation received for employment with the Department, including compensation paid for overtime service, received by the member during any five calendar years within the member’s last ten years of service.

(6) “Fund” means the West Virginia State Police Retirement Fund created pursuant to section four of this article.


(8) “Law-enforcement officer” means individuals employed or otherwise engaged in either a public or private position which involves the rendition of services relating to enforcement of federal, state or local laws for the protection of public or
private safety, including, but not limited to, positions as deputy
sheriffs, police officers, marshals, bailiffs, court security
officers or any other law-enforcement position which requires
certification, but excluding positions held by elected sheriffs or
appointed chiefs of police whose duties are purely administra-
tive in nature.

(9) "Member" or "employee" means a person regularly
employed in the service of the Department as a law-enforce-
ment officer after the effective date of this article.

(10) "Month of service" means each month for which a
member is paid or entitled to payment for at least one hour of
service for which contributions were remitted to the Fund.
These months shall be credited to the member for the calendar
year in which the duties are performed.

(11) "Partially disabled" means a member's inability, on a
probable permanent basis, to perform the essential duties of a
law enforcement officer by reason of any medically determina-
ble physical or mental impairment which has lasted or can be
expected to last for a continuous period of not less than twelve
months, but which impairment does not preclude the member
from engaging in other types of nonlaw-enforcement employ-
ment.

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

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

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

(15) "Retirement system," "plan" or "system" means the
West Virginia State Police Retirement System created and
established by this article.

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

(17) "Totally disabled" means a member's probable
permanent inability to engage in substantial gainful activity by
reason of any medically determined physical or mental impair-
ment that can be expected to result in death or that has lasted or
can be expected to last for a continuous period of not less than
twelve months. For purposes of this subdivision, a member is
totally disabled only if his or her physical or mental impair-
ments are so severe that he or she is not only unable to perform
his or her previous work as a member of the Department, but
also cannot, considering his or her age, education and work
experience, engage in any other kind of substantial gainful
employment which exists in the state regardless of whether: (A)
The work exists in the immediate area in which the member
lives; (B) a specific job vacancy exists; or (C) the member
would be hired if he or she applied for work.

(18) "Years of service" means the months of service
acquired by a member while in active employment with the
Department divided by twelve. Years of service shall be
calculated in years and fraction of a year from the date of active
employment of the member with the Department through the
date of termination of employment or retirement from the
Department. If a member returns to active employment with the
Department following a previous termination of employment
with the Department, and the member has not received a refund of contributions plus interest for the previous employment under section eight of this article, service shall be calculated separately for each period of continuous employment, and years of service shall be the total service for all periods of employment. Years of service shall exclude any periods of employment with the Department for which a refund of contributions plus interest has been paid to the member, unless the member repays the previous withdrawal, as provided in section eight of this article, to reinstate the years of service.

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

(a) There shall be deducted from the monthly payroll of each member and paid into the Fund created pursuant to section four of this article, twelve percent of the amount of his or her salary.

(b) The state of West Virginia's contributions to the retirement system, as determined by the Consolidated Public Retirement Board by legislative rule promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code, shall be a percent of the members' total annual compensation related to benefits under this retirement system. In determining the amount, the Board shall give consideration to setting the amount at a sum equal to an amount which, if paid annually by the state, will be sufficient to provide for the total normal cost of the benefits expected to become payable to all members and to amortize any unfunded liability found by application of the actuarial funding method chosen for that purpose by the Consolidated Public Retirement Board, over a period of years determined actuarially appropriate. When proposing a rule for promulgation which relates to the amount of employer contribution, the board may promulgate emergency rules pursuant to the provisions of article three, chapter twenty-
nine-a of this code, if the inability of the Board to increase state
contributions will detrimentally affect the actuarial soundness
of the retirement system. A signed statement from the state
actuary shall accompany the statement of facts and circum-
stances constituting an emergency which shall be filed in the
State Register. For purposes of this section, subdivision (2),
subsection (b), section fifteen-a, article three, chapter twenty-
nine-a of this code is not applicable to the Secretary of State’s
determination of whether an emergency rule should be ap-
proved. The state’s contributions shall be paid monthly into the
fund created pursuant to section four of this article out of the
annual appropriation for the Department.

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


(a) A member may retire with full benefits upon attaining
the age of fifty-five and completing twenty or more years of
service, by lodging with the Consolidated Public Retirement
Board his or her voluntary petition in writing for retirement. A
member who is less than age fifty-five may retire upon com-
pleting twenty years or more of service: Provided, That he or
she will receive a reduced benefit that is of equal actuarial value
to the benefit the member would have received if the member
deferred commencement of his or her accrued retirement
benefit to the age of fifty-five.

(b) When the Retirement Board retires a member with full
benefits under the provisions of this section, the Board, by order
in writing, shall make a determination that the member is
entitled to receive an annuity equal to two and three-fourths
percent of his or her final average salary multiplied by the
number of years, and fraction of a year, of his or her service in
the Department at the time of retirement. The member’s annuity shall begin the first day of the calendar month following the month in which the member’s application for the annuity is filed with the Board on or after his or her attaining age and service requirements, and termination of employment.

(c) In no event may the provisions of section thirteen, article sixteen, chapter five be applied in determining eligibility to retire with either a deferred or immediate commencement of benefit.


(a) Every member of the Department who is sixty-three years of age or older and who is retired by the Retirement Board under the provisions of section six of this article; every member who is retired under the provisions of section nine or ten of this article; and every surviving spouse receiving a benefit pursuant to section twelve, thirteen or fourteen of this article is eligible to receive an annual retirement annuity adjustment equal to one percent of his or her retirement award or surviving spouse award. The adjustments may not be retroactive. Yearly adjustments shall begin upon the first day of July of each year. The annuity adjustments shall be awarded and paid to a member from the Fund in equal monthly installments while the member is in status of retirement. The annuity adjustments shall supplement the retirement awards and benefits provided in this article.

(b) Any member or beneficiary who receives a benefit pursuant to the provisions of section nine, ten, twelve, thirteen or fourteen of this article shall begin to receive the annual annuity adjustment one year after the commencement of the benefit on the next July first: Provided, That if the member has been retired for less than one year when the first annuity adjustment is given on that July first, that first annuity adjust-
§15-2A-8. Refunds to certain members upon discharge or resignation; deferred retirement.

(a) Any member who is discharged by order of the Superintendent or otherwise terminates employment with the Department is, at the written request of the member to the Retirement Board, entitled to receive from the Retirement Fund a sum equal to the aggregate of the principal amount of moneys deducted from the salary of the member and paid into the Retirement Fund plus four percent interest compounded thereon calculated annually as provided and required by this article.

(b) Any member withdrawing contributions who may thereafter be reenlisted as a member of the Department shall not receive any prior service credit on account of the former service, unless following his or her reenlistment the member redeposits in the Fund the amount of the refund, together with interest thereon at the rate of seven and one-half percent per annum from the date of withdrawal to the date of redeposit, in which case he or she shall receive the same credit on account of his or her former service as if no refund had been made.

(c) Every member who completes ten years of service with the Department is eligible, upon separation of employment with the Department, to either withdraw his or her contributions in accordance with subsection (a) of this section, or to choose not to withdraw his or her accumulated contributions with interest. Upon attainment of age sixty-two, a member who chooses not to withdraw his or her contributions is eligible to receive a retirement annuity. The annuity shall be payable during the lifetime of the member, and shall be in the amount of his or her accrued retirement benefit as determined under section six of this article. The retiring member may choose, in lieu of a life
annuity, an annuity in reduced amount payable during the
member’s lifetime, with one half of the reduced monthly
amount paid to his or her surviving spouse if any, for the
spouse’s remaining lifetime after the death of the member.
Reduction of the monthly benefit amount shall be calculated to
be of equal actuarial value to the life annuity the member could
otherwise have chosen. Any member choosing to receive the
defered annuity under this subsection is not eligible to receive
the annual annuity adjustment provided in section seven of this
article.

§15-2A-9. Awards and benefits for disability — Incurred in
performance of duty.

(a) Except as otherwise provided in this section, a member
of the Department who has not yet entered retirement status on
the basis of age and service and who becomes partially disabled
by injury, illness or disease resulting from any occupational risk
or hazard inherent in or peculiar to the services required of
members of the Department and incurred pursuant to or while
the member was engaged in the performance of his or her duties
as a member of the Department shall, if, in the opinion of the
Retirement Board, he or she is, by reason of such cause, unable
to perform adequately the duties required of him or her as a
member of the Department, but is able to engage in other
gainful employment in a field other than law enforcement, be
retired from active service by the Board. The member thereafter
is entitled to receive annually and there shall be paid to the
member from the Fund in equal monthly installments during the
lifetime of the member, or until the member attains the age of
fifty-five or until the disability sooner terminates, one or the
other of two amounts, whichever is greater:

(1) An amount equal to six tenths of the base salary
received in the preceding twelve-month employment period:

Provided, That if the member had not been employed with the
Department for twelve months prior to the disability, the
amount of monthly salary shall be annualized for the purpose
of determining the benefit; or

(2) The sum of six thousand dollars.

Upon attaining age fifty-five, the member shall receive the
benefit provided in section six of this article as it would apply
to his or her final average salary based on earnings from the
Department through the day immediately preceding his or her
disability. The recalculation of benefit upon a member attaining
age fifty-five shall be considered to be a retirement under the
provisions of section six of this article, for purposes of deter-
miming the amount of annual annuity adjustment and for all
other purposes of this article: Provided, That a member who is
partially disabled under this article may not, while in receipt of
benefits for partial disability, be employed as a law-enforce-
ment officer: Provided, however, That a member retired on a
partial disability under this article may serve as an elected
sheriff or appointed chief of police in the state without a loss of
disability retirement benefits so long as the elected or appointed
position is shown, to the satisfaction of the Board, to require the
performance of administrative duties and functions only, as
opposed to the full range of duties of a law-enforcement officer.

(b) Any member who has not yet entered retirement status
on the basis of age and service and who becomes physically or
mentally disabled by injury, illness or disease on a probable
permanent basis resulting from any occupational risk or hazard
inherent in or peculiar to the services required of members of
the Department and incurred pursuant to or while the member
was or is engaged in the performance of his or her duties as a
member of the Department to the extent that the member is
incapacitated ever to engage in any gainful employment, the
member is entitled to receive annually, and there shall be paid
to the member from the Fund in equal monthly installments
during the lifetime of the member or until the disability sooner terminates, an amount equal to the amount of the base salary received by the member in the preceding twelve-month employment period.

