WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
FOURTH EXTRAORDINARY SESSION, 2009

ENROLLED

Senate Bill No. 4003
(By Senators Tomblin (Mr. President) and Caruth, by Request of the Executive)

[Passed November 19, 2009; in effect from passage.]
AN ACT to amend and reenact §5-10-2, §5-10-22, §5-10-22f, §5-10-27a, §5-10-27b, §5-10-27c, §5-10-27d and §5-10-29 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-2, §7-14D-3, §7-14D-9, §7-14D-9a, §7-14D-9b, §7-14D-9c, §7-14D-9d and §7-14D-11 of said code; to amend and reenact §15-2-25b, §15-2-26, §15-2-27, §15-2-37, §15-2-44, §15-2-45 and §15-2-46 of said code; to amend and reenact §15-2A-2, §15-2A-3, §15-2A-6, §15-2A-6a, §15-2A-6b, §15-2A-6c, §15-2A-6d and §15-2A-8 of said code; to amend and reenact §16-5V-2, §16-5V-4, §16-5V-12, §16-5V-13, §16-5V-14, §16-5V-14a, §16-5V-16 and §16-5V-18 of said code; to amend and reenact §18-7A-3, §18-7A-14, §18-7A-26, §18-7A-28r, §18-7A-28a, §18-7A-28b, §18-7A-28c and §18-7A-28d of said code; to amend and reenact §18-7B-2, §18-7B-12a, §18-7B-13 and §18-7B-13b of said code; and to amend and reenact §51-9-1a, §51-9-12a, §51-9-12b and §51-9-12c of said code, all relating to
the retirement systems administered by the West Virginia Consolidated Public Retirement Board and ensuring the plans' qualification under federal tax laws; clarifying the definitions of the Public Employees Retirement System (PERS); revising the PERS retirement annuity provisions and the minimum benefits provisions to comport with the Internal Revenue Service regulations on maximum benefits; clarifying the PERS federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the PERS rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16); adding clarifying language to ensure that forfeitures under PERS may not be applied to increase a member's benefits; clarifying the definitions of the Deputy Sheriff Retirement System (DSRS) and adding the definition of "qualified public safety employee" to comply with Treasury Regulation §1.401(a)-1(b)(2)(v); revising the DSRS retirement annuity commencement of benefits provisions; clarifying the DSRS federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the DSRS rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16); providing that the DSRS plan will operate under the safe harbor available for plans relating to the "normal retirement age" require-
ments when applicable to governmental plans; clarifying the definitions of the Death, Disability and Retirement System (State Police Plan A) and adding the definition of "qualified public safety employee" to comply with Treasury Regulation §1.401(a)-1(b)(2)(v); revising the State Police Plan A deferred and regular retirement annuity to make subject to Section 415 limitations; clarifying the State Police Plan A federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the State Police Plan A rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16); providing that the State Police Plan A plan will operate under the safe harbor available for plans relating to the "normal retirement age" requirements when applicable to governmental plans; clarifying the definitions of the West Virginia State Police Retirement System (State Police Plan B) and adding the definition of "qualified public safety employee" to comply with Treasury Regulation §1.401(a)-1(b)(2)(v); revising the State Police Plan B deferred and regular retirement annuity to make subject to Section 415 limitations; clarifying the State Police Plan B federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the State Police Plan B rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief
Reconciliation Act of 2001 (P.L. 107-16); providing that the State Police Plan B plan will operate under the safe harbor available for plans relating to the "normal retirement age" requirements when applicable to governmental plans; clarifying the definitions of the Emergency Medical Services Retirement System (EMSRS) and adding the definition of "qualified public safety employee" to comply with Treasury Regulation §1.401(a)-1(b)(2)(v); revising the EMSRS regular retirement annuity to make subject to Section 415 limitations; clarifying the EMSRS federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the EMSRS rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16); providing that the EMSRS plan will operate under the safe harbor available for plans relating to the "normal retirement age" requirements when applicable to governmental plans; clarifying the definitions of the Teachers Retirement System (TRS); adding clarifying language to ensure that forfeitures under TRS may not be applied to increase a member's benefits; revising the TRS retirement annuity provisions and the minimum benefits provisions to comport with the Internal Revenue Service regulations on maximum benefits; clarifying the TRS federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the TRS rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protec-
tion Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16); clarifying the definitions of the Teachers Defined Contribution Retirement System (TDC); revising the TDC retirement annuity provisions and the minimum benefits provisions to comport with the Internal Revenue Service regulations on maximum benefits; clarifying the TDC federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the TDC rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16); clarifying the definitions of the Judges’ Retirement System (JRS); clarifying the JRS federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; and revising the JRS rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16).

Be it enacted by the Legislature of West Virginia:

That §5-10-2, §5-10-22, §5-10-22f, §5-10-27a, §5-10-27b, §5-10-27c, §5-10-27d and §5-10-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §7-14D-2, §7-14D-3, §7-14D-9, §7-14D-9a, §7-14D-9b, §7-14D-9c, §7-14D-9d and §7-14D-11 of said code be amended and reenacted; that §15-2-25b, §15-2-26, §15-2-27, §15-2-37, §15-2-
44, §15-2-45 and §15-2-46 of said code be amended and reenacted; that §15-2A-2, §15-2A-3, §15-2A-6, §15-2A-6a, §15-2A-6b, §15-2A-6c, §15-2A-6d and §15-2A-8 of said code be amended and reenacted; that §16-5V-2, §16-5V-4, §16-5V-12, §16-5V-13, §16-5V-14, §16-5V-14a, §16-5V-16 and §16-5V-18 of said code be amended and reenacted; that §18-7A-3, §18-7A-14, §18-7A-26, §18-7A-26r, §18-7A-28a, §18-7A-28b, §18-7A-28c and §18-7A-28d of said code be amended and reenacted; that §18-7B-2, §18-7B-12a, §18-7B-13 and §18-7B-13b of said code be amended and reenacted; and that §51-9-1a, §51-9-12a, §51-9-12b and §51-9-12c of said code be amended and reenacted, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.

1 Unless a different meaning is clearly indicated by the context, the following words and phrases as used in this article, have the following meanings:

4 (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;

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

12 (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
Provided, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements;

(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 retirant or beneficiary of a retirant 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 retirant, 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, however, 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 prorated 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 of the following: Provided, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code:

(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 1971 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 1971, 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 1971, or in any year thereafter, plus any other compensation 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 1971, who, in either event, was a member of the Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on November 30 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) $1,500 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 subparagraph (ii) of this proviso, the legislative compensation of the former member shall be computed on the basis of $1,500 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 preceding this proviso or on the basis of $1,500 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 corporation 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 July 1, 1997, 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 July 1, 1997:

Provided, however, That the Regional Community Policing Institute which participated in the Public Employees Retirement System before July 1, 2000, 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 July 1, 2000;

(20) "Prior service" means service rendered prior to July 1, 1961, 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 April 1 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 annuity payable by the retirement system;

(24) "Retirement" means a member's withdrawal from the employ of a participating public employer and the commencement 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 July 1, 1961, and the date an employer decides to become a participating member of the Public Employees Retirement System; (2) service prior to July 1, 1961, 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.

§5-10-22. 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, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section twenty-seven-a of this article: Provided, That the final average salary used in this 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 1, 1970, 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 retire-
ment, subject to reduction if necessary to comply with the
maximum benefit provisions of Section 415 of the Internal
Revenue Code and section twenty-seven-a of this article.
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 commence
effective the first day of the month following the month in
which a member retires or a member dies leaving a
beneficiary 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 member receiving an annuity
based in part upon limited credited service is not eligible
for the supplements provided in sections twenty-two-a
through twenty-two-d, inclusive, of this article.

(b) The annuity of any member of the Legislature who
participates in the retirement system as a member of the
Legislature and who retires under this article or of any
former member of the Legislature who has retired under
this article (including any former member of the Legisla-
ture who has retired under this article and whose annuity
was readjusted as of March 1, 1970, under the former
provisions of this section) shall be increased from time to
time during the period of his or her retirement when and
if the legislative compensation paid under section two,
article two-a, chapter four of this code, to a member of the
Legislature shall be increased to the point where a higher
annuity would be payable to the retirant if he or she were
retiring as of the effective date of the latest increase in
legislative compensation, but on the basis of his or her
years of credited service to the date of his or her actual
retirement.

§5-10-22f. Minimum benefit for certain retirants; legislative
declaration; state interest and public purpose.
The Legislature hereby finds and declares that an important state interest exists in providing a minimum retirement annuity for certain retirants (or their beneficiaries) who are credited with twenty or more years of credited service; that such program constitutes a public purpose; and that the exclusions of credited service while an elected public official or while a temporary legislative employee are reasonable and equitable exclusions for purposes of determining eligibility for such minimum benefits. For purposes of this section:

1. "Elected public official" means any member of the Legislature or any member of the legislative body of any political subdivision; and

2. "Temporary legislative employee" means any employee of the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof whose employment is classified as temporary and who is employed to perform services required by the Clerk of the House of Delegates, the Clerk of the Senate, the Legislature or a committee thereof, as the case may be, for regular sessions, extraordinary sessions and/or interim meetings of the Legislature.

If the retirement annuity of a retirant (or, if applicable, his or her beneficiary) with at least twenty years of credited service as of the effective date of this section is less than $500 per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for any such retired member (or if applicable, his or her beneficiary) shall be increased to $500 per month: Provided, That any year of credited service while an elected public official or a temporary legislative employee shall not be taken into account for purposes of this section.

The payment of any minimum benefit under this section shall be in lieu of, and not in addition to, the payments of
any retirement benefit or supplemental benefit or incentives otherwise provided by law: Provided, That the minimum benefit provided herein shall be subject to any limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended, and section twenty-seven-a of this article.

Any minimum benefit conferred herein shall not be retroactive to the time of retirement and shall apply only to members who have retired prior to the effective date of this section, or, if applicable, to beneficiaries receiving benefits under the retirement system prior to the effective date.

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

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations promulgated thereunder to the extent applicable to governmental plans (hereafter sometimes referred to as the “415 limitation(s)” or “415 dollar limitation(s)”), so that the annual benefit payable under this system to a member shall not exceed those limitations. Any annual benefit payable under this system shall be reduced or limited if necessary to an amount which does not exceed those limitations. The extent to which any annuity or other annual benefit payable under this retirement system shall be reduced, as compared to the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced, shall be proportional on a percentage basis to the reductions made in such other plans administered by the board and required to be so taken into consideration under Section 415, unless a disproportionate reduction is determined by the board to maximize the
aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities or other annual benefit required by this section.