(c) The Superintendent of the Department may expend moneys from funds appropriated for the Department in payment of medical, surgical, laboratory, X-ray, hospital, ambulance and dental expenses and fees, and reasonable costs and expenses incurred in the purchase of artificial limbs and other approved appliances which may be reasonably necessary for any member of the Department who is temporarily, permanently or totally disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the service required of members of the Department and incurred pursuant to or while the member was or shall be engaged in the performance of duties as a member of the Department. Whenever the Superintendent determines that any disabled member is ineligible to receive any of the aforesaid benefits at public expense, the Superintendent shall, at the request of the disabled member, refer the matter to the Board for hearing and final decision. In no case will the compensation rendered to health care providers for medical and hospital services exceed the then current rate schedule in use by the Bureau of Employment Programs, Workers’ Compensation Division.

§15-2A-10. Same — Due to other causes.

(a) If any member while in active service of the State Police becomes partially or totally disabled on a probable permanent basis to the extent that the member cannot adequately perform the duties required of a member of the Department from any cause other than those set forth in the preceding section and not due to vicious habits, intemperance or willful misconduct on his or her part, the member shall be retired by the Board. There shall be paid annually to the member from the Fund in equal
monthly installments, commencing on the date the member is
retired and continuing during the lifetime of the member; or
until the member attains the age of fifty-five; while in status of
retirement an amount equal to one half the base salary received
by the member in the preceding twelve-month period: Pro-
vided, That if the member had not been employed with the
Department for twelve months prior to the disability, the
amount of monthly salary shall be annualized for the purpose
of determining the benefit.

(b) Upon attaining age fifty-five, the member shall receive
the benefit provided in section six of this article as it would
apply to his or her final average salary based on earnings from
the Department through the day immediately preceding his or
her disability. The recalculation of benefit upon a member
attaining age fifty-five shall be considered to be a retirement
under the provisions of section six of this article, for purposes
of determining the amount of annual annuity adjustment and for
all other purposes of this article.


The Board may require any member retired with compensa-
tion on account of disability to submit to a physical or mental
examination or both a physical and mental examination by a
physician or physicians selected or approved by the Board and
cause all costs incident to the examination including hospital,
laboratory, X-ray, medical and physicians’ fees to be paid out
of funds appropriated to defray the current expenses of the
Department, and a report of the findings of the physician or
physicians shall be submitted in writing to the Board for its
consideration. If from the report or from the report and hearing
on the report, the Board is of opinion and finds that the disabled
member has recovered from the disability to the extent that he
or she is able to perform adequately the duties of a law-enforce-
ment officer, the Board shall order that all payments from the
Fund be terminated. If from the report or the report and hearing
on the report, the Board is of the opinion and find that the
disabled member has recovered from his or her previously
determined probable permanent disability to the extent that he
or she is able to engage in any gainful employment but unable
to adequately perform the duties of a law-enforcement officer,
the Board shall order, in the case of a member retired under the
provisions of section nine of this article, that the disabled
member be paid annually from the Fund an amount equal to six
tenths of the base salary paid to the member in the last twelve-
month employment period. The Board shall order, in the case
of a member retired under the provisions of section ten of this
article, that the disabled member be paid from the Fund an
amount equal to one fourth of the base salary paid to the
member in the last twelve-month employment period: Provided,
That if the member had not been employed with the Department
for twelve months prior to the disability, the amount of monthly
salary shall be annualized for the purpose of determining the
benefit.

§15-2A-11a. Physical examinations of prospective members;
application for disability benefit; determinations.

(a) Not later than thirty days after an employee becomes a
member of the Fund, the employer shall forward to the Board
a copy of the physician’s report of a physical examination
which incorporates the standards or procedures described in
section seven, article two, chapter fifteen of this code. A copy
of the physician’s report shall be placed in the employee’s
retirement system file maintained by the Board.

(b) Application for a disability benefit may be made by a
member or, if the member is under an incapacity, by a person
acting with legal authority on the member’s behalf. After
receiving an application for a disability benefit, the Board shall
notify the Superintendent of the Department that an application
has been filed: Provided, That when, in the judgment of the
Superintendent, a member is no longer physically or mentally
fit for continued duty as a member of the West Virginia State
Police and the member has failed or refused to make application
for disability benefits under this article, the Superintendent may
petition the Board to retire the member on the basis of disability
pursuant to legislative rules proposed in accordance with article
three, chapter twenty-nine-a of this code. Within thirty days of
the Superintendent’s receipt of the notice from the Board or the
filing of the Superintendent’s petition with the Board, the
Superintendent shall forward to the Board a statement certifying
the duties of the member’s employment, information relating to
the Superintendent’s position on the work relatedness of the
member’s alleged disability, complete copies of the member’s
medical file and any other information requested by the Board
in its processing of the application.

(c) The Board shall propose legislative rules in accordance
with article three, chapter twenty-nine-a of this code relating to
the processing of applications and petitions for disability
retirement under this article.

(d) The Board shall notify a member and the Superinten-
dent of its final action on the disability application or petition
within ten days of the Board’s final action. The notice shall be
sent by certified mail, return receipt requested. If either the
member or the Superintendent is aggrieved by the decision of
the Board and intends to pursue judicial review of the Board’s
decision as provided in section four, article five, chapter
twenty-nine-a of this code, the party aggrieved shall notify the
Board within twenty days of the member’s or Superintendent’s
receipt of the Board’s notice that they intend to pursue judicial
review of the Board’s decision.

(e) The Board may require a disability benefit recipient to
file an annual statement of earnings and any other information
required in rules which may be adopted by the Board. The
Board may waive the requirement that a disability benefit
recipient file the annual statement of earnings if the Board’s
physician certifies that the recipient’s disability is ongoing. The
Board shall annually examine the information submitted by the
recipient. If a disability recipient refuses to file the statement or
information, the disability benefit shall be suspended until the
statement and information are filed.

§15-2A-11b. Annual report on each employer’s disability retire-
ment experience.

Not later than the first day of January, two thousand six,
and each first day of January thereafter, the Board shall prepare
a report for the preceding fiscal year of the disability retirement
experience of the State Police. The report shall specify the total
number of disability applications submitted, the status of each
application as of the last day of the fiscal year, total applica-
tions granted or denied, and the percentage of disability benefit
recipients to the total number of the State Police employees
who are members of the Fund. The report shall be submitted to
the Governor and the chairpersons of the standing committees
of the Senate and House of Delegates with primary responsibil-
ity for retirement legislation.

§15-2A-12. Awards and benefits to dependents of member —
When member dies in performance of duty, etc.;
dependent child scholarship and amount.

The surviving spouse, the dependent child or children or
dependent parent or parents of any member who has lost or
shall lose his or her life by reason of injury, illness or disease
resulting from an occupational risk or hazard inherent in or
peculiar to the service required of members while the member
was engaged in the performance of his or her duties as a
member of the Department, or the survivor of a member who
dies from any cause after having been retired pursuant to the provisions of section nine of this article, is entitled to receive and shall be paid from the Fund benefits as follows: To the surviving spouse annually, in equal monthly installments during his or her lifetime, one or the other of two amounts, which shall become immediately available and which shall be the greater of:

(1) An amount equal to seven tenths of the base salary received in the preceding twelve-month employment period by the deceased member: Provided, That if the member had not been employed with the Department for twelve months prior to his or her death, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or

(2) The sum of six thousand dollars.

In addition thereto, the surviving spouse is entitled to receive and there shall be paid to the person one hundred dollars monthly for each dependent child or children. If the surviving spouse dies or if there is no surviving spouse, there shall be paid monthly to each dependent child or children from the Fund a sum equal to one fourth of the surviving spouse’s entitlement. If there is no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the Fund to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is but one dependent parent surviving, that parent is entitled to receive during his or her lifetime one half the amount which both parents, if living, would have been entitled to receive.

Any person qualifying as a surviving dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship
to be applied to the career development education of that
person. This sum, up to but not exceeding seven thousand five
hundred dollars, shall be paid from the Fund to any university
or college in this state or to any trade or vocational school or
other entity in this state approved by the Board, to offset the
expenses of tuition, room and board, books, fees or other costs
incurred in a course of study at any of these institutions so long
as the recipient makes application to the Board on an approved
form and under rules provided by the Board, and maintains
scholastic eligibility as defined by the institution or the Board.
The Board may by appropriate rules define age requirements,
physical and mental requirements, scholastic eligibility,
disbursement methods, institutional qualifications and other
requirements as necessary and not inconsistent with this
section.

Awards and benefits for a surviving spouse or dependents
of a member received under any section or any of the provi-
sions of this retirement system are in lieu of receipt of any
benefits for these persons under the provisions of any other
state retirement system. Receipt of benefits under any other
state retirement system is in lieu of any right to receive any
benefits under this retirement system, so that only a single
receipt of state retirement benefits occurs.


In any case where a member while in active service of the
Department, before having completed twenty years of service
as a member of the Department, dies from any cause other than
those specified in this article and not due to vicious habits,
intemperance or willful misconduct on his or her part, there
shall be paid annually in equal monthly installments from the
Fund to the surviving spouse of the member during his or her
lifetime, or until such time as the surviving spouse remarries, a
sum equal to one half of the base salary received in the preced-
ing twelve-month employment period by the deceased member:
Provided, That if the member had not been employed with the
Department for twelve months prior to the disability, the
amount of monthly salary shall be annualized for the purpose
of determining the benefit. If there is no surviving spouse or the
surviving spouse dies or remarries, there shall be paid monthly
to each dependent child or children from the Fund a sum equal
to one fourth of the surviving spouse’s entitlement. If there is
no surviving spouse and no dependent child or children, there
shall be paid annually in equal monthly installments from the
Fund to the dependent parents of the deceased member during
their joint lifetimes a sum equal to the amount that a surviving
spouse would have been entitled to receive: Provided, however,
That when there is but one dependent parent surviving, then that
parent is entitled to receive during his or her lifetime one half
the amount which both parents, if living, would have been
entitled to receive.

§15-2A-14. Awards and benefits to dependents of member —
When member dies after retirement or after
serving twenty years.

(a) When any member of the Department has completed
twenty years of service or longer as a member of the Depart-
ment and dies from any cause or causes other than those
specified in this article before having been retired by the Board,
and when a member in retirement status has died after having
been retired by the Board under the provisions of this article,
there shall be paid annually in equal monthly installments from
the Fund to the surviving spouse of the member, commencing
on the date of the death of the member and continuing during
the lifetime or until remarriage of the surviving spouse, an
amount equal to two thirds of the retirement benefit which the
deceased member was receiving while in status of retirement,
or would have been entitled to receive to the same effect as if
the member had been retired under the provisions of this article
immediately prior to the time of his or her death. In no event shall the annual benefit payable be less than five thousand dollars. In addition thereto, the surviving spouse is entitled to receive and there shall be paid to the surviving spouse from the Fund the sum of one hundred dollars monthly for each dependent child or children. If the surviving spouse dies or remarries, or if there is no surviving spouse, there shall be paid monthly from the Fund to each dependent child or children of the deceased member a sum equal to one fourth of the surviving spouse’s entitlement. If there is no surviving spouse or no surviving spouse eligible to receive benefits and no dependent child or children, there shall be paid annually in equal monthly installments from the Fund to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse without children would have been entitled to receive: Provided, That when there is but one dependent parent surviving, that parent is entitled to receive during his or her lifetime one half the amount which both parents, if living, would have been entitled to receive.

(b) The member may choose a higher percentage of surviving spouse benefits by taking an actuarially determined reduced initial benefit so that the chosen spouse benefit and initial benefit would be actuarially equivalent to the normal spouse benefit and initial benefit. The Retirement Board shall design these benefit options and provide them as choices for the member to select. For the purposes of this subsection, “initial benefit” means the benefit received by the member upon retirement.

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

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

(1) That he or she has been honorably discharged from the
Armed Forces;

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

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

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

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

(1) That he or she has been honorably discharged from the Armed Forces;

(2) That within ninety days after honorable discharge from the Armed Forces, he or she presented himself or herself to the Superintendent and offered to resume service as an active member of the Department; and

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

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

(d) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414 (u) of the Internal Revenue Code. For purposes of this section, “qualified military service” has the same meaning as in Section 414 (u) of the Internal Revenue Code. The Retirement Board shall determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the Retirement Board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414 (u) of the Internal Revenue Code.
§15-2A-21. Retirement credited service through member’s use, as
option, of accrued annual or sick leave days.

Any member accruing annual leave or sick leave days may,
after the effective date of this section, elect to use the days at
the time of retirement to acquire additional credited service in
this retirement system. The days shall be applied on the basis of
two workdays’ credit granted for each one day of accrued
annual or sick leave days, with each month of retirement
service credit to equal twenty workdays and with any remainder
of ten workdays or more to constitute a full month of additional
credit and any remainder of less than ten workdays to be
dropped and not used, notwithstanding any provisions of the
code to the contrary. The credited service shall be allowed and
not considered to controvert the requirement of no more than
twelve months’ credited service in any year’s period.


(a) The state will not increase any existing benefits or
create any new benefits for any retirees or beneficiaries
currently receiving monthly benefit payments from the system,
other than an increase in benefits or new benefits effected by
operation of law in effect on the effective date of this article, in
an amount that would exceed more than one percent of the
accrued actuarial liability of the system as of the last day of the
preceding fiscal year as determined in the annual actuarial
valuation for the plan completed for the Consolidated Public
Retirement Board as of the first day of the following fiscal year
as of the date the improvement is adopted by the Legislature.

(b) If any increase of existing benefits or creation of new
benefits for any retirees or beneficiaries currently receiving
monthly benefit payments under the system, other than an
increase in benefits or new benefits effected by operation of law
in effect on the effective date of this article, causes any addi-
tional unfunded actuarial accrued liability in the system as calculated in the annual actuarial valuation for the plan during any fiscal year, the additional unfunded actuarial accrued liability of that pension system will be fully amortized over no more than the six consecutive fiscal years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. The Consolidated Public Retirement Board shall include the six year amortization in the determination of the adequacy of the employer contribution percentage for the system.

(c) The state will not increase any existing benefits or create any new benefits for active members due to retirement, death or disability of the system unless the actuarial accrued liability of the plan shall be at least eighty-five percent funded as of the last day of the prior fiscal year as determined in the actuarial valuation for the plan completed for the Consolidated Public Retirement Board as of the first day of the following fiscal year as of the date the improvement is adopted by the Legislature. Any additional unfunded actuarial accrued liability due to any improvement in active members benefits shall be fully amortized over not more than ten years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. The Consolidated Public Retirement Board shall include the ten year amortization in the determination of the adequacy of the employer contribution percentage for the system.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.


(a) As used in this article, unless the context clearly require a different meaning:
(1) "Accumulated contributions" means all deposits and all
deductions from the gross salary of a contributor plus regular
interest.

(2) "Accumulated net benefit" means the aggregate amount
of all benefits paid to or on behalf of a retired member;

(3) "Annuities" means the annual retirement payments for
life granted beneficiaries in accordance with this article.

(4) "Average final salary" means the average of the five
highest fiscal year salaries earned as a member within the last
fifteen fiscal years of total service credit, including military
service as provided in this article, or if total service is less than
fifteen years, the average annual salary for the period on which
contributions were made.

(5) "Beneficiary" means the recipient of annuity payments
made under the retirement system.

(6) "Contributor" means a member of the retirement system
who has an account in the teachers accumulation fund.

(7) "Deposit" means a voluntary payment to his or her
account by a member.

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

(9) "Employment term" means employment for at least ten
months, a month being defined as twenty employment days.

(10) "Gross salary" means the fixed annual or periodic cash
wages paid by a participating public employer to a member for
performing duties for the participating public employer for
which the member was hired. Gross salary shall also include
retroactive payments made to a member to correct a clerical
error, or pursuant to a court order or final order of an adminis-
trative agency charged with enforcing federal or state law
pertaining to the member's rights to employment or wages, with
all such retroactive salary payments to be allocated to and
deemed paid in the periods in which the work was or would
have been done. Gross salary shall not include lump sum
payments for bonuses, early retirement incentives, severance
pay, or any other fringe benefit of any kind including, but not
limited to, transportation allowances, automobiles or automo-
bile allowances, or lump sum payments for unused, accrued
leave of any type or character.

(11) "Internal Revenue Code" means the Internal Revenue
Code of 1986, as it has been amended.

(12) "Member" means a member of the retirement system.

(13) "Members of the administrative staff of the public
schools" means deans of instruction, deans of men, deans of
women, and financial and administrative secretaries.

(14) "Members of the extension staff of the public schools"
means every agricultural agent, boys' and girls' club agent and
every member of the agricultural extension staff whose work is
not primarily stenographic, clerical or secretarial.

(15) "New entrant" means a teacher who is not a present
teacher.

(16) "Nonteaching member" means any person, except a
teacher member, who is regularly employed for full-time
service by: (a) Any county board of education; (b) the State
Board of Education; (c) the West Virginia Board of Regents
[abolished]; or (d) the Teachers Retirement Board.

(17) "Pick-up service" means service that a member was
titled to, but which the employer has not withheld or paid for.
(18) "Plan year" means the twelve-month period commencing on the first day of July and ending the following thirtieth day of June of any designated year.

(19) "Present member" means a present teacher who is a member of the retirement system.

(20) "Present teacher" means any person who was a teacher within the thirty-five years beginning the first day of July, one thousand nine hundred thirty-four, and whose membership in the retirement system is currently active.

(21) "Prior service" means all service as a teacher completed prior to the first day of July, one thousand nine hundred forty-one, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.

(22) "Public schools" means all publicly supported schools, including colleges and universities in this state.

(23) "Refund beneficiary" means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

(24) "Refund interest" means interest compounded, according to the formula established in legislative rules, series seven of the Consolidated Public Retirement Board.

(25) "Regular interest" means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board.

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

(27) “Required beginning date” means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy and one-half years; or (b) the calendar year in which the member retires or ceases covered employment under the system after having attained the age of seventy and one half years.

(28) “Retirement system” means the State Teachers Retirement System provided for in this article.

(29) “Teacher member” means the following persons, if regularly employed for full-time service: (a) Any person employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teacher’s certificate; (f) the Executive Secretary of the Retirement Board; (g) members of the research, extension, administrative or library staffs of the public schools; (h) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the State Superintendent performing services of an educational nature; (i) employees of the State Board of Education who are performing services of an educational nature; (j) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education or the Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections, the Division of Health or the Division of Human Services; and (l) employees of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools.
(30) "Total service" means all service as a teacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

The masculine gender shall be construed so as to include the feminine.

Age in excess of seventy years shall be considered to be seventy years.

§18-7A-14. Contributions by members; contributions by employers.

(a) At the end of each month every member of the retirement system shall contribute six percent of that member's monthly gross salary to the Retirement Board: Provided, That any member employed by the West Virginia Board of Directors of the State College System or the Board of Trustees of the University System at an institution of higher education under its control shall contribute on the member's full earnable compensation, unless otherwise provided in section fourteen-a of this article.

(b) Annually, the contributions of each member shall be credited to the member's account in the Teachers' Retirement System Fund. The contributions shall be deducted from the salaries of the members as prescribed in this section, and every member shall be considered to have given consent to the deductions. No deductions, however, shall be made from the earnable compensation of any member who retired because of age or service, and then resumed service unless as provided in section thirteen-a of this article.

(c) The aggregate of employer contributions, due and payable under this article, shall equal annually the total deductions from the gross salary of members required by this section. Beginning the first day of July, one thousand nine hundred
ninety-four, the rate shall be seven and one-half percent; beginning on the first day of July, one thousand nine hundred ninety-five, the rate shall be nine percent; beginning on the first day of July, one thousand nine hundred ninety-six, the rate shall be ten and one-half percent; beginning on the first day of July, one thousand nine hundred ninety-seven, the rate shall be twelve percent; beginning on the first day of July, one thousand nine hundred ninety-eight, the rate shall be thirteen and one-half percent; and beginning on the first day of July, one thousand nine hundred ninety-nine and thereafter, the rate shall be fifteen percent: Provided, that the rate shall be seven and one-half percent for any individual who becomes a member of the Teachers Retirement System for the first time on or after the first day of July, two-thousand five or any individual who becomes a member of the Teachers Retirement System as a result of the merger contemplated in article seven-c of this chapter.

(d) Payment by an employer to a member of the sum specified in the employment contract minus the amount of the employee’s deductions shall be considered to be a full discharge of the employer’s contractual obligation as to earnable compensation.