For purposes of the 415 limitations, the “limitation year” shall be the calendar year. The 415 limitations are incorporated herein by reference, except to the extent the following provisions may modify the default provisions thereunder:

(a) The annual adjustment to the 415 dollar limitations made by Section 415(d) of the Internal Revenue Code and the regulations thereunder shall apply for each limitation year. The annual adjustments to the dollar limitations under Section 415(d) of the Internal Revenue Code which become effective: (i) After a retirant’s severance from employment with the employer; or (ii) after the annuity starting date in the case of a retirant who has already commenced receiving benefits, will apply with respect to a retirant’s annual benefit in any limitation year. A retirant’s annual benefit payable in any limitation year from this retirement system shall in no event be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(b) For purposes of this section, the “annual benefit” means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit, using factors prescribed in the 415 limitation regulations, before applying the 415 limitations. No actuarial adjustment to the benefit shall be made for: (1) Survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the
59 extent such benefits would not be payable if the member's
60 benefit were paid in another form; (2) benefits that are not
61 directly related to retirement benefits (such as a qualified
62 disability benefit, preretirement incidental death benefits,
63 and post-retirement medical benefits); or (3) the inclusion
64 in the form of benefit of an automatic benefit increase
65 feature, provided the form of benefit is not subject to
66 Section 417(e)(3) of the Internal Revenue Code and would
67 otherwise satisfy the limitations of this article, and the
68 plan provides that the amount payable under the form of
69 benefit in any limitation year shall not exceed the limits of
70 this article applicable at the annuity starting date, as
71 increased in subsequent years pursuant to Section 415(d)
72 of the Internal Revenue Code. For this purpose an auto-
73 matic benefit increase feature is included in a form of
74 benefit if the form of benefit provides for automatic,
75 periodic increases to the benefits paid in that form.

76 (c) Adjustment for benefit forms not subject to Section
77 417(e)(3). — The straight life annuity that is actuarially
78 equivalent to the member's form of benefit shall be
determined under this subsection if the form of the
79 member's benefit is either: (1) A nondecreasing annuity
80 (other than a straight life annuity) payable for a period of
81 not less than the life of the member (or, in the case of a
82 qualified preretirement survivor annuity, the life of the
83 surviving spouse); or (2) an annuity that decreases during
84 the life of the member merely because of: (i) The death of
85 the survivor annuitant (but only if the reduction is not
86 below fifty percent of the benefit payable before the death
87 of the survivor annuitant); or (ii) the cessation or reduction
88 of Social Security supplements or qualified disability
89 payments (as defined in Section 411(a)(9) of the Internal
90 Revenue Code). The actuarially equivalent straight life
91 annuity is equal to the greater of: (I) The annual amount of
92 the straight life annuity (if any) payable to the member
93 under the plan commencing at the same annuity starting
date as the member's form of benefit; and (II) the annual
amount of the straight life annuity commencing at the
same annuity starting date that has the same actuarial
present value as the member's form of benefit, computed
using a five percent interest rate assumption and the
applicable mortality table defined in Treasury Regulation
§1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subse-
quent Revenue Ruling modifying the applicable provisions
of Revenue Ruling 2001-62) for that annuity starting date.

(d) Adjustment for benefit forms subject to Section
417(e)(3). – The straight life annuity that is actuarially
equivalent to the member's form of benefit shall be
determined under this subsection if the form of the
member's benefit is other than a benefit form described in
subsection (c) of this section. In this case, the actuarially
equivalent straight life annuity shall be determined as
follows: The actuarially equivalent straight life annuity is
equal to the greatest of: (1) The annual amount of the
straight life annuity commencing at the same annuity
starting date that has the same actuarial present value as
the member's form of benefit, computed using the interest
rate specified in this retirement system and the mortality
table (or other tabular factor) specified in this retirement
system for adjusting benefits in the same form; (2) the
annual amount of the straight life annuity commencing at
the same annuity starting date that has the same actuarial
present value as the member's form of benefit, computed
using a five and a half percent interest rate assumption
and the applicable mortality table defined in Treasury
Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or
any subsequent Revenue Ruling modifying the applicable
provisions of Revenue Ruling 2001-62) for that annuity
starting date; and (3) the annual amount of the straight
life annuity commencing at the same annuity starting date
that has the same actuarial present value as the member's
form of benefit, computed using the applicable interest
rate defined in Treasury Regulation §1.417(e)-1(d)(3) and
the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

(e) Benefits payable prior to age sixty-two. —

(1) Except as provided in subdivisions (2) and (3) of this subsection, if the member's retirement benefits become payable before age sixty-two, the 415 dollar limitation prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that the limitation (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) which is equivalent to an annual benefit in the amount of the applicable dollar limitation of Section 415(b)(1)(A) of the Internal Revenue Code (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) beginning at age sixty-two.

(2) The limitation reduction provided in subdivision (1) of this subsection shall not apply if the member commencing retirement benefits before age sixty-two is a qualified participant. A qualified participant for this purpose is a participant in a defined benefit plan maintained by a state, or any political subdivision of a state, with respect to whom the service taken into account in determining the amount of the benefit under the defined benefit plan includes at least fifteen years of service: (i) As a full-time employee of any police or fire department organized and operated by the state or political subdivision maintaining the defined benefit plan to provide police protection, firefighting services or emergency medical services for any area within the jurisdiction of such state or political subdivision; or (ii) as a member of the armed forces of the United States.
(3) The limitation reduction provided in subdivision (1) of this subsection shall not be applicable to preretirement disability benefits or preretirement death benefits.

(4) For purposes of adjusting the 415 dollar limitation for benefit commencement before age sixty-two or after age sixty-five (if the plan provides for such adjustment), no adjustment is made to reflect the probability of a member's death: (i) After the annuity starting date and before age sixty-two; or (ii) after age sixty-five and before the annuity starting date.

(f) Adjustment when member has less than ten years of participation. — In the case of a member who has less than ten years of participation in the retirement system (within the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the 415 dollar limitation (as adjusted pursuant to Section 415(d) of the Internal Revenue Code and subsection (e) of this section) shall be reduced by multiplying the otherwise applicable limitation by a fraction, the numerator of which is the number of years of participation in the plan (or one, if greater), and the denominator of which is ten. This adjustment shall not be applicable to preretirement disability benefits or preretirement death benefits.

(g) The application of the provisions of this section shall not cause the maximum annual benefit provided to a member to be less than the member’s accrued benefit as of December 31, 2008 (the end of the limitation year that is immediately prior to the effective date of the final regulations for this retirement system as defined in Treasury Regulation §1.415(a)-1(g)(2)), under provisions of the retirement system that were both adopted and in effect before April 5, 2007, provided that such provisions satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Section 415 of the Internal Revenue Code in effect as of the end of December 31, 2008, as described in Treasury
Regulation §1.415(a)-1(g)(4). If additional benefits are accrued for a member under this retirement system after January 1, 2009, then the sum of the benefits described under the first sentence of this subsection and benefits accrued for a member after January 1, 2009, must satisfy the requirements of Section 415, taking into account all applicable requirements of the final 415 Treasury Regulations.

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

1. The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this code.
2. This provision applies to plan years beginning after December 31, 1986. Notwithstanding anything in this code to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder. For this purpose, the following provisions apply:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

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

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

(1) If a member's interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before December 31 of the calendar year immediately following the calendar year in which the member died; or

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

(A) December 31 of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) December 31 of the calendar year following the calendar year in which the member died; or (ii) December 31 of the calendar year following the calendar year in which the spouse died.

§5-10-27c. Direct rollovers.

(a) Except where otherwise stated, this section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct
rollover. For purposes of this section, the following definitions apply:

1. "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; and (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. For distributions after December 31, 2001, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or (for taxable years beginning before January 1, 2007) to a qualified trust which is part of a defined contribution plan described in Section 401(a) or (for taxable years beginning after December 31, 2006) to a qualified trust or to an annuity contract described in Section 403(a) or (b) of the Internal Revenue Code that agrees to separately account for amounts transferred (including interest or earnings thereon), including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not so includable,
or (for taxable years beginning after December 31, 2007) to a Roth IRA described in Section 408(a) of the Internal Revenue Code.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution prior to January 1, 2002, to the surviving spouse, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity. For distributions after December 1, 2001, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system. For distributions after December 31, 2007, an eligible retirement plan also means a Roth IRA described in Section 408(a) of the Internal Revenue Code: Provided, That in the case of an eligible rollover distribution after December 31, 2007, to a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue Code.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's
surviving spouse and the employee's or former employee's
spouse or former spouse who is the alternate payee under
a qualified domestic relations order, as defined in Section
414(p) of the Internal Revenue Code with respect to
governmental plans, are distributees with regard to the
interest of the spouse or former spouse. For distributions
after December 31, 2007, "distributee" also includes a
designated beneficiary (other than a surviving spouse) as
such term is defined in Section 402(c)(11) of the Internal
Revenue Code.

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

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

§5-10-27d. Rollovers and transfers to purchase service credit or
repay withdrawn contributions.

(a) This section applies to rollovers and transfers as
specified in this section made on or after January 1, 2002.
Notwithstanding any provision of this article to the
contrary that would otherwise prohibit or limit rollovers
and plan transfers to this system, the retirement system
shall accept the following rollovers and plan transfers on
behalf of a member solely for the purpose of purchasing
permissive service credit, in whole or in part, as otherwise
provided in this article or for the repayment of withdrawn
or refunded contributions, in whole or in part, with respect
to a previous forfeiture of service credit as otherwise
provided in this article: (i) One or more rollovers within
the meaning of Section 408(d)(3) of the Internal Revenue
Code from an individual retirement account described in
Section 408(a) of the Internal Revenue Code or from an
individual retirement annuity described in Section 408(b)
of the Internal Revenue Code; (ii) one or more rollovers
described in Section 402(c) of the Internal Revenue Code
from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code:

Provided, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with policies, practices and procedures established by the board from time to time. For purposes of this article, the following definitions and limitations apply:

(1) "Permissive service credit" means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code:

Provided, That no more than five years of "nonqualified service credit", as defined in Section 415(n)(3)(C) of the Internal Revenue Code, may be included in the permissive service credit allowed to be purchased (other than by means of a rollover or plan transfer), and no nonqualified service credit may be included in any such purchase (other than by means of a rollover or plan transfer) before the member has at least five years of participation in the retirement system.

(2) "Repayment of withdrawn or refunded contributions" means the payment into the retirement system of
the funds required pursuant to this article for the rein-
statement of service credit previously forfeited on account
of any refund or withdrawal of contributions permitted in
this article, as set forth in Section 415(k)(3) of the Internal
Revenue Code.

(3) Any contribution (other than by means of a rollover
or plan transfer) to purchase permissive service credit
under any provision of this article must satisfy the special
limitation rules described in Section 415(n) of the Internal
Revenue Code and shall be automatically reduced, limited
or required to be paid over multiple years if necessary to
ensure such compliance. To the extent any such purchased
permissive service credit is qualified military service
within the meaning of Section 414(u) of the Internal
Revenue Code, the limitations of Section 415 of the
Internal Revenue Code shall be applied to such purchase
as described in Section 414(u)(1)(B) of the Internal Reve-

(4) For purposes of Section 415(b) of the Internal Reve-
nue Code, the annual benefit attributable to any rollover
contribution accepted pursuant to this section shall be
determined in accordance with Treasury Regulation
§1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity
payments attributable to any rollover contribution
provided under the retirement system over the annual
benefit so determined shall be taken into account when
applying the accrued benefit limitations of Section 415(b)
of the Internal Revenue Code and section twenty-seven-a
of this article.

(b) Nothing in this section shall be construed as permit-
ting rollovers or transfers into this system or any other
system administered by the retirement board other than as
specified in this section and no rollover or transfer shall be
accepted into the system in an amount greater than the
amount required for the purchase of permissive service
credit or repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the purchase of service credit or repayment of withdrawn or refunded contributions except as otherwise permitted in this article.