(e) Each contributor shall file with the Retirement Board or with the employer to be forwarded to the Retirement Board an enrollment form showing the contributor’s date of birth and other data needed by the Retirement Board.

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

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

(b) For the purpose of this article, the Retirement Board shall grant prior service credit to new entrants and other members of the retirement system for service in any of the Armed Forces of the United States in any period of national emergency within which a federal Selective Service Act was in effect. For purposes of this section, “Armed Forces” includes Women’s Army Corps, women’s appointed volunteers for emergency service, Army Nurse Corps, SPARS, Women’s Reserve and other similar units officially parts of the military service of the United States. The military service is considered equivalent to public school teaching, and the salary equivalent for each year of that service is the actual salary of the member as a teacher for his or her first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement. Notwithstanding the preceding provisions of this subsection, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, “qualified military service” has the same meaning as in Section 414(u) of the Internal Revenue Code. The Retirement Board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the Retirement Board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code. No military service credit may be used in more than one
retirement system administered by the Consolidated Public
Retirement Board.

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

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

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

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

(g) The Teachers Retirement Board shall grant service
credit to any former or present member of the West Virginia
Public Employees Retirement System who has been a contribut-
ing member for more than three years, for service previously
credited by the Public Employees Retirement System and: (1)
Shall require the transfer of the member’s contributions to the
Teachers Retirement System; or (2) shall require a repayment
of the amount withdrawn any time prior to the member’s
retirement: Provided, That there shall be added by the member
to the amounts transferred or repaid under this subsection an
amount which shall be sufficient to equal the contributions he
or she would have made had the member been under the
Teachers Retirement System during the period of his or her
membership in the Public Employees Retirement System plus
interest at a rate to be determined by the Board compounded
annually from the date of withdrawal to the date of payment.
The interest paid shall be deposited in the reserve fund.
(h) For service as a teacher in an elementary or secondary parochial school, located within this state and fully accredited by the West Virginia Department of Education, the Retirement Board shall grant credit to the member: Provided, That the member shall pay to the system double the amount contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the Retirement Board. The interest shall be deposited in the reserve fund and service granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member’s total service as a teacher in the West Virginia public school system. Any transfer of parochial school service, as provided in this section, may not be used to establish eligibility for a retirement allowance and the Board shall grant credit for the transfer as additional service only: Provided, however, That a transfer of parochial school service is prohibited if the service is used to obtain a retirement benefit from another retirement system.

(i) Active members who previously worked in CETA (Comprehensive Employment and Training Act) may receive service credit for time served in that capacity: Provided, That in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from temporary employment with the participating employer to permanent full-time employment with the participating employer within one hundred twenty days following the termination of the member’s CETA employment; (2) the Board must receive evidence that establishes to a reasonable degree of certainty as determined by the Board that the member previously worked in CETA; and (3) the member shall pay to the Board an amount equal to the employer and employee contribution plus interest at the amount set by the Board for the amount of service credit sought pursuant to this subsection: Provided, however, That the maximum service
credit that may be obtained under the provisions of this subsection is two years: Provided further, That a member must apply and pay for the service credit allowed under this subsection and provide all necessary documentation by the thirty-first day of March, two thousand three: And provided further, That the Board shall exercise due diligence to notify affected employees of the provisions of this subsection.

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

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

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

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

(n) The Teachers Retirement Board shall grant service
credit to any former member of the State Police Death, Disabil-
ity and Retirement System who has been a contributing member
for more than three years, for service previously credited by the
State Police Death, Disability and Retirement System: and: (1)
Shall require the transfer of the member’s contributions to the
Teachers Retirement System; or (2) shall require a repayment
of the amount withdrawn any time prior to the member’s
retirement: Provided, That the member shall add to the amounts
transferred or repaid under this paragraph an amount which is
sufficient to equal the contributions he or she would have made
had the member been under the Teachers Retirement System
during the period of his or her membership in the State Police
Death, Disability and Retirement System plus interest at a rate
to be determined by the Board compounded annually from the
date of withdrawal to the date of payment. The interest paid
shall be deposited in the reserve fund.
§18-7A-18. Teachers Employers Contribution Collection Account; Teachers Retirement System Fund; transfers.

(a) There is hereby created in the State Treasury a special revenue account designated the "Teachers Employers Contribution Collection Account" to be administered by the Consolidated Public Retirement Board. The Teachers Employers Contribution Collection Account shall be an interest-bearing account with interest credited to and deposited in the account and transferred in accordance with the provisions of this section.

(b) There shall be deposited into the Teachers Employers Contribution Collection Account the following:

(1) contributions of employers, through state appropriations, and such amounts shall be included in the budget bill submitted annually by the governor;

(2) Beginning on the first day of July, two-thousand five, contributions from each county in an amount equal to fifteen percent of all salary paid in excess of that authorized for minimum salaries in sections two and eight-a, article four, chapter eighteen-a of this code and any salary equity authorized in section five of said article or any county supplement equal to the amount distributed for salary equity among the counties for each individual who was a member of the Teachers' Retirement System before the first day of July, two-thousand five: Provided, That the rate shall be seven and one-half percent for any individual who becomes a member of the Teachers Retirement System for the first time on or after the first day of July, two-thousand five or any individual who becomes a member of the Teachers' Retirement System as a result of the merger contemplated in article seven-c of this chapter;

(3) the amounts transferred pursuant to section eighteen-a of this article; and
any other moneys, available and not otherwise expended, which may be appropriated or transferred to this account.

(c) Moneys on deposit in the Teacher Employers Contribution Collection Account shall be transferred monthly in the following order:

(1) to the Teachers’ Retirement System Fund the amount certified by the Consolidated Public Retirement Board as the actuarially required contribution;

(2) to the Pension Liability Redemption Fund the amount, if any, appropriated in accordance with section eight, article eight, chapter twelve of this code; and

(3) the balance, if any, to the Employee Pension and Health Care Benefits Fund established under section thirty-nine, article seven-a of this chapter.

(d) There is hereby continued in the State Treasury a separate irrevocable trust designated the Teachers’ Retirement System Fund. The Teachers’ Retirement System Fund shall be invested as provided in section nine-a, article six, chapter twelve of this code.

(e) There shall be deposited into the Teachers’ Retirement System Fund, the following:

(1) moneys transferred from the Teachers Employers Contribution Collection Account;

(2) member contributions provided for in section fifteen of this article;

(3) gifts and bequests to the fund and any accretions and accumulations which may properly be paid into and become a part of the fund;
(4) specific appropriations to the fund made by the Legislature;

(5) interest on the investment of any part or parts of the fund; and

(6) any other moneys, available and not otherwise expended, which may be appropriated or transferred to the Teachers Retirement System or the Fund.

(f) The Teachers Retirement System Fund shall be the fund from which annuities shall be paid.

(g) The Consolidated Public Retirement Board has sole authority to direct and approve the making of any and all fund transfers as provided in this section, anything in this code to the contrary notwithstanding.

(h) References in the code to the Teachers Accumulation Fund, the Employers Accumulation Fund, the Benefit Fund, the Reserve Fund and the Expense Fund mean the Teachers Retirement System Fund.

§18-7A-18a. Calculation of allocation to Teachers Employers Contribution Collection Account.

(a) There shall be an annual allocation from the State General Revenue Fund to the Teachers Employers Contribution Collection Account, created by section eighteen of this article, equal to the actuarially required contribution, reduced by any employer contributions and other allocated amounts.

There shall be an additional allocation in each year an amount equal to the total of all irrevocably forfeited amounts in the suspension account established in section eleven, article seven-b of this chapter plus earnings thereon which have been certified to the several contributing employers as irrevocably forfeited in the prior fiscal year and subsequently used by the
contributing employers to reduce their total aggregate contribution requirements pursuant to section seventeen, article seven-b of this chapter.

(b) The additional allocation provided in this section represents a funding method by which a part of a rational amortization plan will be established to amortize the current unfunded liability of the Teachers Retirement System created by this article. The additional allocations are not and shall not be construed to be moneys which are owed to, nor earned by any employee.

§18-7A-23a. Terminal benefits.

(a) This section provides for the payment of the balance in a retired member’s account to paid in the manner described in this section in the event that all claims to benefits payable to, or on behalf of, a member expire before his or her member account has been fully exhausted. The expiration of the rights to benefits would be on the later of either the death of the retired member drawing benefits under a straight life annuity, or the death of a survivor annuitant drawing benefits under any optional form of benefit selected by the retired member.

(b) In the event that all claims to benefits payable to, or on behalf of, a retired member expire, and the accumulated contributions exceed the accumulated net benefit payments paid to or on behalf of the retired member, the balance in the retired member’s account shall be paid to the person or persons as the retired member has nominated by written designation duly executed and filed with the board of trustees. If there is no designated person or persons surviving the retired member following the expiration of the claims, the excess of the accumulated contributions over the accumulated net benefit, if any, shall be paid to the retired member’s estate: Provided, That the provisions of this section are retroactive to all members who entered retirement status on or after the ninth day of June, two thousand.
§18-7A-25. Eligibility for retirement allowance.

(a) Any member who has attained the age of sixty years or
who has had thirty-five years of total service as a teacher in
West Virginia, regardless of age, is eligible for an annuity. No
new entrant nor present member is eligible for an annuity,
however, if either has less than five years of service to his or
her credit.

(b) Any member who has attained the age of fifty-five years
and who has served thirty years as a teacher in West Virginia is
eligible for an annuity.

(c) Any member who has served at least thirty but less than
thirty-five years as a teacher or nonteaching member in West
Virginia and is less than fifty-five years of age is eligible for an
annuity, but the annuity shall be the reduced actuarial equiva-
 lent of the annuity the member would have received if the
member were age fifty-five at the time such annuity was
applied for.

(d) The request for any annuity shall be made by the
member in writing to the Retirement Board, but in case of
retirement for disability, the written request may be made by
either the member or the employer.

(e) A member is eligible for annuity for disability if he or
she satisfies the conditions in either subdivision (a) or subdivi-
sion (b) of this section and meets the conditions of subdivision
(c) of this section as follows:

(1) His or her service as a teacher or nonteaching member
in West Virginia must total at least ten years, and service as a
teacher or nonteaching member must have been terminated
because of disability, which disability must have caused
absence from service for at least six months before his or her
application for disability annuity is approved.

(2) His or her service as a teacher or nonteaching member
in West Virginia must total at least five years, and service as a
teacher or nonteaching member must have been terminated
because of disability, which disability must have caused
absence from service for at least six months before his or her
application for disability annuity is approved and the disability
is a direct and total result of an act of student violence directed
toward the member.

(3) An examination by a physician or physicians selected
by the Retirement Board must show that the member is at the
time mentally or physically incapacitated for service as a
teacher, that for that service the disability is total and likely to
be permanent, and that he or she should be retired in conse-
quence of the disability.

(f) Continuance of the disability of the retired member shall
be established by medical examination, as prescribed in
subdivision three, subsection (1) of this section, annually for
five years after retirement, and thereafter at such times required
by the Retirement Board. Effective the first day of July, one
thousand nine hundred ninety-eight, a member who has retired
because of a disability may select an option of payment under
the provisions of section twenty-eight of this article: Provided,
That any option selected under the provisions of section twenty-
eight of this article shall be in all respects the actuarial equiva-
lent of the straight life annuity benefit the disability retiree
receives or would receive if the options under section twenty-
eight of this article were not available and that no beneficiary
or beneficiaries of the disability annuitant may receive a greater
benefit, nor receive any benefit for a greater length of time, than
the beneficiary or beneficiaries would have received had the
disability retiree not made any election of the options available
under said section twenty-eight. In determining the actuarial
equivalence, the Board shall take into account the life expectan-
cies of the member and the beneficiary: Provided, however,
That the life expectancies may at the discretion of the Board be
established by an underwriting medical director of a competent
insurance company offering annuities. Payment of the disability
annuity provided in this article shall cease immediately if the
Retirement Board finds that the disability of the retired teacher
no longer exists, or if the retired teacher refuses to submit to medical examination as required by this section.


(a) Annuitants whose annuities were approved by the Retirement Board effective before the first day of July, one thousand nine hundred eighty, shall be paid the annuities which were approved by the Retirement Board.

(b) Annuities approved by the Board effective after the thirtieth day of June, one thousand nine hundred eighty, shall be computed as provided in this section.

(c) Upon establishment of eligibility for a retirement allowance, a member shall be granted an annuity which shall be the sum of the following:

(1) Two percent of the member’s average salary multiplied by his or her total service credit as a teacher. In this subdivision “average salary” means the average of the highest annual salaries received by the member during any five years contained within his or her last fifteen years of total service credit.

Provided. That the highest annual salary used in this calculation for certain members employed by the West Virginia Higher Education Policy Commission under its control shall be four thousand eight hundred dollars, as provided by section fourteen-a of this article;

(2) The actuarial equivalent of the voluntary deposits of the member in his or her individual account up to the time of his or her retirement, with regular interest.

(d) The disability annuities of all teachers retired for disability shall be based upon a disability table prepared by a competent actuary approved by the Board.

(e) Upon the death of an annuitant who qualified for an annuity as the surviving spouse of an active member or because of permanent disability, the estate of the deceased or beneficiary designated for such purpose shall be paid the difference,
if any, between the member's contributions with regular interest thereon, and the sum of the annuity payments. Upon the death of a spouse who was named as the member's survivor, a retirant may elect an annuity option approved by the Board in an amount adjusted on a fair basis to be of equal actuarial value as the annuity prospectively in effect relative to the surviving member at the time the new option is elected.

(f) All annuities shall be paid in twelve monthly payments. In computing the monthly payments, fractions of a cent shall be considered a cent. The monthly payments shall cease with the payment for the month within which the beneficiary dies, and shall begin with the payment for the month succeeding the month within which the annuitant became eligible under this article for the annuity granted; in no case, however, shall an annuitant receive more than four monthly payments which are retroactive after the Board receives his or her application for annuity. The monthly payments shall be made on the twenty-fifth day of each month, except the month of December, when the payment shall be made on the eighteenth day of December. If the date of payment falls on a holiday, Saturday or Sunday, then the payment shall be made on the preceding workday.

(g) In case the Retirement Board receives data affecting the approved annuity of a retired teacher, the annuity shall be changed in accordance with the data, the change being effective with the payment for the month within which the Board received the new data.

(h) Any person who has attained the age of sixty-five and who has served at least twenty-five years as a teacher prior to the first day of July, one thousand nine hundred forty-one, is eligible for prior service credit and for prior service pensions as prescribed in this section.

§18-7A-28e. Limitations on benefit increases.

(a) The state shall not increase any existing benefits or create any new benefits for any retirees or beneficiaries currently receiving monthly benefit payments from the retirement system, other than an increase in benefits or new benefits
effected by operation of law in effect on the effective date of this article, in an amount that would exceed more than one percent of the accrued actuarial liability of the system as of the last day of the preceding fiscal year as determined in the annual actuarial valuation for each plan completed for the Consolidated Public Retirement Board as of the first day of the following fiscal year.

(b) If any increase of existing benefits or creation of new benefits for any retirees or beneficiaries currently receiving monthly benefit payments under the retirement system, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, causes any additional unfunded actuarial accrued liability in any of the West Virginia state sponsored pension systems as calculated in the annual actuarial valuation for each plan during any fiscal year, additional unfunded actuarial accrued liability of that pension system shall be fully amortized over no more than the six consecutive fiscal years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. Following the receipt of the certification of additional actuarial accrued liability, the Governor shall submit the amount of the amortization payment each year for the retirement system as part of the annual budget submission or in an executive message to the Legislature.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the computation of annuities or benefits for active members due to retirement, death or disability as provided for in the retirement system shall not be amended in such a manner as to increase any existing benefits or to provide for new benefits.

(d) The provisions of this section terminate effective the first day of July, two thousand thirty-four: Provided, however, that if bonds are issued pursuant to article eight, chapter twelve of this code, the provisions of this section shall not terminate while any of the bonds are outstanding.
§18-7A-34. Loans to members.

(a) An actively contributing member of the retirement system upon written application may borrow from his or her individual account in the Teachers Accumulation Fund, subject to these restrictions:

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

(2) Interest charged on the amount of the loan shall be six percent per annum, or a higher rate as set by the Board: Provided, That interest charged shall be commercially reasonable in accordance with the provisions of section 72(p)(2) of the Internal Revenue Code, and the federal regulations issued thereunder. If repayable in installments, the interest shall not exceed the annual rate so established upon the principal amount of the loan, for the entire period of the loan, and such charge shall be added to the principal amount of the loan. The minimal interest charge shall be for six months.

(3) No member is eligible for more than one outstanding loan at any time.
(4) If a refund is payable to the borrower or his or her beneficiary before he or she repays the loan with interest, the balance due with interest to date shall be deducted from the refund.

(5) From his or her monthly salary as a teacher or a nonteacher the member shall pay the loan and interest by deductions which will pay the loan and interest in substantially level payments in not more than sixty nor less than six months. Upon notice of loan granted and payment due, the employer is responsible for making the salary deductions and reporting them to the Retirement Board. At the option of the Board, loan deductions may be collected as prescribed herein for the collection of members' contribution, or may be collected through issuance of warrant by employer. If the borrower is no longer employed as a teacher or nonteaching member, the borrower must make monthly loan payments directly to the Consolidated Public Retirement Board and the Board must accept the payments.

(6) The entire unpaid balance of any loan, and interest due thereon, shall, at the option of the Board, become due and payable without further notice or demand upon the occurrence with respect to the borrowing member of any of the following events of default: (A) Any payment of principal and accrued interest on a loan remains unpaid after it becomes due and payable under the terms of the loan or after the grace period established in the discretion of the 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 Board in accordance with the authority granted pursuant to section one, article ten-d, chapter five of this code: Provided, That any refund or offset of an unpaid loan balance shall be made only at the time the member is entitled to receive a distribution under the retirement system.

(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.

(8) Notwithstanding anything herein to the contrary, the loan program authorized by this section shall comply with the provisions of Section 72(p)(2) and Section 401 of the Internal Revenue Code, and the federal regulations issued thereunder, and accordingly, the Retirement Board is authorized to: (A) apply and construe the provisions of this section and administer the plan loan program in such a manner as to comply with the provisions of Section 72(p)(2) and Section 401 of the Internal Revenue Code and the federal regulations issued thereunder; (B) adopt plan loan policies or procedures consistent with these federal law provisions; and (C) take such actions as it deems necessary or appropriate to administer the plan loan program created hereunder in accordance with these federal law provisions. The Retirement Board is further authorized in connection with the plan loan program to take any actions that may at any time be required by the Internal Revenue Service regarding compliance with the requirements of Section 72(p)(2) or Section 401 of the Internal Revenue Code, and the federal regulations issued thereunder, notwithstanding any provision in this article to the contrary.

(b) Notwithstanding anything in this article to the contrary, the loan program authorized by this section shall not be available to any teacher or nonteacher who becomes a member of the Teachers Retirement System on or after the first day of July, two thousand five: Provided, That a member is eligible for loan under subsection (c), section six, article seven-c of this chapter to pay all or part of the one and one-half percent contribution for service in the Defined Contribution Plan.


(a) There is hereby created in the State Treasury a special revenue account designated as the “Employee Pension and Health Care Benefits Fund” to be administered by the Department of Administration. Funds in this account may be invested in the manner permitted by the provisions of article six, chapter
twelve of this code, with all interest income credited to this
Fund.

(b) Effective the first day of July, two thousand five, any
savings realized from the reduction in employer contributions
for current retirement benefits, being the difference between the
required employer contributions that would have been required
into the Teachers Defined Contribution System as in effect
immediately prior to the first day of July, two thousand five and
the required employer contribution for normal cost into the
State Teachers Retirement System on and after the first day of
July, two thousand five, shall be deposited into the Employee
Pension and Health Care Benefits Fund. The Consolidated
Public Retirement Board shall determine the annual amount of
the savings based on the annual actuarial valuation for the plan
prepared as of the first day of July following the end of each
fiscal year and certify the amount to the Governor by the thirty-
first day of January of that fiscal year. The Governor shall
submit the amount of the savings as part of the annual budget
submission or in an executive message to the Legislature.

(c) Moneys in the Employee Pension and Health Care
Benefits Fund are to be used and expended to pay for the cost
of unfunded health care benefits or unfunded pension benefits,
or to be transferred into the Pension Liability Redemption Fund
created in section eight, article eight, chapter twelve of this
code as appropriated by the Legislature.