§5-10-29. Members' deposit fund; members' contributions; forfeitures

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

(b) The contributions of a member to the retirement system (including any member of the Legislature, except as otherwise provided in subsection (g) of this section) shall be a sum of not less than three and five-tenths percent of his or her annual compensations but not more than four and five-tenths percent of his or her annual compensations, as determined by the board of trustees. The said contributions shall be made notwithstanding that the minimum salary or wages provided by law for any member shall be thereby changed. Each member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of a member's compensation less said deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered by him or her to a participating public employer, except as to benefits provided by this article.

(c) The officer or officers responsible for making up the payrolls for payroll units of the state government and for each of the other participating public employers shall cause the contributions, provided in subsection (b) of this
section, to be deducted from the compensations of each member in the employ of the participating public employer, on each and every payroll, for each and every payroll period, from the date the member enters the retirement system to the date his or her membership terminates. When deducted, each of said amounts shall be paid by the participating public employer to the retirement system; said payments to be made in such manner and form, and in such frequency, and shall be accompanied by such supporting data, as the board of trustees shall from time to time prescribe. When paid to the retirement system, each of said amounts shall be credited to the members' deposit fund account of the member from whose compensations said contributions were deducted.

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

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

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

(g) Any member of the Legislature who is a member of the retirement system and with respect to whom the term “final average salary” includes a multiple of eight, pursuant to the provisions of subdivision (15), section two of this article, shall contribute to the retirement system on the basis of his or her legislative compensation the sum of $540 each year he or she participates in the retirement system as a member of the Legislature.

(h) 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.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.

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

2 (a) “Accrued benefit” means on behalf of any member two and one-quarter percent of the member’s final average salary multiplied by the member’s years of credited service. A member’s accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of section nine-a of this article.

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

(c) "Active member" means a member who is active and contributing to the plan.

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

(e) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: Provided, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

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

(g) "Annual leave service" means accrued annual leave.

(h) "Annuity starting date" means the first day of the first calendar month following receipt of the retirement application by the board or the required beginning date, if earlier: Provided, That the member has ceased covered employment and reached early or normal retirement age.

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

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

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

(l) "Covered employment" means either: (1) Employment as a deputy sheriff and the active performance of the duties required of a deputy sheriff; or (2) the period of time which active duties are not performed but disability benefits are received under section fourteen or fifteen of this article; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or her employment as a deputy sheriff where the secondary employment requires the deputy sheriff to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code: Provided, That the deputy sheriff contributes to the fund created in section six of this article the amount specified as the deputy sheriff's contribution in section seven of this article.
“Credited service” means the sum of a member's years of service, active military duty, disability service and annual leave service.

“Deputy sheriff” means an individual employed as a county law-enforcement deputy sheriff in this state and as defined by section two, article fourteen of this chapter.

“Dependent child” means either:

1. An unmarried person under age eighteen who is:
   A. A natural child of the member;
   B. A legally adopted child of the member;
   C. A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or
   D. A stepchild of the member residing in the member's household at the time of the member's death; or
2. Any unmarried child under age twenty-three:
   A. Who is enrolled as a full-time student in an accredited college or university;
   B. Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and
   C. Whose relationship with the member is described in subparagraph (A), (B) or (C), paragraph (1) of this subdivision.

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

“Disability service” means service credit received by a member, expressed in whole years, fractions thereof or
both, equal to one half of the whole years, fractions thereof or both, during which time a member receives disability benefits under section fourteen or fifteen of this article.

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

(s) "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.

(t) "Effective date" means July 1, 1998.

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

(v) "Fund" means the West Virginia Deputy Sheriff Retirement Fund created pursuant to section six of this article.

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

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

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

(x) "Member" means a person first hired as a deputy sheriff after the effective date of this article, as defined in subsection (r) of this section, or a deputy sheriff first hired prior to the effective date and who elects to become a member pursuant to section five or seventeen of this article. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited or until cessation of membership pursuant to section five of this article.
(y) "Monthly salary" means the portion of a member's annual compensation which is paid to him or her per month.

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

(aa) "Normal retirement age" means the first to occur of the following: (1) Attainment of age fifty years and the completion of twenty or more years of service; (2) while still in covered employment, attainment of at least age fifty years and when the sum of current age plus years of service equals or exceeds seventy years; (3) while still in covered employment, attainment of at least age sixty years and completion of five years of service; or (4) attainment of age sixty-two years and completion of five or more years of service.

(bb) "Partially disabled" means a member's inability to engage in the duties of deputy sheriff by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent June 30, as of which plan data
has been assembled and used for the actuarial valuation of the plan.

(cc) "Public Employees Retirement System" means the West Virginia Public Employees Retirement System created by article ten, chapter five of this code.

(dd) "Plan" means the West Virginia Deputy Sheriff Death, Disability and Retirement Plan established by this article.

(ee) "Plan year" means the twelve-month period commencing on July 1 of any designated year and ending the following June 30.

(ff) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

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

(hh) "Required beginning date" means April 1 of the calendar year following the later of: (i) The calendar year in which the member attains age seventy and one-half; or (ii) the calendar year in which he or she retires or otherwise separates from covered employment.

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

(jj) "Spouse" means the person to whom the member is legally married on the annuity starting date.
“Surviving spouse” means the person to whom the member was legally married at the time of the member's death and who survived the member.

“Totally disabled” means a member’s inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. For purposes of this subdivision:

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

(2) “Physical or mental impairment” is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. A member’s receipt of Social Security disability benefits creates a rebuttable presumption that the member is totally disabled for purposes of this plan. Substantial gainful employment rebuts the presumption of total disability.

“Year of service”. — A member shall, except in his or her first and last years of covered employment, be credited with year of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:
During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under section fourteen or fifteen of this article. Except as specifically excluded, years of service include covered employment prior to the effective date. Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to section thirteen of this article or section thirty, article ten, chapter five of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to section thirteen of this article or had prior to the effective date made the repayment pursuant to section eighteen, article ten, chapter five of this code.

§7-14D-3. Creation and administration of West Virginia Deputy Sheriff Retirement System; specification of actuarial assumptions.

There is hereby created the West Virginia Deputy Sheriff Retirement System. The purpose of this system is to provide for the orderly retirement of deputy sheriffs who become superannuated because of age or permanent disability and to provide certain survivor death benefits, and it is contemplated that substantially all of the members of the retirement system shall be qualified public safety employees as defined in section two of this article.
The retirement system constitutes a body corporate. All business of the system shall be transacted in the name of the West Virginia Deputy Sheriff Retirement System. The board shall specify and adopt all actuarial assumptions for the plan at its first meeting of every calendar year or as soon thereafter as may be practicable, which assumptions shall become part of the plan.

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

A member may retire and commence to receive retirement income payments on the first day of the calendar month following the board’s receipt of the member’s voluntary written application for retirement or the required beginning date, if earlier. Before receiving retirement income payments, the member shall have ceased covered employment and reached early or normal retirement age. The retirement income payments shall be in an amount as provided under section eleven of this article: Provided, That retirement income payments under this plan shall be subject to the provisions of this article.

Upon receipt of the application, the board shall promptly provide the member with an explanation of his or her optional forms of retirement benefits and upon receipt of properly executed forms from the member, the board shall process the member’s request and commence payments as soon as administratively feasible.

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

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section, to the extent applicable to governmental plans (hereafter sometimes referred to as the “415 limitation(s)” or “415 dollar limitation(s)”), so that the annual benefit payable under this system to a member shall not exceed those
limitations. Any annual benefit payable under this system shall be reduced or limited if necessary to an amount which does not exceed those limitations. The extent to which any annuity or other annual benefit payable under this retirement system shall be reduced, as compared to the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced, shall be proportional on a percentage basis to the reductions made in such other plans administered by the board and required to be so taken into consideration under Section 415, unless a disproportionate reduction is determined by the board to maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities or other annual benefit required by this section. For purposes of the 415 limitations, the “limitation year” shall be the calendar year. The 415 limitations are incorporated herein by reference, except to the extent the following provisions may modify the default provisions thereunder:

(a) The annual adjustment to the 415 dollar limitations made by Section 415(d) of the Internal Revenue Code and the regulations thereunder shall apply for each limitation year. The annual adjustments to the dollar limitations under Section 415(d) of the Internal Revenue Code which become effective: (i) After a retirant’s severance from employment with the employer; or (ii) after the annuity starting date in the case of a retirant who has already commenced receiving benefits, will apply with respect to a retirant’s annual benefit in any limitation year. A retirant’s annual benefit payable in any limitation year from this retirement system shall in no event be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d)
(b) For purposes of this section, the "annual benefit" means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit, using factors prescribed in the 415 limitation regulations, before applying the 415 limitations. No actuarial adjustment to the benefit shall be made for: (1) Survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form; (2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and post-retirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this article, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this article applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code. For this purpose an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(c) Adjustment for benefit forms not subject to Section 417(e)(3). — The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is either: (1) A nondecreasing annuity (other than a straight life annuity) payable for a period of
81 not less than the life of the member (or, in the case of a
82 qualified preretirement survivor annuity, the life of the
83 surviving spouse); or (2) an annuity that decreases during
84 the life of the member merely because of: (i) The death of
85 the survivor annuitant (but only if the reduction is not
86 below fifty percent of the benefit payable before the death
87 of the survivor annuitant); or (ii) the cessation or reduction
88 of Social Security supplements or qualified disability
89 payments (as defined in Section 411(a)(9) of the Internal
90 Revenue Code). The actuarially equivalent straight life
91 annuity is equal to the greater of: (I) The annual amount of
92 the straight life annuity (if any) payable to the member
93 under the plan commencing at the same annuity starting
94 date as the member's form of benefit; and (II) the annual
95 amount of the straight life annuity commencing at the
96 same annuity starting date that has the same actuarial
97 present value as the member's form of benefit, computed
98 using a five percent interest rate assumption and the
99 applicable mortality table defined in Treasury Regulation
100 §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subse-
101 quent Revenue Ruling modifying the applicable provisions
102 of Revenue Ruling 2001-62) for that annuity starting date.

103 (d) Adjustment for benefit forms subject to Section
104 417(e)(3). — The straight life annuity that is actuarially
105 equivalent to the member's form of benefit shall be
106 determined under this subsection if the form of the
107 member's benefit is other than a benefit form described in
108 subdivision (c) of this section. The actuarially equivalent
109 straight life annuity shall be determined as follows: The
110 actuarially equivalent straight life annuity is equal to the
111 greatest of: (1) The annual amount of the straight life
112 annuity commencing at the same annuity starting date
113 that has the same actuarial present value as the member's
114 form of benefit, computed using the interest rate specified
115 in this retirement system and the mortality table (or other
116 tabular factor) specified in this retirement system for
adjusting benefits in the same form; (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five and a half percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date; and (3) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate defined in Treasury Regulation §1.417(e)-1(d)(3) and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

(e) Benefits payable prior to age sixty-two. —

(1) Except as provided in paragraphs (2) and (3) of this subdivision, if the member's retirement benefits become payable before age sixty-two, the 415 dollar limitation prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that the limitation (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) which is equivalent to an annual benefit in the amount of the applicable dollar limitation of Section 415(b)(1)(A) of the Internal Revenue Code (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) beginning at age sixty-two.