Nothing in this article or article seven-b of this chapter shall
be construed:

(1) To be in conflict with section four-a, article twenty-
three, chapter eighteen of this code; or

(2) To affect the membership of higher education employ-
ees who are currently members of either the State Teachers
Retirement System created in this article or the Teachers’
Defined Contribution Retirement System created in article
seven-b of this chapter: Provided, That if the merger contemplated by article seven-c of this chapter occurs, any higher education employees who are currently members of the Teachers' Defined Contribution Retirement System shall become members of the Teachers Retirement System.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

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

2 (1) "Defined contribution system" or "system" means the Teachers' Defined Contribution Retirement System created and established by this article:

3 (2) "Existing retirement system" means the State Teachers Retirement System established in article seven-a of this chapter;

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

5 (4) "Consolidated board" or "board" means the Consolidated Public Retirement Board created and established pursuant to article ten-d, chapter five of this code;

6 (5) "Member" or "employee" means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the State Superintendent performing services of an educational nature; (H) employees of the State
Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education or the State Department of Education if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections and the Department of Health and Human Resources; (K) any person who is regularly employed for full-time service by any county board of education or the State Board of Education and (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries;

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

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

(8) "Employer" means the agency of and within the State of West Virginia which has employed or employs a member;

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

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

(11) "Member contribution" means an amount reduced from the employee’s regular pay periods, and deposited into the member’s individual annuity account within the Defined Contribution Retirement System;
(12) “Employer contribution” means an amount deposited into the member’s individual annuity account on a periodic basis coinciding with the employee’s regular pay period by an employer from its own funds;

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

(14) “Retirement” means a member’s withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement;

(15) “Permanent, total disability” means a mental or physical incapacity requiring absence from employment service for at least six months: Provided, That the incapacity is shown by an examination by a physician or physicians selected by the Board: Provided, however, That for employees hired on or after the first day of July, two thousand five, permanent, total disability means an inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than twelve months and the incapacity is so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness.

(16) “Plan year” means the twelve-month period commencing on the first day of July of any designated year and ending on the following thirtieth day of June;

(17) “Required beginning date” means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy-one and one-half years; or (b) the calendar year in which the member retires or otherwise ceases employment with a participating employer after having attained the age of seventy and one-half years; and
(18) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

§18-7B-7. Participation in Teachers' Defined Contribution Retirement System; limiting participation in existing teachers retirement system.

(a) Beginning the first day of July, one thousand nine hundred ninety-one, and except as provided in this section, the Teachers' Defined Contribution Retirement System shall be the single retirement program for all new employees whose employment commences on or after that date and all new employees shall be required to participate. No additional new employees except as may be provided in this section may be admitted to the existing Teachers Retirement System.

(b) Members of the existing Teachers Retirement System whose employment continues beyond the first day of July, one thousand nine hundred ninety-one, and those whose employment was terminated after the thirtieth day of June, one thousand nine hundred ninety-one, under a reduction in force are not affected by subsection (a) of this section and shall continue to contribute to and participate in the existing Teachers Retirement System without a change in plan provisions or benefits.

(c) Any person who was previously a member of the Teachers Retirement System and who left participating employment before the creation of the Defined Contribution System on the first day of July, one thousand nine hundred ninety-one, and who later returned to participating employment after the effective date of this section has the right to elect to return to the existing Teachers Retirement System or to elect to participate in the Defined Contribution System. The election shall be made at the time of his or her reemployment, is irrevocable and shall be made upon forms approved by and filed with the West Virginia Consolidated Public Retirement Board.

(d) Any person who was, prior to the first day of July, one thousand nine hundred ninety-one, a member of the existing
Teachers Retirement System who left participating employment
before the creation of the Teachers’ Defined Contribution
Retirement System on the first day of July, one thousand nine
hundred ninety-one, and who later returned to participating
employment after that date and who was precluded from
returning to the existing Teachers Retirement System as a result
of prior provisions of this section, may elect, pursuant to the
provisions of this section, readmission to the existing Teachers
Retirement System: Provided, That persons who are eligible to,
and who make the election to, terminate their participation in
the Defined Contribution System and to return to participation
in the existing Teachers Retirement System as provided in this
section shall make the election, on a form approved by and filed
with the West Virginia Consolidated Public Retirement Board
on or before the thirtieth day of June, two thousand two:
Provided, however, That as a condition of the right of readmis-
sion to the existing Teachers Retirement System, a person
making the election provided in this section whose Defined
Contribution Account had not, prior to election, been divided by
a qualified domestic relations order, shall pay an additional
contribution to the existing Teachers Retirement System equal
to one and one-half percent of his or her annual gross compen-
sation earned for each year during which he or she participated
in the Defined Contribution System and shall consent and agree
to the transfer of his or her total account balance in the Defined
Contribution System as of the most recent plan valuation
immediately preceding his or her transfer to the existing
Teachers Retirement System. For a person making the election
provided in this section whose defined contribution account
had, prior to the election, previously been divided by a qualified
domestic relations order, the cost to transfer to the existing
Teachers Retirement System shall be actuarially determined by
the Consolidated Public Retirement Board. Upon verification of
that person’s eligibility to return to participation in the existing
Teachers Retirement System and the tender and transfer of
funds as provided in this subsection, a person making this
election shall receive service credit for the time the member
participated in the Defined Contribution System as if his or her
participation had been in the existing Teachers Retirement
System: Provided further, That the right to terminate participation in the Defined Contribution System and to resume participation in the existing Teachers Retirement System as provided in this section is irrevocable and shall not apply to any person who, while a member of the Teachers Retirement System, voluntarily elected to terminate his or her membership in the Teachers Retirement System and to become a participant in the Defined Contribution System pursuant to section eight of this article.

(e) Any employee whose employment with an employer was suspended or terminated while he or she served as an officer with a statewide professional teaching association, is eligible for readmission to the existing retirement system in which he or she was a member.

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

(g) In all cases in which a question exists as to the right of an employee to readmission to membership in the existing Teachers Retirement System, the Consolidated Public Retirement Board shall decide the question.

(h) Any individual who is not a "member" or "employee" as defined by section two of this article and any individual who is a leased employee is not eligible to participate in the Teachers Defined Contribution System. For purposes of this section, a "leased" employee means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. In all cases in which a question exists as to whether an individual is eligible for membership in this system, the Consolidated Public Retirement Board shall decide the question.
(i) Effective the first day of July, two thousand five and
continuing through the first day of two thousand six, any
employee of River Valley Child Development Services, Inc.,
who is a member of the teachers’ defined contribution retire-
ment system may elect to withdraw from membership and join
the private pension plan provided by River Valley Child
Development Services, Inc.

(j) River Valley Child Development Services, Inc., and its
successors in interest shall provide for their employees a
pension plan in lieu of the teachers’ defined contribution
retirement system on or before the first day of July, two
thousand five, and continuing thereafter during the existence of
the River Valley Child Development Services, Inc., and its
successors in interest. All new employees hired after the
thirtieth day of June, two thousand five, shall participate in the
pension plan in lieu of the teachers’ defined contribution
retirement system.

(k) The administrative body of River Valley Child Develop-
ment Services, Inc., shall, on or before the first day of June, two
thousand five, give written notice to each employee who is a
member of the teachers’ defined contribution retirement system
of the option to withdraw from or remain in the system. The
notice shall include a copy of this section and a statement
explaining the member’s options regarding membership. The
notice shall include a statement in plain language giving a full
explanation and actuarial projection figures, prepared by an
independent actuary, in support of the explanation regarding the
individual member’s current account balance, vested and
nonvested, and his or her projected return upon remaining in the
teacher’s defined contribution retirement system until retire-
ment, disability or death, in comparison with the projected
return upon withdrawing from the teachers’ defined contribu-
tion retirement system and joining a private pension plan
provided by River Valley Child Development Center, Inc., and
remaining therein until retirement, disability or death. The
administrative body shall keep in its records a permanent record
of each employee’s signature confirming receipt of the notice.
§18-7B-7a. Plan closed to persons employed for the first time after June, 2005; former employees.

1. The Retirement System created and established in this article shall be closed and no new members accepted in the system after the thirtieth day of June, two thousand five. Notwithstanding the provisions of sections seven and eight of this article, all persons who are regularly employed for full-time service as a member or an employee whose initial employment commences after the thirtieth day of June, two thousand five, shall become a member of the State Teachers' Retirement System created and established in article seven-a of this chapter: Provided, That any person rehired after the thirtieth day of June, two thousand five, shall become a member of the Teachers' Defined Contribution Retirement System created and established in this article, or of the Teachers Retirement System created and established in article seven-a of this chapter, depending upon which system he or she last contributed to while he or she was employed with an employer mandating membership and contributions to one of those plans: Provided, however, That if, and only if, the Teachers' Defined Contribution Retirement System is merged and consolidated with the Teachers Retirement System pursuant to the provisions of article seven-c of this chapter, then all employees shall be a member of the Teachers Retirement System as of the first day of July, two thousand six, as provided in article seven-c of this chapter.

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

1. (a) Each employee who is a member of the Defined Contribution System shall contribute four and one-half percent of his or her gross compensation by salary deduction. The salary deductions shall be made by the employer and shall be paid to the Teachers' Defined Contribution Retirement System within fifteen days of the end of the pay period: Provided, That the Board may require any employer to make the payments within such shorter period as it may determine, upon at least sixty days notice to the employer, if the Board determines the
employer has the technological capacity to transfer the funds within the shorter period. The employer payments shall be remitted by the Board within five working days to the private pension, insurance, annuity, mutual fund, or other qualified company or companies designated by the Board to administer the day-to-day operations of the system.

(b) All member contributions shall be immediately deposited to an account or accounts established in the name of the member and held in trust for the benefit of the member. An account agreement shall be issued to each member setting forth the terms and conditions under which contributions are received, and the investment and retirement options available to the member. The Board shall propose for legislative approval in accordance with article three, chapter twenty-nine-a of this code, pursuant to section six of this article, rules defining the minimum requirements for the investment and retirement options to be provided to the members.

(c) The legislative rules proposed by the Board, to the extent not inconsistent with the applicable provisions of the Internal Revenue Code of the United States, shall provide for varied retirement options including, but not limited to:

(1) Lump sum or periodic payment distributions;

(2) Joint and survivor annuities;

(3) Other annuity forms in the discretion of the Board;

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

§18-7B-11. Termination of membership.

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

(b) (1) Upon termination of employment, regardless of whether the member has taken a distribution of all or a portion of his or her vested account, the remaining balance, if any, in the member's employer account that is not vested shall be remitted and paid into a suspension account to be administered
by the Board. The Board shall propose rules for legislative
approval in accordance with article three, chapter twenty-nine-a
of this code regarding the distribution of any balance in the
special account created by this section: Provided, That any
funds in the account shall be used solely for the purpose of
reducing employer contributions in future years.