(2) The limitation reduction provided in paragraph (1) of this subdivision shall not apply if the member commencing
retirement benefits before age sixty-two is a qualified participant. A qualified participant for this purpose is a participant in a defined benefit plan maintained by a state, or any political subdivision of a state, with respect to whom the service taken into account in determining the amount of the benefit under the defined benefit plan includes at least fifteen years of service: (i) As a full-time employee of any police or fire department organized and operated by the state or political subdivision maintaining the defined benefit plan to provide police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of such state or political subdivision; or (ii) as a member of the armed forces of the United States.

(3) The limitation reduction provided in paragraph (1) of this subdivision shall not be applicable to preretirement disability benefits or preretirement death benefits.

(4) For purposes of adjusting the 415 dollar limitation for benefit commencement before age sixty-two or after age sixty-five (if the plan provides for such adjustment), no adjustment is made to reflect the probability of a member's death: (i) After the annuity starting date and before age sixty-two; or (ii) after age sixty-five and before the annuity starting date.

(f) Adjustment when member has less than ten years of participation. — In the case of a member who has less than ten years of participation in the retirement system (within the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the 415 dollar limitation (as adjusted pursuant to Section 415(d) of the Internal Revenue Code and subdivision (e) of this section) shall be reduced by multiplying the otherwise applicable limitation by a fraction, the numerator of which is the number of years of participation in the plan (or one, if greater), and the denominator of which is ten.
This adjustment shall not be applicable to preretirement disability benefits or preretirement death benefits.

(g) The application of the provisions of this section shall not cause the maximum annual benefit provided to a member to be less than the member's accrued benefit as of December 31, 2008 (the end of the limitation year that is immediately prior to the effective date of the final regulations for this retirement system as defined in Treasury Regulation §1.415(a)-1(g)(2)), under provisions of the retirement system that were both adopted and in effect before April 5, 2007, provided that such provisions satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Section 415 of the Internal Revenue Code in effect as of December 31, 2008, as described in Treasury Regulation §1.415(a)-1(g)(4). If additional benefits are accrued for a member under this retirement system after January 1, 2009, then the sum of the benefits described under the first sentence of this subsection and benefits accrued for a member after January 1, 2009, must satisfy the requirements of Section 415, taking into account all applicable requirements of the final 415 Treasury Regulations.

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

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this plan. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the plan to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:
(a) The payment of benefits under the plan to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

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

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the plan shall be distributed by December 31 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 December 31 of the calendar year immediately following the calendar year in which the member died; or

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

(A) December 31 of the calendar year in which the member would have attained age seventy and one-half; or
(B) The earlier of: (i) December 31 of the calendar year following the calendar year in which the member died; or (ii) December 31 of the calendar year following the calendar year in which the spouse died.

§7-14D-9c. Direct rollovers.

Except where otherwise stated, this section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this plan, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (A) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (B) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; (C) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (D) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. For distributions after December 31, 2001, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax
employee contributions which are not includable in gross
income. However, this portion may be paid only to an
individual retirement account or annuity described in
Section 408(a) or (b) of the Internal Revenue Code, or (for
taxable years beginning before January 1, 2007) to a
qualified trust which is part of a defined contribution plan
described in Section 401(a) or (for taxable years beginning
after December 31, 2006) to a qualified trust or to an
annuity contract described in Section 403(a) or (b) of the
Internal Revenue Code that agrees to separately account
for amounts transferred (including interest or earnings
thereon), including separately accounting for the portion
of the distribution which is includable in gross income and
the portion of the distribution which is not so includable,
or (for taxable years beginning after December 31, 2007)
to a Roth IRA described in Section 408(a) of the Internal
Revenue Code.

(2) "Eligible retirement plan" means an individual
retirement account described in Section 408(a) of the
Internal Revenue Code, an individual retirement annuity
described in Section 408(b) of the Internal Revenue Code,
an annuity plan described in Section 403(a) of the Internal
Revenue Code or a qualified plan described in Section
401(a) of the Internal Revenue Code that accepts the
distributee's eligible rollover distribution: Provided, That
in the case of an eligible rollover distribution prior to
January 1, 2002, to the surviving spouse, an eligible
retirement plan is limited to an individual retirement
account or individual retirement annuity. For distribu-
tions after December 31, 2001, an eligible retirement plan
also means an annuity contract described in Section 403(b)
of the Internal Revenue Code and an eligible plan under
Section 457(b) of the Internal Revenue Code which is
maintained by a state, political subdivision of a state, or
any agency or instrumentality of a state or political
subdivision of a state and which agrees to separately
account for amounts transferred into the plan from this system. For distributions after December 31, 2007, an eligible retirement plan also means a Roth IRA described in Section 408 of the Internal Revenue Code: Provided, That in the case of an eligible rollover distribution after December 31, 2007, to a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue Code.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2007, "distributee" also includes a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code.

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

§7-14D-9d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

(a) This section applies to rollovers and transfers as specified in this section made on or after January 1, 2002. Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the retirement system shall accept the following rollovers and plan transfers on
behalf of a member solely for the purpose of purchasing permissive service credit, in whole or in part, as otherwise provided in this article or for the repayment of withdrawn or refunded contributions, in whole and in part, with respect to a previous forfeiture of service credit as otherwise provided in this article: (i) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (ii) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: Provided, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with such policies, practices and procedures established by the board from time to time. For purposes of this article, the following definitions and limitations apply:

(1) "Permissive service credit" means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined
Provided, That no more than five years of "nonqualified service credit", as defined in Section 415(n)(3)(C) of the Internal Revenue Code, may be included in the permissive service credit allowed to be purchased (other than by means of a rollover or plan transfer), and no nonqualified service credit may be included in any such purchase (other than by means of a rollover or plan transfer) before the member has at least five years of participation in the retirement system.

(2) "Repayment of withdrawn or refunded contributions" means the payment into the retirement system of the funds required pursuant to this article for the reinstatement of service credit previously forfeited on account of any refund or withdrawal of contributions permitted in this article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

(3) Any contribution (other than by means of a rollover or plan transfer) to purchase permissive service credit under any provision of this article must satisfy the special limitation rules described in Section 415(n) of the Internal Revenue Code, and shall be automatically reduced, limited, or required to be paid over multiple years if necessary to ensure such compliance. To the extent any such purchased permissive service credit is qualified military service within the meaning of Section 414(u) of the Internal Revenue Code, the limitations of Section 415 of the Internal Revenue Code shall be applied to such purchase as described in Section 414(u)(1)(B) of the Internal Revenue Code.

(4) For purposes of Section 415(b) of the Internal Revenue Code, the annual benefit attributable to any rollover contribution accepted pursuant to this section shall be determined in accordance with Treasury Regulation §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity...
payments attributable to any rollover contribution provided under the retirement system over the annual benefit so determined shall be taken into account when applying the accrued benefit limitations of Section 415(b) of the Internal Revenue Code and section nine-a of this article.

(b) Nothing in this section shall be construed as permitting rollovers or transfers into this system or any other system administered by the retirement board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the purchase of permissive service credit or repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the purchase of service credit or repayment of withdrawn or refunded contributions except as otherwise permitted in this article.


This section provides for a member's accrued benefit payable starting at the member's annuity starting date which follows the completion of a written application for the commencement of benefits. The member shall receive the accrued retirement benefit in the normal form or in an actuarial equivalent amount in an optional form as provided under section twelve of this article, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section nine-a of this article. The first day of the calendar month following the calendar month of birth shall be used in lieu of any birth date that does not fall on the first day of a calendar month.

(a) Normal retirement. — A member whose annuity starting date is the date the member attains normal retirement age or later is entitled to his or her accrued
(b) Early retirement. - A member who ceases covered employment and has attained early retirement age while in covered employment may elect to receive retirement income payments commencing on the first day of the month coincident with or following the date the member ceases covered employment. "Normal retirement age" for such a member is the first day of the calendar month coincident with or next following the month in which the member attains the age of fifty years. If the member's annuity starting date is prior to the date the member attains normal retirement age, his or her accrued benefit is reduced to the actuarial equivalent benefit amount based on the years and months by which his or her annuity starting date precedes the date he or she attains normal retirement age.

(c) Retirement benefits shall be paid monthly in an amount equal to one twelfth of the retirement income payments elected and at those times established by the board. Notwithstanding any other provision of the plan, a member who is married on the annuity starting date will receive his or her retirement income payments in the form of a sixty-six and two-thirds percent joint and survivor annuity with his or her spouse unless prior to the annuity starting date the spouse waives the form of benefit.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.


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

(a) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the
basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: Provided, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, “actuarially equivalent” shall be computed using the mortality tables and interest rates required to comply with those requirements.

(b) “Agency” means the West Virginia State Police.

c) “Beneficiary” means a surviving spouse or other surviving beneficiary who is entitled to, or will be entitled to, an annuity or other benefit payable by the fund.

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

(e) “Dependent child” means any unmarried child or children born to or adopted by a member of the fund who is:

(1) Under the age of eighteen;

(2) After reaching eighteen years of age, continues as a full-time student in an accredited high school, college, university, business or trade school, until the child or children reaches the age of twenty-three years; or

(3) Is financially dependent on the member by virtue of a permanent mental or physical disability upon evidence satisfactory to the board.

(f) “Dependent parent” means the member’s parent or stepparent claimed as a dependent by the member for federal income tax purposes at the time of the member’s death.

(g) “Employee” means any person regularly employed in the service of the agency as a law-enforcement officer
before March 12, 1994, and who is eligible to participate in the fund.

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

(i) "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.

(j) "Member" means any person who has contributions standing to his or her credit in the fund and who has not yet entered into retirement status.

(k) "Partially disabled" means an employee'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 employee from engaging in other types of nonlaw-enforcement employment.

(l) "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.

(m) "Plan year" means the twelve-month period commencing on July 1 of any designated year and ending the following June 30.
“Qualified public safety employee” means any employee of a participating state or political subdivision who provides police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

“Retirant” or “retiree” means any former member who is receiving an annuity payable by the fund.

“Surviving spouse” means the person to whom the member was legally married at the time of the member’s death and who survived the member.

“Totally disabled” means an employee’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, an employee 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 an employee of the agency 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 employee lives; (2) a specific job vacancy exists; or (3) the employee 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, retirants
and any dependents of retirants or deceased members of the fund. It is contemplated that substantially all of the members of the retirement system shall be qualified public safety employees as defined in section twenty-five-b of this article.

(b) There shall be deducted from the monthly payroll of each employee and paid into the fund six percent of the amount of his or her salary: Provided, That beginning on July 1, 1994, there shall be deducted from the monthly payroll of each employee and paid into the fund seven and one-half percent of the amount of his or her salary: Provided, however, That on and after July 1, 1995, there shall be deducted from the monthly payroll of each employee 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 employee shall be paid by the State of West Virginia monthly into the fund out of the annual appropriation for the agency: Provided further, That beginning on July 1, 1995, the agency shall pay thirteen percent of the monthly salary of each employee into the fund: And provided further, That beginning on July 1, 1996, the agency shall pay fourteen percent of the monthly salary of each employee into the fund: And provided further, That on and after July 1, 1997, the agency shall pay fifteen percent of the monthly salary of each employee into the fund. There shall also be paid into the fund amounts that have previously been collected by the superintendent of the agency on account of payments to employees for court attendance and mileage, rewards for apprehending wanted persons, fees for traffic accident reports and photographs, fees for criminal investigation reports and photographs, fees for criminal history record checks, fees for criminal history record reviews and challenges or from any other sources designated by the superintendent. All moneys payable into the fund shall be deposited in the State Treasury and the board shall keep a separate account thereof.
(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; are not subject to execution, garnishment, attachment or any other process whatsoever, with the exception that the benefits or contributions under the fund are subject to "qualified domestic relations orders" as that term is defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans; and are unassignable except as is provided in this article. The fund shall be administered by the board created pursuant to article ten-d, chapter five of this code.

(e) All moneys paid into and accumulated in the fund, except amounts designated or set aside by the awards, shall be invested by the West Virginia Investment Management Board as provided by law.

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

(a) The board shall retire any member of the fund who has filed with the 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 fund (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 fund (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 fund (excluding military service credit granted under section twenty-eight of this article).

(b) When the board retires any member under any of the provisions of this section, the member is entitled to receive annually and shall be paid from the fund in equal monthly installments during his or her lifetime while in status of retirement, one or the other of two amounts, whichever is the greater, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section forty-four of this article:

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

(2) The sum of $6,000.

When a member has or shall have served twenty years or longer but less than twenty-five years as a member of the fund 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 day following the date he or she attains the age of fifty years. Beginning on July 15, 1994, 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.

(c) A member meeting the age and service requirements of this section who terminates employment at two thousand four hundred hours may begin to receive retirement annuity payments immediately upon termination of employment. Any member meeting the age and service requirements of this section who terminates employment
at a time of day other than two thousand four hundred
hours shall receive a pro rata share of a full day’s amount
for that day. Upon receipt of properly executed forms
from the agency and the member, the board shall process
the member’s retirement petition and commence annuity
payments as soon as administratively feasible.

(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.

§15-2-37. Refunds to certain employees upon discharge or
resignation; deferred retirement.

(a) Any employee who is discharged by order of the
superintendent or otherwise terminates employment with
the agency, at the written request of the member to the
board, is entitled to receive from the fund a sum equal to
the aggregate of the principal amount of moneys deducted
from his or her salary and paid into the 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 reemployed by the agency shall not receive
any prior service credit in the fund on account of former
service. The employee may redeposit 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 employee who completes ten years of service with the agency is eligible, upon separation of employment, 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 board retires any member under any of the provisions of this section, the member is entitled to receive annually and shall be paid from the 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, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section forty-four of this article:

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

(2) The sum of $6,000.

(d) A member may choose, in lieu of a life annuity available under the provisions of subsection (c) of this section, an annuity in a reduced amount payable during the member's lifetime, with one half of the reduced monthly amount paid to his or her surviving spouse, for the spouse's remaining lifetime after the death of the retirant. 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.
(e) A member retiring under the provisions of this section may receive retirement annuity payments on the day following his or her attaining age sixty-two. Upon receipt of properly executed forms from the agency and the member, the board shall process the member's retirement benefit and commence annuity payments as soon as administratively feasible.

§15-2-44. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the fund in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section to the extent applicable to governmental plans (hereafter sometimes referred to as the "415 limitation(s)" or "415 dollar limitation(s)"), so that the annual benefit payable under this system to a member shall not exceed those limitations. Any annual benefit payable under this system shall be reduced or limited if necessary to an amount which does not exceed those limitations. The extent to which any annuity or other annual benefit payable under this fund shall be reduced, as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced, shall be proportional on a percentage basis to the reductions made in such other plans administered by the board and required to be so taken into consideration under Section 415, unless a disproportionate reduction is determined by the board to maximize the aggregate benefits payable to the member. If the reduction is under this fund, the board shall advise affected members or retirants of any additional limitation on the annuities or other annual benefit required by this section. For purposes of the 415 limitations, the "limitation year" shall be the calendar year. The 415 limitations are incorporated herein
by reference, except to the extent the following provisions may modify the default provisions thereunder:

(a) The annual adjustment to the 415 dollar limitations made by Section 415(d) of the Internal Revenue Code and the regulations thereunder shall apply for each limitation year. The annual adjustments to the dollar limitations under Section 415(d) of the Internal Revenue Code which become effective: (i) After a retirant’s severance from employment with the employer; or (ii) after the annuity starting date in the case of a retirant who has already commenced receiving benefits, will apply with respect to a retirant’s annual benefit in any limitation year. A retirant’s annual benefit payable in any limitation year from this retirement fund shall in no event be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(b) For purposes of this section, the “annual benefit” means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit, using factors prescribed in the 415 limitation regulations, before applying the 415 limitations. No actuarial adjustment to the benefit shall be made for: (1) Survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member’s benefit were paid in another form; (2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and post-retirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to
Section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this article, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this article applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code. For this purpose an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(c) Adjustment for benefit forms not subject to Section 417(e)(3). — The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is either: (1) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse); or (2) an annuity that decreases during the life of the member merely because of: (i) The death of the survivor annuitant (but only if the reduction is not below fifty percent of the benefit payable before the death of the survivor annuitant); or (ii) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Section 411(a)(9) of the Internal Revenue Code). The actuarially equivalent straight life annuity is equal to the greater of: (I) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member's form of benefit; and (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subse-
(d) Adjustment for benefit forms subject to Section 417(e)(3). – The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is other than a benefit form described in subdivision (c) of this section. In this case, the actuarially equivalent straight life annuity shall be determined as follows: The actuarially equivalent straight life annuity is equal to the greatest of: (1) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the interest rate specified in this retirement fund and the mortality table (or other tabular factor) specified in this retirement fund for adjusting benefits in the same form; (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five and a half percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date; and (3) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate defined in Treasury Regulation §1.417(e)-1(d)(3) and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

(e) Benefits payable prior to age sixty-two. –
(1) Except as provided in paragraphs (2) and (3) of this subdivision, if the member's retirement benefits become payable before age sixty-two, the 415 dollar limitation prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that the limitation (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) which is equivalent to an annual benefit in the amount of the applicable dollar limitation of Section 415(b)(1)(A) of the Internal Revenue Code (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) beginning at age sixty-two.

(2) The limitation reduction provided in paragraph (1) of this subdivision shall not apply if the member commencing retirement benefits before age sixty-two is a qualified participant. A qualified participant for this purpose is a participant in a defined benefit plan maintained by a state, or any political subdivision of a state, with respect to whom the service taken into account in determining the amount of the benefit under the defined benefit plan includes at least fifteen years of service: (i) As a full-time employee of any police or fire department organized and operated by the state or political subdivision maintaining the defined benefit plan to provide police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of such state or political subdivision; or (ii) as a member of the armed forces of the United States.

(3) The limitation reduction provided in paragraph (1) of this subdivision shall not be applicable to preretirement disability benefits or preretirement death benefits.

(4) For purposes of adjusting the 415 dollar limitation for benefit commencement before age sixty-two or after age sixty-five (if the plan provides for such adjustment),
no adjustment is made to reflect the probability of a member's death: (i) After the annuity starting date and before age sixty-two; or (ii) after age sixty-five and before the annuity starting date.

(f) **Adjustment when member has less than ten years of participation.** - In the case of a member who has less than ten years of participation in the retirement fund (within the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the 415 dollar limitation (as adjusted pursuant to Section 415(d) of the Internal Revenue Code and subsection (e) of this section) shall be reduced by multiplying the otherwise applicable limitation by a fraction, the numerator of which is the number of years of participation in the plan (or one, if greater), and the denominator of which is ten. This adjustment shall not be applicable to preretirement disability benefits or preretirement death benefits.

(g) The application of the provisions of this section shall not cause the maximum annual benefit provided to a member to be less than the member's accrued benefit as of December 31, 2008 (the end of the limitation year that is immediately prior to the effective date of the final regulations for this retirement system as defined in Treasury Regulation §1.415(a)-1(g)(2)), under provisions of the retirement system that were both adopted and in effect before April 5, 2007, provided that such provisions satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Section 415 of the Internal Revenue Code in effect as of December 31, 2008, as described in Treasury Regulation §1.415(a)-1(g)(4). If additional benefits are accrued for a member under this retirement system after January 1, 2009, then the sum of the benefits described under the first sentence of this subsection and benefits accrued for a member after January 1, 2009, must satisfy the requirements of Section 415, taking into account all applicable requirements of the final 415 Treasury Regulations.
§15-2-45. Federal law minimum required distributions.

1. The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this code.
2. This section applies to plan years beginning after December 31, 1998. Notwithstanding anything to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:

   (a) The payment of benefits under the fund to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary, or over a period not extending beyond the life expectancy of the member and his or her beneficiary. For purposes of this section, the term "required beginning date" means April 1 of the calendar year following the later of: (i) The calendar year in which the member attains age seventy and one-half; or (ii) the calendar year in which the member retires or otherwise ceases providing covered service under this fund. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

   (b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.
(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the fund shall be distributed by December 31 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 December 31 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) December 31 of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) December 31 of the calendar year following the calendar year in which the member died; or (ii) December 31 of the calendar year following the calendar year in which the spouse died.

§15-2-46. Direct rollovers.

(a) Except where otherwise stated, this section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this fund, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least $500 paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the
distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee’s designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution or distributions that are reasonably expected to total less than $200 during a year. For distributions after December 31, 2001, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or (for taxable years beginning before January 1, 2007) to a qualified trust which is part of a defined contribution plan described in Section 401(a) or (for taxable years beginning after December 31, 2006) to a qualified trust or to an annuity contract described in Section 403(a) or (b) of the Internal Revenue Code that agrees to separately account for amounts transferred (including interest or earnings thereon), including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not so includable, or (for taxable years beginning after December 31, 2007) to a Roth IRA described in Section 408(a) of the Internal Revenue Code.
(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified plan described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution prior to January 1, 2002, to the surviving spouse, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity. For distributions after December 31, 2001, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system. For distributions after December 31, 2007, an eligible retirement plan also means a Roth IRA described in Section 408(p) of the Internal Revenue Code: Provided, That in the case of an eligible rollover distribution after December 31, 2007, to a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue Code.

(3) "Distributee" means a member. In addition, the member's surviving spouse and the member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental
plans, are distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2007, "distributee" also includes a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code.

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

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

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.


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

(1) "Accumulated contributions" means the sum of all amounts deducted from base salary, together with four percent interest compounded annually.

(2) "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 employee has been called to active full-time duty.

(3) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: Provided, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.
(4) "Agency" means the West Virginia State Police.

(5) "Base salary" means compensation paid to an employee without regard to any overtime pay.

(6) "Beneficiary" means a surviving spouse or other surviving beneficiary who is entitled to, or will be entitled to, an annuity or other benefit payable by the fund.

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

(8) "Dependent child" means any unmarried child or children born to or adopted by a member or retirant of the fund who:

(A) Is under the age of eighteen;

(B) After reaching eighteen years of age, continues as a full-time student in an accredited high school, college, university, business or trade school until the child or children reaches the age of twenty-three years; or

(C) Is financially dependent on the member or retirant by virtue of a permanent mental or physical disability upon evidence satisfactory to the board.

(9) "Dependent parent" means the member's or retirant's parent or stepparent claimed as a dependent by the member or retirant for federal income tax purposes at the time of the member's or retirant's death.

(10) "Employee" means any person regularly employed in the service of the agency as a law-enforcement officer after May 12, 1994, and who is eligible to participate in the fund.

(11) "Final average salary" means the average of the highest annual compensation received for employment with the agency, including compensation paid for overtime service, received by the employee during any five calendar
Provided, That annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code.

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

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

(14) "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 purely administrative in nature.