(2) Any account balances remitted to the suspension
account herein shall be maintained by the Board in the suspen-
sion account in the name of the terminated employee for a
period of five years following the member’s termination of
employment. For each terminated employee at the culmination
of the five-year period, the Board shall certify in writing to each
contributing employer the amount of the account balance plus
earnings thereon attributable to each separate contributing
employer’s previously terminated employee’s account which
has been irrevocably forfeited due to the elapse of a five-year
period since termination pursuant to section sixteen of this
article.

(c) Upon certification to the several contributing employers
of the aggregate account balances plus earnings thereon which
have been irrevocably forfeited pursuant to this section, the
several contributing employers shall be permitted in the next
succeeding fiscal year or years to reduce their total aggregate
contribution requirements pursuant to section seventeen of this
article, for the then current fiscal year by an amount equal to the
aggregate amounts irrevocably forfeited and certified as such to
each contributing employer: Provided, That should the partici-
pating employer no longer be contributing to the Defined
Contribution System, any funds in the account shall be paid
directly to the employer.

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

Provided, That notwithstanding any provision of this article to the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office requires that member to be absent from his or her teaching, nonteaching or administrative duties, the time served in discharge of his or her duties of the legislative office are credited as time served for purposes of computing service credit, regardless when this time was served:

Provided, however, That the Board may not require any additional contributions from that member in order for the Board to credit him or her with the contributing service credit earned while discharging official legislative duties: Provided further, That nothing herein may be construed to relieve the employer from making the employer contribution at the member’s regular salary rate or rate of pay from that employer on the contributing service credit earned while the member is discharging his or her official legislative duties. These employer payments shall commence as of the first day of July, two thousand three: And provided further, That any member to which the provisions of this subsection apply may elect to pay to the Board an amount equal to what his or her contribution would have been for those periods of time he or she was serving in the Legislature.

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

The requirements of this section apply to any distribution of a member’s or beneficiary’s interest and take precedence over any inconsistent provisions of this Defined Contribution System. This section applies to plan years beginning after the thirty-first day of December, one thousand nine hundred eighty-six. Notwithstanding anything in this system to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401 (a) (9) of the Internal Revenue Code and the regulations thereunder, including without limitation the incidental death benefit provisions of
Section 401 (a) (9)(G) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:

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

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

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

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

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

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

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

§18-7B-16. Years of employment service.

1 (a) A member of the Defined Contribution System who
2 terminates employment with a participating employer and does
3 not remove any funds from his or her vested employee and
4 employer account, or who removes the funds and repays them
5 withing five years after termination, and becomes reemployed
6 with a participating employer within five years does not forfeit
7 any amounts placed into the suspension account pursuant to
8 section eleven of this article and they shall be returned to his or
9 her employer account.

10 (b) All years of employment service shall be counted for
11 vesting purposes under section eleven of this article.

§18-7B-20. Prohibition of involuntary cash-outs.

1 Notwithstanding any provision of this section or of any
2 legislative rule contained in series three, involuntary cash-outs
3 to members may not be made after the thirtieth day of June, two
4 thousand five.

ARTICLE 7C. MERGER OF TEACHERS’ DEFINED CONTRIBUTION
RETIREMENT SYSTEM WITH STATE TEACHERS
RETIREMENT SYSTEM.

§18-7C-1. Short title.

1 This article may be cited as the “Teachers’ Retirement
2 Equity Act”.

§18-7C-2. Legislative findings and purpose.

(a) The Legislature declares that the State of West Virginia and its citizens have always believed in a strong public education system. The Constitution of this State mandates a thorough and efficient public education system. The Legislature notes that the quality of our state's education system is dependent, *inter alia*, upon the motivation and quality of its teachers and educational service personnel.

(b) The Legislature finds and declares that the State of West Virginia is privileged to be the home of some of the best teachers and education service personnel in this nation, and that our teachers and education service personnel are dedicated and hard working individuals. The Legislature further finds and declares that our teachers and education service personnel deserve a retirement program whereby they know in advance what their retirement benefit will be, a defined benefit retirement program where our teachers and service personnel will not have to bear the risk of investment performance to receive their full retirement benefit. The Legislature notes that uncertainty exists in the investment markets, especially in the post September eleventh era, and that placing this risk and uncertainty upon the state in the form of a defined benefit plan will protect and ensure a meaningful retirement benefit for our teachers and educational service personnel.

(c) The Legislature declares that it is in the best interests of the teachers and public education in this state and conducive to the fiscal solvency of the Teachers Retiremen System that the Teachers’ Defined Contribution Retirement System be merged with the State Teachers Retirement System.

(d) The Legislature also finds that a fiscally sound retirement program with an ascertainable benefit aids in the retention and recruitment of teachers and school service personnel, and that the provisions of this article are designed to accomplish the goals set forth in this section.
34 (e) The Legislature has studied this matter diligently and in
35 making the determination to merge the two plans has availed
36 itself of an actuarial study of the proposed merger by the
37 actuary of the Consolidated Public Retirement Board as well as
38 engaging the service of two independent actuaries.
39
40 (f) The Legislature further finds and declares that members
41 of a defined contribution system who must bear the attendant
42 market risk and performance of their investments are truly
43 being provided a significant and greater benefit where the
44 defined contribution system is replaced with a defined benefit
45 system in which the employer bears the risk of market fluctua-
46 tions and investment performance, especially where those
47 members decide through an election process whether to trade
48 the defined contribution system for a defined benefit system.

§18-7C-3. Definitions.

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

3 (1) “Defined Contribution System” means the Teachers
4 Defined Contribution System created and established in article
5 seven-b of this chapter.

6 (2) “Existing retirement system” or “State Teachers
7 Retirement System” means the State Teachers Retirement
8 System created and established in article seven-a of this
9 chapter.

10 (3) “Board” means the Consolidated Public Retirement
11 Board created and established in article ten-d, chapter five of
12 this code and its employees.

13 (4) “Member” means and includes any person who has at
14 least one dollar in the Defined Contribution System.

15 (5) “Assets” or “all assets” means all member contributions,
16 employer contributions and interest or asset appreciation in a
17 member's Defined Contribution Account, less any applicable
18 fees as approved by the Board.
19
20 (6) "Salary" or "annual salary" means the annual contract
21 salary for those persons working in accordance with an employ-
22 ment contract and in any other event as an annualized amount
23 determined by multiplying a person's hourly rate of pay by two
24 thousand eighty hours.
25
26 (7) "Date of merger" means, in the event of a positive vote
27 on the merger, the first day of July, two thousand six.

§18-7C-4. Merger.

1 On the first day of July, two thousand six, the Teachers'
2 Defined Contribution Retirement System created and estab-
3 lished in this article shall be merged and consolidated with the
4 Teachers Retirement System created and established in article
5 seven-a of this chapter, pursuant to the provisions of this article:
6 Provided, That if the majority of the voting members of the
7 Teachers' Defined Contribution Retirement System do not elect
8 in favor of the merger, then all of the provisions of this article
9 are void and of no force and effect, and the Defined Contribu-
10 tion System created and established in article seven-b of this
11 chapter shall continue as the retirement system for all members
12 in that system as of the thirtieth day of June, two thousand six:
13 Provided, however, that prior to the merger and consolidation
14 the State shall deposit into the Teachers Retirement System the
15 amount necessary to cover any additional unfunded actuarial
16 accrued liability which results to the system on the date that the
17 assets and liabilities of the Teachers Defined Contribution
18 Retirement System are merged into the Teachers Retirement
19 System as certified by the Consolidated Public Retirement
20 Board.

§18-7C-5. Notice, education, record keeping requirements.

1 (a) Commencing not later than the first day of August, two
2 thousand five, the Consolidated Public Retirement Board shall
3 begin an educational program with respect to the merger of the
Defined Contribution Plan with the State Teachers Retirement System. This education program shall address, at a minimum, the law providing for the merger, the mechanics of the merger, the election process, relevant dates and time periods, the benefits, potential advantages and potential disadvantages if members fail or refuse to approve the merger and thereby elect to remain in the Defined Contribution System, the benefits, potential advantages and potential disadvantages of becoming a member of the Teachers Retirement System, potential state and federal tax implications in general attendant to the various options available to the members and any other pertinent information considered relevant by the Board. The Board shall provide this information through its website, by written materials, electronic materials or both written and electronic materials delivered to each member and by classes or seminars, if, in the best judgment of the Board, the classes and seminars are required to provide the necessary education for members to make an informed decision with respect to the election. The Board shall also provide this information through computer programs, or, at the discretion of the Board, through a program of individual counseling which is optional on the part of the member, and by any other educational program or programs considered necessary by the Board.

(b) The Board shall provide each member with a copy of the written or electronic educational materials and with a copy of the notice of the election. The notice shall provide full and appropriate disclosure regarding the merger and of the election process, including the date of the election. The Board shall also cause notice of the election to be published in at least ten newspapers of general circulation in this state. This notice shall be by Class III legal advertisement published in accordance with the provisions of article three, chapter fifty-nine of this code. The Board shall cause this notice to be published not later than thirty days prior to the beginning of the election period and not sooner than sixty days prior to the beginning of the election period.
(c) It is the responsibility of each member of the Defined Contribution Plan to keep the Board informed of his or her current address. If a member does not keep the Board informed of his or her current address, he or she is considered to have waived his or her right to receive any information from the Board with respect to the purposes of this article.

(d) Once the Board has complied with the provisions of this section, every member of the Defined Contribution Plan is considered to have actual notice of the election and all matters pertinent to the election.

§18-7C-6. Conversion of assets from Defined Contribution System to State Teachers Retirement System.

(a) If a majority of members voting elect to merge the Defined Contribution System into the State Teachers Retirement System, the consolidation and merger shall be governed by the provisions of this article, the Defined Contribution Retirement System shall not exist after the thirtieth day of June, two thousand six, and all members of that system shall become members of the State Teachers Retirement System as provided in this article.