(15) "Member" means any person who has contributions standing to his or her credit in the fund and who has not yet entered into retirement status.

(16) "Month of service" means each month for which an employee 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.

(17) "Partially disabled" means an employee'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 employee from engaging in other types of nonlaw-enforcement employment.

(18) "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.

(19) "Plan year" means the twelve-month period commencing on July 1 of any designated year and ending the following June 30.

(20) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(21) "Required beginning date" means April 1 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 agency after having attained the age of seventy and one-half years.

(22) "Retirant" or "retiree" means any member who commences an annuity payable by the retirement system.

(23) "Salary" means the compensation of an employee, excluding any overtime payments.
(24) "Surviving spouse" means the person to whom the member or retirant was legally married at the time of the member's or retirant's death and who survived the member or retirant.

(25) "Totally disabled" means an employee'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 subdivision, an employee 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 an employee of the agency, 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 employee lives; (B) a specific job vacancy exists; or (C) the employee would be hired if he or she applied for work.

(26) "Years of service" means the months of service acquired by a member while in active employment with the agency 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 agency through the date of termination of employment or retirement from the agency. If a member returns to active employment with the agency following a previous termination of employment with the agency 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 agency for which a refund of contributions plus interest
has been paid to the member unless the employee repays
the previous withdrawal, as provided in section eight of
this article, to reinstate the years of service.

§15-2A-3. Continuation and administration of West Virginia
State Police Retirement System; leased employ-
ees; federal qualification requirements.

(a) The West Virginia State Police Retirement System is
continued. It is contemplated that substantially all of the
members of the retirement system shall be qualified public
safety employees as defined in section two of this article.
Any West Virginia state trooper employed by the agency
on or after the effective date of this article shall be a
member of this retirement system and may not qualify for
membership in any other retirement system administered
by the board so long as he or she remains employed by the
State Police.

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

(c) The board created pursuant to article ten-d, chapter
five of this code shall administer the retirement system.
The board may sue and be sued, contract and be con-
tracted with and conduct all the business of the system in
the name of the West Virginia State Police Retirement
System.

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


1 (a) A member may retire with full benefits upon attaining the age of fifty and completing twenty-five or more years of service or attaining the age of fifty-two and completing twenty years or more of service by filing with the board his or her voluntary application in writing for retirement. A member who is less than age fifty-two may retire upon completing 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-two.

(b) When the 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 at the time of retirement, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section six-a of this article. The retirant’s annuity shall begin the first day of the calendar month following the month in which the member's application for the
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25 annuity is filed with the board on or after his or her
26 attaining age and service requirements and termination of
27 employment.

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


1 Notwithstanding any other provision of this article or
2 state law, the board shall administer the retirement system
3 in compliance with the limitations of Section 415 of the
4 Internal Revenue Code and Treasury Regulations under
5 that section to the extent applicable to governmental plans
6 (hereafter sometimes referred to as the “415 limitation(s)”
7 or “415 dollar limitation(s)”), so that the annual benefit
8 payable under this system to a member shall not exceed
9 those limitations. Any annual benefit payable under this
10 system shall be reduced or limited if necessary to an
11 amount which does not exceed those limitations. The
12 extent to which any annuity or other annual benefit
13 payable under this retirement system shall be reduced, as
14 compared with the extent to which an annuity, contribu-
15 tions or other benefits under any other defined benefit
16 plans or defined contribution plans required to be taken
17 into consideration under Section 415 of the Internal
18 Revenue Code shall be reduced, shall be proportional on a
19 percentage basis to the reductions made in such other
20 plans administered by the board and required to be so
21 taken into consideration under Section 415, unless a
22 disproportionate reduction is determined by the board to
23 maximize the aggregate benefits payable to the member.
24 If the reduction is under this retirement system, the board
25 shall advise affected members or retirants of any addi-
26 tional limitation on the annuities or other annual benefit
27 required by this section. For purposes of the 415 limita-
28 tions, the "limitation year" shall be the calendar year. The
29 415 limitations are incorporated herein by reference,
30 except to the extent the following provisions may modify
31 the default provisions thereunder:

32 (a) The annual adjustment to the 415 dollar limitations
33 made by Section 415(d) of the Internal Revenue Code and
34 the regulations thereunder shall apply for each limitation
35 year. The annual adjustments to the dollar limitations
36 under Section 415(d) of the Internal Revenue Code which
37 become effective: (i) After a retirant's severance from
38 employment with the employer; or (ii) after the annuity
39 starting date in the case of a retirant who has already
40 commenced receiving benefits, will apply with respect to
41 a retirant's annual benefit in any limitation year. A
42 retirant's annual benefit payable in any limitation year
43 from this retirement system shall in no event be greater
44 than the limit applicable at the annuity starting date, as
45 increased in subsequent years pursuant to Section 415(d)
46 of the Internal Revenue Code and the regulations thereun-
47 der.

48 (b) For purposes of this section, the "annual benefit"
49 means a benefit that is payable annually in the form of a
50 straight life annuity. Except as provided below, where a
51 benefit is payable in a form other than a straight life
52 annuity, the benefit shall be adjusted to an actuarially
53 equivalent straight life annuity that begins at the same
54 time as such other form of benefit, using factors prescribed
55 in the 415 limitation regulations, before applying the 415
56 limitations. No actuarial adjustment to the benefit shall
57 be made for: (1) Survivor benefits payable to a surviving
58 spouse under a qualified joint and survivor annuity to the
59 extent such benefits would not be payable if the member's
60 benefit were paid in another form; (2) benefits that are not
61 directly related to retirement benefits (such as a qualified
62 disability benefit, preretirement incidental death benefits,
63 and post-retirement medical benefits); or (3) the inclusion
in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this article, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this article applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code. For this purpose an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(c) Adjustment for benefit forms not subject to Section 417(e)(3). – The straight life annuity that is actuarially equivalent to the member’s form of benefit shall be determined under this subsection if the form of the member’s benefit is either: (1) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse); or (2) an annuity that decreases during the life of the member merely because of: (i) The death of the survivor annuitant (but only if the reduction is not below fifty percent of the benefit payable before the death of the survivor annuitant); or (ii) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Section 411(a)(9) of the Internal Revenue Code). The actuarially equivalent straight life annuity is equal to the greater of: (I) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member’s form of benefit; and (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member’s form of benefit, computed using a five percent interest rate assumption and the
applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date.

(d) Adjustment for benefit forms subject to Section 417(e)(3). — The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is other than a benefit form described in subsection (c) of this section. In this case, the actuarially equivalent straight life annuity shall be determined as follows: The actuarially equivalent straight life annuity is equal to the greatest of: (1) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the interest rate specified in this retirement system and the mortality table (or other tabular factor) specified in this retirement system for adjusting benefits in the same form; (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five and a half percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date; and (3) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate defined in Treasury Regulation §1.417(e)-1(d)(3) and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.
(e) Benefits payable prior to age sixty-two. —

(1) Except as provided in subdivisions (2) and (3) of this subsection, if the member's retirement benefits become payable before age sixty-two, the 415 dollar limitation prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that the limitation (as so reduced) equals an annual straight life benefit (when the retirement income begins) which is equivalent to an annual benefit in the amount of the applicable dollar limitation of Section 415(b)(1)(A) of the Internal Revenue Code (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) beginning at age sixty-two.

(2) The limitation reduction provided in subdivision (1) of this subsection shall not apply if the member commencing retirement benefits before age sixty-two is a qualified participant. A qualified participant for this purpose is a participant in a defined benefit plan maintained by a state, or any political subdivision of a state, with respect to whom the service taken into account in determining the amount of the benefit under the defined benefit plan includes at least fifteen years of service: (i) As a full-time employee of any police or fire department organized and operated by the state or political subdivision maintaining the defined benefit plan to provide police protection, fighting services or emergency medical services for any area within the jurisdiction of such state or political subdivision; or (ii) as a member of the armed forces of the United States.

(3) The limitation reduction provided in subdivision (1) of this subsection shall not be applicable to preretirement disability benefits or preretirement death benefits.

(4) For purposes of adjusting the 415 dollar limitation for benefit commencement before age sixty-two or after...
age sixty-five (if the plan provides for such adjustment),
no adjustment is made to reflect the probability of a
member's death: (i) After the annuity starting date and
before age sixty-two; or (ii) after age sixty-five and before
the annuity starting date.

(f) Adjustment when member has less than ten years of
participation. – In the case of a member who has less than
ten years of participation in the retirement system (within
the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)),
the 415 dollar limitation (as adjusted pursuant to Section
415(d) of the Internal Revenue Code and subsection (e) of
this section) shall be reduced by multiplying the otherwise
applicable limitation by a fraction, the numerator of
which is the number of years of participation in the plan
(or one, if greater), and the denominator of which is ten.
This adjustment shall not be applicable to preretirement
disability benefits or preretirement death benefits.

(g) The application of the provisions of this section shall
not cause the maximum annual benefit provided to a
member to be less than the member's accrued benefit as of
December 31, 2008 (the end of the limitation year that is
immediately prior to the effective date of the final regula-
tions for this retirement system as defined in Treasury
Regulation §1.415(a)-1(g)(2)), under provisions of the
retirement system that were both adopted and in effect
before April 5, 2007, provided that such provisions satis-
fied the applicable requirements of statutory provisions,
regulations and other published guidance relating to
Section 415 of the Internal Revenue Code in effect as of
the end of December 31, 2008, as described in Treasury
Regulation §1.415(a)-1(g)(4). If additional benefits are
accrued for a member under this retirement system after
January 1, 2009, then the sum of the benefits described
under the first sentence of this subsection and benefits
accrued for a member after January 1, 2009, must satisfy
the requirements of Section 415, taking into account all
§15-2A-6b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's interest and take precedence over any inconsistent provisions of this retirement system. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

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

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system shall be distributed by December 31 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 December 31 of the calendar year immediately following the calendar year in which the member died; or

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

(A) December 31 of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) December 31 of the calendar year following the calendar year in which the member died; or (ii) December 31 of the calendar year following the calendar year in which the spouse died.

§15-2A-6c. Direct rollovers.

(a) Except where otherwise stated, this section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic
payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary or for a specified period of ten years or more; (ii) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; and (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. For distributions after December 31, 2001, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or (for taxable years beginning before January 1, 2007) to a qualified trust which is part of a defined contribution plan described in Section 401(a) or (for taxable years beginning after December 31, 2006) to a qualified trust or to an annuity contract described in Section 403(a) or (b) of the Internal Revenue Code that agrees to separately account for amounts transferred (including interest or earnings thereon), including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not so includable, or (for taxable years beginning after December 31, 2007) to a Roth IRA described in Section 408(f)(1) of the Internal Revenue Code.

(2) “Eligible retirement plan” means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code,
an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution prior to January 1, 2002, to the surviving spouse, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity. For distributions after December 31, 2001, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system. For distributions after December 31, 2007, an eligible retirement plan also means a Roth IRA described in Section 408(a) of the Internal Revenue Code: Provided, however, That in the case of an eligible rollover distribution after December 31, 2007, to a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue Code.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2007, "distributee" also includes a
designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code.

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

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

§15-2A-6d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

(a) This section applies to rollovers and transfers as specified in this section made on or after January 1, 2002. Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the retirement system shall accept the following rollovers and plan transfers on behalf of an employee solely for the purpose of purchasing permissive service credit, in whole and in part, as otherwise provided in this article or for the repayment of withdrawn or refunded contributions, in whole and in part, with respect to a previous forfeiture of service credit as otherwise provided in this article: (i) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (ii) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee
transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: Provided, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with the policies, practices and procedures established by the board from time to time. For purposes of this article, the following definitions and limitations apply:

(1) “Permissive service credit” means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code: Provided, That no more than five years of “nonqualified service credit”, as defined in Section 415(n)(3)(C) of the Internal Revenue Code, may be included in the permissive service credit allowed to be purchased (other than by means of a rollover or plan transfer), and no nonqualified service credit may be included in any such purchase (other than by means of a rollover or plan transfer) before the member has at least five years of participation in the retirement system.

(2) “Repayment of withdrawn or refunded contributions” means the payment into the retirement system of the funds required pursuant to this article for the reinstatement of service credit previously forfeited on account of any refund or withdrawal of contributions permitted in this article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

(3) Any contribution (other than by means of a rollover or plan transfer) to purchase permissive service credit
under any provision of this article must satisfy the special
limitation rules described in Section 415(n) of the Internal
Revenue Code, and shall be automatically reduced, limited
or required to be paid over multiple years if necessary to
ensure such compliance. To the extent any such purchased
permissive service credit is qualified military service
within the meaning of Section 414(u) of the Internal
Revenue Code, the limitations of Section 415 of the
Internal Revenue Code shall be applied to such purchase
as described in Section 414(u)(1)(B) of the Internal Reve-
nu Code.

(4) For purposes of Section 415(b) of the Internal Reve-
nu Code, the annual benefit attributable to any rollover
contribution accepted pursuant to this section shall be
determined in accordance with Treasury Regulation
§1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity
payments attributable to any rollover contribution
provided under the retirement system over the annual
benefit so determined shall be taken into account when
applying the accrued benefit limitations of Section 415(b)
of the Internal Revenue Code and section six-a of this
article.

(b) Nothing in this section shall be construed as permit-
ting rollovers or transfers into this system or any other
system administered by the board other than as specified
in this section and no rollover or transfer shall be accepted
into the system in an amount greater than the amount
required for the purchase of permissive service credit or
repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permit-
ting the purchase of service credit or repayment of with-
drawn or refunded contributions except as otherwise
permitted in this chapter.

§15-2A-8. Refunds to certain members upon discharge of
resignation; deferred retirement.
(a) Any employee who is discharged by order of the superintendent or otherwise terminates employment with the agency is, at the written request of the member to the board, entitled to receive from the fund a sum equal to the aggregate of the principal amount of moneys deducted from his or her base salary and paid into the 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 reemployed by the agency shall not receive any prior service credit in the fund on account of former service. The employee may redeposit in the fund established by this article 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 employee who completes ten years of service with the agency is eligible, upon separation of employment, 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. 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 retirant and shall be in the amount of his or her accrued retirement benefit as determined under section six of this article, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section six-a of this article. The retirant may choose, in lieu of a life annuity, an annuity in a reduced amount payable during the retirant's lifetime, with one half of the reduced monthly amount paid to his or her surviving spouse for the spouse's remaining lifetime after the death
of the retirant. Reduction of the monthly benefit amount shall be calculated to be of equal actuarial value to the life annuity the retirant could otherwise have chosen. Any retirant choosing to receive the deferred annuity under this subsection is not eligible to receive the annual annuity adjustment provided in section seven of this article. A retiring member under the provisions of this section may receive retirement annuity payments on the first day of the month following his or her attaining age sixty-two and upon receipt of the application for retirement. The board shall promptly provide the member with an explanation of his or her optional forms of retirement benefits and, upon receipt of properly executed forms from the agency and member, the board shall process the member's request for and commence payments as soon as administratively feasible.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-2. Definitions.

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

3 (a) “Accrued benefit” means on behalf of any member two and six-tenths percent per year of the member's final average salary for the first twenty years of credited service. Additionally, two percent per year for twenty-one through twenty-five years and one percent per year for twenty-six through thirty years will be credited with a maximum benefit of sixty-seven percent. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of section twelve of this article.

13 (1) The board may upon the recommendation of the board's actuary increase the employees' contribution rate
to ten and five-tenths percent should the funding of the plan not reach seventy percent funded by July 1, 2012. The board shall decrease the contribution rate to eight and one-half percent once the plan funding reaches the seventy percent support objective as of any later actuarial valuation date.

(2) Upon reaching the seventy-five percent actuarial funded level, as of an actuarial valuation date, the board shall increase the two and six-tenths percent to two and three-quarter percent for the first twenty years of credited service. The maximum benefit will also be increased from sixty-seven percent to seventy percent.

(b) "Accumulated contributions" means the sum of all retirement contributions deducted from the compensation of a member, or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.

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

(d) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article: Provided, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

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

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

(g) "Annuity starting date" means the first day of the
month for which an annuity is payable after submission of
a retirement application or the required beginning date, if
earlier. For purposes of this subsection, if retirement
income payments commence after the normal retirement
age, "retirement" means the first day of the month follow-
ing or coincident with the latter of the last day the mem-
ber worked in covered employment or the member's
normal retirement age and after completing proper
written application for "retirement" on an application
supplied by the board.

(h) "Board" means the Consolidated Public Retirement
Board.

(i) "County commission or political subdivision" has the
meaning ascribed to it in this code.

(j) "Covered employment" means either: (1) Employment
as a full-time emergency medical technician, emergency
medical technician/paramedic or emergency medical
services/registered nurse and the active performance of the
duties required of emergency medical services officers; or
(2) the period of time during which active duties are not
performed but disability benefits are received under this
article; or (3) concurrent employment by an emergency
medical services officer in a job or jobs in addition to his
or her employment as an emergency medical services
officer where the secondary employment requires the
emergency medical services officer to be a member of
another retirement system which is administered by the
Consolidated Public Retirement Board pursuant to this
code: Provided, That the emergency medical services
officer contributes to the fund created in this article the
amount specified as the member's contribution in section
eight of this article.

(k) "Credited service" means the sum of a member's
years of service, active military duty, disability service and
accrued annual and sick leave service.

(l) "Dependent child" means either:

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

(A) A natural child of the member;

(B) A legally adopted child of the member;

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

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

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

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

(B) Who was claimed as a dependent by the member for
federal income tax purposes at the time of member's
(C) Whose relationship with the member is described in subparagraph (A), (B) or (C), paragraph (1) of this subdivision.

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

(n) "Disability service" means service credit received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(o) "Early retirement age" means age forty-five or over and completion of twenty years of regular contributory service.

(p) "Effective date" means January 1, 2008.

(q) "Emergency medical services officer" means an individual employed by the state, county or other political subdivision as a medical professional who is qualified to respond to medical emergencies, aids the sick and injured and arranges or transports to medical facilities, as defined by the West Virginia Office of Emergency Medical Services. This definition is construed to include employed ambulance providers and other services such as law enforcement, rescue or fire department personnel who primarily perform these functions and are not provided any other credited service benefits or retirement plans. These persons may hold the rank of emergency medical technician/basic, emergency medical technician/paramedic, emergency medical services/registered nurse, or others as defined by the West Virginia Office of Emergency Medical Services and the Consolidated Public Retirement Board.
(r) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last ten years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under this article, then "final average salary" means the average of the monthly salary determined paid to the member during that period as determined under section twenty-two of this article multiplied by twelve. "Final average salary" does not include any lump sum payment for unused, accrued leave of any kind or character.

(s) "Full-time employment" means permanent employment of an employee by a participating public employer in a position which normally requires twelve months per year service and requires at least one thousand forty hours per year service in that position.

(t) "Fund" means the West Virginia Emergency Medical Services Retirement Fund created by this article.

(u) "Hour of service" means:

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

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

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

(v) "Member" means a person first hired as an emergency medical services officer by an employer which is a participating public employer of the Public Employees Retirement System or the Emergency Medical Services Retirement System after the effective date of this article, as defined in subdivision (p) of this section, or an emergency medical services officer of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to the effective date and who elects to become a member pursuant to this article. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(w) "Monthly salary" means the W-2 reportable compensation received by a member during the month.

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

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

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

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

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

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

(z) "Political subdivision" means a county, city or town in the state; 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 public corporation established under section four, article fifteen, chapter seven of this code is considered a political subdivision solely for the purposes of this article.

(aa) "Public Employees Retirement System" means the West Virginia Public Employees Retirement System created by West Virginia Code.
(bb) "Plan" means the West Virginia Emergency Medical Services Retirement System established by this article.

(cc) "Plan year" means the twelve-month period commencing on January 1 of any designated year and ending December 31.

(dd) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(ee) "Regular contributory service" means a member's credited service excluding active military duty, disability service and accrued annual and sick leave service.

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

(gg) "Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age seventy and one-half; or (2) the calendar year in which he or she retires or otherwise separates from covered employment; or (3) for members who are covered under the Public Employees Retirement System, their service shall be recognized upon transfer of assets from the Public Employees Retirement System according to the provisions of section nine of this article. Prior service for members not covered under the Public Employees Retirement System shall be recognized only upon repayment of amounts covered under the provisions of section six of this article.
(hh) "Retirement income payments" means the monthly retirement income payments payable under the plan.

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

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

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

For purposes of this subsection:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as an emergency medical services officer 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. For purposes of this article, "substantial gainful employment" is the same definition as used by the United States Social Security Administration.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member's annual tax return for purposes of monitoring the earnings limitation.
(ll) "Year of service" means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

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

328 During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund.

333 A member is not entitled to credit for years of service for any time period during which he or she received disability payments under section nineteen or twenty of this article.

336 Except as specifically excluded, years of service include covered employment prior to the effective date.

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

§16-5V-4. Creation and administration of West Virginia Emergency Medical Services Retirement System; specification of actuarial assumptions.
There is hereby created the West Virginia Emergency Medical Services Retirement System. The purpose of this system is to provide for the orderly retirement of emergency medical services officers who become superannuated because of age or permanent disability and to provide certain survivor death benefits, and it is contemplated that substantially all of the members of the retirement system shall be qualified public safety employees as defined in section two of this article. The retirement system shall come into effect January 1, 2008: Provided, That at least seventy percent of all eligible emergency medical services officers and at least eighty-five percent of the eligible emergency medical services officers who are currently active members of the Public Employees Retirement System elect to participate in this plan by December 31, 2007. If this level of participation is not reached, then all of the provisions of this article are void and of no force and effect. All business of the system shall be transacted in the name of the West Virginia Emergency Medical Services Retirement System. The board shall specify and adopt all actuarial assumptions for the plan at its first meeting of every calendar year or as soon thereafter as may be practicable, which assumptions shall become part of the plan.