(b) Following the election, if the vote is in favor of the merger, the Board shall transfer all assets in the defined contribution account into the State Teachers Retirement System and members have the option to pay into the State Teachers Retirement System a one and one-half of one percent contribution for service in the Defined Contribution Plan being recognized in the State Teachers Retirement System. This contribution shall be calculated based on the member's salary as of the thirtieth day of June, two thousand five, and the members attained age on that date, applying both an annual backward salary scale projection from that date for prior years based upon the salary scale assumption applied in the actuarial valuation dated the first day of July, two thousand four, for the Teachers Retirement System and a one year forward salary scale projection for the year ending on the thirtieth day of June, two thousand six.
(c) The Board shall make available to the members a loan in accordance with the provisions of section thirty-four, article seven-a of this chapter to be used by the members to pay all or a part of the one and one-half percent amount established in this section. Notwithstanding any provision of this code, any rule or any policy of the Board to the contrary, the interest rate on any loan used to pay the one and one-half percent amount may not exceed seven and one-half percent per annum and the amount total borrowed for this section may not exceed twelve thousand dollars. In the event a plan loan is used to pay the one and one-half percent, the Board shall make any necessary actuarial adjustments at the time the loan is made. The Board shall make this plan loan available for members until the thirtieth day of June, two thousand seven.

(d) The Board shall develop and institute a payroll deduction program for the repayment of the plan loan established in this section.

(e) If the merger and consolidation is elected by a majority of those persons voting, as of the first day of July, two thousand six, the members’ contribution rate shall become six percent of his or her salary or wages and all members who make a contribution into the State Teachers Retirement System on or after the first day of July, two thousand six, shall be governed by the provisions of article seven-a of this chapter, subject to the provisions of this article.

(f) In the event a member has withdrawn or cashed out part of his or her defined contribution plan, that member will not be given credit for those moneys cashed out or withdrawn. The Board shall make an actuarial determination as to the amount of credit a member loses on the amounts he or she has withdrawn or cashed out, which shall be expressed as a loss of service credit: Provided, That a member may repay those amounts he or she previously cashed out or withdrew, along with interest determined by the Board and receive the same credit as if the withdrawal or cash out never occurred. If the repayment is five or more years following the cash out or
withdrawal, then he or she must repay any forfeited employer contribution account balance along with interest determined by the Board in addition to repaying the cash out or withdrawn amount.

(g) Where the member has cashed out of his or her teacher defined contribution plan account balance after the last day of June, two thousand one, and that member wishes to repurchase defined contribution plan service after the thirtieth day of June, two thousand six, then the member shall repay the teachers retirement plan.

(h) Any prior service in the State Teachers Retirement System a member may have is not affected by the provisions of this article.

§18-7C-7. Service credit in State Teachers Retirement System following merger.

Any member transferring all of his or her assets from the Defined Contribution System to the State Teachers Retirement System pursuant to the provisions of this article, and who has not made any withdrawals from his or her defined contribution plan, is entitled to service credit in the State Teachers Retirement System for each year, or part of a year, as governed by the provisions of article seven-a of this chapter, the member worked and contributed to the Defined Contribution Plan. Any member who has made withdrawals or cash outs will receive service credit based upon the amounts transferred and the Board shall make the appropriate actuarial determination of and the appropriate actuarial adjustment to the service credit the member will receive.

§18-7C-8. Election; Board may contract for professional services.

(a) The Board shall arrange for and hold an election for the members of the defined contribution plan on the issue of merging and consolidating the Defined Contribution Plan into the State Teachers Retirement Plan with the result being that, if a majority of the members casting ballots vote in the positive on
the issue, all members of the Defined Contribution Plan will
transfer, or have transferred, all assets held by them or on their
behalf in the Defined Contribution Plan to, and they shall
become members of and be entitled to the benefits of, the State
Teachers Retirement System and be governed by the provisions
of the State Teachers Retirement System subject to the provi-
sions of this article: Provided, That at least one-half of the
members of the Defined Contribution Plan must vote on the
question in order for the election to be valid and binding.

(b) Any person who has one dollar or more in a defined
contribution account created and established pursuant to article
sever-b of this chapter, may vote on the question of the merger.

(c) The Board may retain the services of the professionals
it considers necessary to: (1) Assist in the preparation of
educational materials for members of the Defined Contribution
Plan to inform these members of their options in the election;
(2) assist in the educational process of the members; (3) assist
in the election process and the election; and (4) ensure compli-
ance with all relevant state and federal laws.

(d) Due to the time constraints inherent in the merger
process set forth in this article in specific, and due to the nature
of the professional services required by the Consolidated Public
Retirement Board in general, the provisions of article three,
chapter five-a of this code, relating to the Division of Purchas-
ing of the Department of Administration do not apply to any
contracts for any actuarial services, investment services, legal
services or other professional services authorized under the
provisions of this article.

(e) The election provided for in this section may be held
through certified mail or in any other way the Board determines
is in the best interest of the members. Each ballot shall contain
the following language, in bold fifteen point type: “By casting
this ballot I am making an educated, informed and voluntary
choice as to my retirement and the retirement system of which
I wish to be a member. I am also certifying that I understand the
consequences of my vote in this election.” Each ballot shall be
signed by the member voting. The Board shall retain the ballots
in a permanent file. Any unsigned ballot is void.

(f) The election period shall begin not later than the first
day of March, two thousand six, and the Board shall ascertain
the results of the election not later than the last day of March,
two thousand six. The Board shall certify the results of the
election to the Governor, to the Legislature and to the members
not later than the fifth day of April, two thousand six.

(g) The election period shall terminate and no votes may be
cast or counted after the twelfth day of March, two thousand
six, except that if the election is conducted through the United
States mails, the ballot shall be postmarked not later than the
twelfth day of March, two thousand six, in order to be counted.

(h) The Board shall take all necessary steps to see that the
merger does not affect the qualified status with the Internal
Revenue Service of either retirement plan.

§18-7C-9. Election considered final.

(a) The election is considered final and each member,
whether he or she votes, or fails to vote, shall thereafter be
bound by the results of the election. Every member is consid-
ered to have made an informed, educated, knowing and
voluntary decision and choice with respect to the election.
Those members who fail or refuse to vote are also considered
to have made an informed, educated, knowing and voluntary
decision and choice with respect to the election and with respect
to voting and shall be bound by the results of the election as if
he or she voted in the election.

(b) Only one election may be held pursuant to the provi-
sions of this article on the issue of merging and consolidating
the Defined Contribution Plan with the State Teachers Retire-
ment Plan.

§18-7C-10. Qualified domestic relations orders.
Any member having a qualified domestic relations order against his or her defined contribution account is allowed to repurchase service in the State Teachers Retirement System by repaying any moneys previously distributed to the alternate payee along with the interest as set by the Board: *Provided,* that a member shall repay any amounts under this section by the last day of June, two thousand twelve. The provisions of this section are void and of no effect if the members of the Defined Contribution Plan fail to elect to merge and consolidate the Defined Contribution Plan with the State Teachers Retirement System.

§18-7C-11. Vesting.

Any member who works one hour or more after the date of merger provided in this article occurs, is subject to the vesting schedule set forth in article seven-a of this chapter: *Provided,* that if a member is vested under the Defined Contribution Plan and his or her last contribution was not made to the State Teachers Retirement System, that member is subject to the vesting schedule set forth in article seven-b of this chapter.

§18-7C-12. Minimum guarantees.

(a) Any member of the Defined Contribution Plan who has made a contribution to the State Teachers Retirement System after the date of merger is guaranteed a minimum benefit equal to his or her contributions to the Defined Contribution Plan as of the thirtieth day of June, two thousand six, plus his or her vested employer account balance as of that date, as stated by the Board or the Board’s professional contractor.

(b) A member of the Defined Contribution Plan who has made contributions to the State Teachers Retirement System after the thirtieth day of June, two thousand six, where the Defined Contribution Plan has been merged into the State Teachers Retirement System pursuant to the provisions of this article, shall have, upon eligibility to receive a distribution under article seven-a of this chapter, at a minimum, the following three options: (1) The right to receive an annuity from the
State Teachers Retirement System created and established in article seven-a of this chapter, based upon the benefit and vesting provisions of that article; (2) the right to withdraw from the State Teachers Retirement Plan and receive his or her member accumulated contributions plus regular interest thereon as set forth in article seven-a of this chapter; or (3) the right to withdraw and receive his or her original vested defined contribution account balance as of the date of the merger as determined by the Board or its professional third party benefits administrator pursuant to the vesting provisions of section twelve of this article.

(c) Any member of the Teachers Defined Contribution System who makes no contribution to the State Teachers Retirement System following approval of the merger and following the date of merger is guaranteed the receipt of the amount in his or her total vested account in the Defined Contribution Plan on the date of merger plus interest thereon at four percent accruing from the date of merger.

§18-7C-13. Due process and right to appeal.

Any person aggrieved by any actuarial determination made by the Board following the election, if the result of the election is in favor of merger and consolidation, may petition the Board and receive an administrative hearing on the matter in dispute. The administrative decision may be appealed to a circuit court.

§18-7C-14. Nonseverability.

If any provision of this article is held unconstitutional or void, the remaining provisions of this article shall be void and of no effect and, to this end, the provisions of this article are hereby declared to be nonseparable.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.
§51-9-6c. Limitations on benefit increases.

(a) The state shall not increase any existing benefits or create any new benefits for any retirees or beneficiaries currently receiving monthly benefit payments from the system, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, in an amount that would exceed more than one percent of the accrued actuarial liability of the system as of the last day of the preceding fiscal year as determined in the annual actuarial valuation for the plan completed for the Consolidated Public Retirement Board as of the first day of the following fiscal year as of the date the improvement is adopted by the Legislature.

(b) If any increase of existing benefits or creation of new benefits for any retirees or beneficiaries currently receiving monthly benefit payments under the system, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, causes any additional unfunded actuarial accrued liability in any of the West Virginia state sponsored pension systems as calculated in the annual actuarial valuation for the plan during any fiscal year, the additional unfunded actuarial accrued liability of the system shall be fully amortized over no more than the six consecutive fiscal years following the date the increase in benefits or new benefits become effective as certified by the consolidated public retirement board. Following the receipt of the certification of additional actuarial accrued liability, the Governor shall submit the amount of the amortization payment each year for the system as part of the annual budget submission or in an executive message to the Legislature.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the computation of annuities or benefits for active members due to retirement, death or disability as provided for in the system shall not be amended in such a manner as to increase any existing benefits or to provide for new benefits.
(d) The provisions of this section terminate effective the first day of July, two thousand nineteen: Provided, That if bonds are issued pursuant to article eight, chapter twelve of this code, the provisions of this section shall not terminate while any of the bonds are outstanding.
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That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 4th day of May, 2005.

Governor