§16-5V-12. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section, to the extent applicable to governmental plans (hereafter sometimes referred to as the “415 limitation(s)” or “415 dollar limitation(s)”), so that the annual benefit payable under this system to a member shall not exceed those limitations. Any annual benefit payable under this system shall be reduced or limited if necessary to an amount which does not exceed those limitations. The extent to
which any annuity or other annual benefit payable under this retirement system shall be reduced as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced, shall be proportional on a percentage basis to the reductions made in such other plans administered by the board and required to be so taken into consideration under Section 415, unless a disproportionate reduction is determined by the board to maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities or other annual benefit required by this section. For purposes of the 415 limitations, the "limitation year" shall be the calendar year. The 415 limitations are incorporated herein by reference, except to the extent the following provisions may modify the default provisions thereunder:

(a) The annual adjustment to the 415 dollar limitations made by Section 415(d) of the Internal Revenue Code and the regulations thereunder shall apply for each limitation year. The annual adjustments to the dollar limitations under Section 415(d) of the Internal Revenue Code which become effective: (i) After a retirant's severance from employment with the employer; or (ii) after the annuity starting date in the case of a retirant who has already commenced receiving benefits, will apply with respect to a retirant's annual benefit in any limitation year. A retirant's annual benefit payable in any limitation year from this retirement system shall in no event be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.
(b) For purposes of this section, the "annual benefit" means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit, using factors prescribed in the 415 limitation regulations, before applying the 415 limitations. No actuarial adjustment to the benefit shall be made for: (1) Survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form; (2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits and post-retirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this article, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this article applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code. For this purpose an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(c) Adjustment for benefit forms not subject to Section 417(e)(3). — The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is either: (1) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified preretirement survivor annuity, the life of the
surviving spouse); or (2) an annuity that decreases during the life of the member merely because of: (i) The death of the survivor annuitant (but only if the reduction is not below fifty percent of the benefit payable before the death of the survivor annuitant); or (ii) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Section 411(a)(9) of the Internal Revenue Code). The actuarially equivalent straight life annuity is equal to the greater of: (I) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member's form of benefit; and (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date.

(d) Adjustment for benefit forms subject to Section 417(e)(3). — The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is other than a benefit form described in subdivision (c) of this section. In this case, the actuarially equivalent straight life annuity shall be determined as follows: The actuarially equivalent straight life annuity is equal to the greatest of: (1) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the interest rate specified in this retirement system and the mortality table (or other tabular factor) specified in this retirement system for adjusting benefits in the same form; (2) the annual amount of the straight life annuity commencing at
the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five and a half percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date; and (3) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate defined in Treasury Regulation §1.417(e)-1(d)(3) and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

(e) Benefits payable prior to age sixty-two. —

(1) Except as provided in paragraphs (2) and (3) of this subdivision, if the member's retirement benefits become payable before age sixty-two, the 415 dollar limitation prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that the limitation (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) which is equivalent to an annual benefit in the amount of the applicable dollar limitation of Section 415(b)(1)(A) of the Internal Revenue Code (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) beginning at age sixty-two.

(2) The limitation reduction provided in paragraph (1) of this subdivision shall not apply if the member commencing retirement benefits before age sixty-two is a qualified participant. A qualified participant for this purpose is a
participant in a defined benefit plan maintained by a state, or any political subdivision of a state, with respect to whom the service taken into account in determining the amount of the benefit under the defined benefit plan includes at least fifteen years of service: (i) As a full-time employee of any police or fire department organized and operated by the state or political subdivision maintaining the defined benefit plan to provide police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of such state or political subdivision; or (ii) as a member of the armed forces of the United States.

(3) The limitation reduction provided in paragraph (1) of this subdivision shall not be applicable to preretirement disability benefits or preretirement death benefits.

(4) For purposes of adjusting the 415 dollar limitation for benefit commencement before age sixty-two or after age sixty-five (if the plan provides for such adjustment), no adjustment is made to reflect the probability of a member's death: (i) After the annuity starting date and before age sixty-two; or (ii) after age sixty-five and before the annuity starting date.

(f) Adjustment when member has less than ten years of participation. — In the case of a member who has less than ten years of participation in the retirement system (within the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the 415 dollar limitation (as adjusted pursuant to Section 415(d) of the Internal Revenue Code and subdivision (e) of this section) shall be reduced by multiplying the otherwise applicable limitation by a fraction, the numerator of which is the number of years of participation in the plan (or one, if greater), and the denominator of which is ten. This adjustment shall not be applicable to preretirement disability benefits or preretirement death benefits.
(g) The application of the provisions of this section shall not cause the maximum annual benefit provided to a member to be less than the member's accrued benefit as of December 31, 2008 (the end of the limitation year that is immediately prior to the effective date of the final regulations for this retirement system as defined in Treasury Regulation §1.415(a)-1(g)(2)), under provisions of the retirement system that were both adopted and in effect before April 5, 2007, provided that such provisions satisfied the applicable requirements of statutory provisions, regulations and other published guidance relating to Section 415 of the Internal Revenue Code in effect as of December 31, 2008, as described in Treasury Regulation §1.415(a)-1(g)(4). If additional benefits are accrued for a member under this retirement system after January 1, 2009, then the sum of the benefits described under the first sentence of this subdivision and benefits accrued for a member after January 1, 2009, must satisfy the requirements of Section 415, taking into account all applicable requirements of the final 415 Treasury Regulations.


1 The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this plan. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the plan to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and its regulations. For this purpose, the following provisions apply:

(a) The payment of benefits under the plan to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under
Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

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

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the plan shall be distributed by December 31 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 December 31 of the calendar year immediately following the calendar year in which the member died; or

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

(A) December 31 of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) December 31 of the calendar year following the calendar year in which the member died; or (ii) December 31 of the calendar year following the calendar year in which the spouse died.
§16-5V-14. Direct rollovers.

1 Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this plan, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

9 (1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (A) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (B) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; and (C) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code (including a Roth IRA described in Section 408(a) of the Internal Revenue Code), or to a qualified trust or to an annuity contract described in Section 403(a) or (b) of the Internal Revenue Code that agrees to separately account for amounts transferred (including interest or earnings thereon), including separately accounting for the portion of the distribution which
is includable in gross income and the portion of the
distribution which is not so includable.

(2) "Eligible retirement plan" means an eligible plan
under Section 457(b) of the Internal Revenue Code which
is maintained by a state, political subdivision of a state, or
any agency or instrumentality of a state or political
subdivision of a state and which agrees to separately
account for amounts transferred into such plan from this
plan, an individual retirement account described in
Section 408(a) of the Internal Revenue Code, an individual
retirement annuity described in Section 408(b) of the
Internal Revenue Code, a Roth IRA described in Section
408(a) of the Internal Revenue Code, an annuity plan
described in Section 403(a) of the Internal Revenue Code,
an annuity contract described in Section 403(b) of the
Internal Revenue Code, or a qualified plan described in
Section 401(a) of the Internal Revenue Code that accepts
the distributee's eligible rollover distribution: Provided,
That in the case of an eligible rollover distribution to a
designated beneficiary (other than a surviving spouse) as
such term is defined in Section 402(c)(11) of the Internal
Revenue Code, an eligible retirement plan is limited to an
individual retirement account or individual retirement
annuity which meets the conditions of Section 402(c)(11)
of the Internal Revenue Code.

(3) "Distributee" means an employee or former em-
ployee. In addition, the employee's or former employee's
surviving spouse and the employee's or former employee's
spouse or former spouse who is the alternate payee under
a qualified domestic relations order, as defined in Section
414(p) of the Internal Revenue Code with respect to
governmental plans, are distributees with regard to the
interest of the spouse or former spouse. The term
"distributee" also includes a designated beneficiary (other
than a surviving spouse) as such term is defined in Section
402(c)(11) of the Internal Revenue Code.
(4) "Direct rollover" means a payment by the plan to the eligible retirement plan.

§16-5V-14a. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

(a) Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the plan shall accept the following rollovers and plan transfers on behalf of a member solely for the purpose of purchasing permissive service credit, in whole or in part, as otherwise provided in this article or for the repayment of withdrawn or refunded contributions, in whole and in part, with respect to a previous forfeiture of service credit as otherwise provided in this article: (A) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (B) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (C) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (D) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code:

Provided, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with such policies, practices and procedures established by the board from time to time. For purposes
of this article, the following definitions and limitations apply:

(1) "Permissive service credit" means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code:

Provided, That no more than five years of "nonqualified service credit", as defined in Section 415(n)(3)(C) of the Internal Revenue Code, may be included in the permissive service credit allowed to be purchased (other than by means of a rollover or plan transfer), and no nonqualified service credit may be included in any such purchase (other than by means of a rollover or plan transfer) before the member has at least five years of participation in the retirement system.

(2) "Repayment of withdrawn or refunded contributions" means the payment into the retirement system of the funds required pursuant to this article for the reinstatement of service credit previously forfeited on account of any refund or withdrawal of contributions permitted in this article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

(3) Any contribution (other than by means of a rollover or plan transfer) to purchase permissive service credit under any provision of this article must satisfy the special limitation rules described in Section 415(n) of the Internal Revenue Code, and shall be automatically reduced, limited or required to be paid over multiple years if necessary to ensure such compliance. To the extent any such purchased permissive service credit is qualified military service within the meaning of Section 414(u) of the Internal Revenue Code, the limitations of Section 415 of the
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Internal Revenue Code shall be applied to such purchase as described in Section 414(u)(1)(B) of the Internal Revenue Code.

(4) For purposes of Section 415(b) of the Internal Revenue Code, the annual benefit attributable to any rollover contribution accepted pursuant to this section shall be determined in accordance with Treasury Regulation §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity payments attributable to any rollover contribution provided under the retirement system over the annual benefit so determined shall be taken into account when applying the accrued benefit limitations of Section 415(b) of the Internal Revenue Code and section twelve of this article.

(b) Nothing in this section may be construed as permitting rollovers or transfers into this system or any other system administered by the retirement board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the purchase of permissive service credit or repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the purchase of service credit or repayment of withdrawn or refunded contributions except as otherwise permitted in this article.

§16-5V-16. Retirement benefits.

This section describes when adjustment of a member's accrued benefit to reflect the difference in age, in years and months, between the member's annuity starting date and the date the member attains normal retirement age shall be made. This age adjustment, when required, shall be made based upon the normal form of benefit and shall be the actuarial equivalent of the accrued benefit at the
member's normal retirement age. The member shall receive the age adjusted retirement income in the normal form or in an actuarial equivalent amount in an optional form as provided under this article, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section twelve of this article. The first day of the calendar month following the month of birth shall be used in lieu of any birth date that does not fall on the first day of a calendar month.

(a) Normal retirement. — A member whose annuity starting date is the date the member attains normal retirement age, is entitled to his or her accrued benefit without adjustment for age at commencement.

(b) Early retirement. — A member who ceases covered employment and has attained early retirement age while in covered employment may elect in writing by completion of an application for retirement required by and submitted to the board, to receive retirement income payments commencing on the first day of the month coincident with or following the date the member ceases covered employment and submits the proper application to the board. “Normal retirement age” for such a member is the first day of the calendar month coincident with or next following the month in which the member attains the age of fifty years. If the member's annuity starting date is prior to the date the member attains normal retirement age, his or her accrued benefit is reduced to the actuarial equivalent benefit amount based on the years and months by which his or her annuity starting date precedes the date he or she attains normal retirement age.

(c) Late retirement. — A member whose annuity starting date is later than the date the member attains normal retirement age shall receive retirement income payments in the normal form without adjustment for age at com-
mencement, which is the benefit to which he or she is entitled according to his or her accrued benefit based on his or her final average salary and credited service at the time of his or her actual retirement and following the completion of an application for retirement as required by the board.

(d) Retirement benefits shall be paid monthly in an amount equal to one twelfth of the retirement income payments elected and at those times established by the board. Notwithstanding any other provision of the plan, a member who is married on the annuity starting date will receive his or her retirement income payments in the form of a sixty-six and two-thirds percent joint and survivor annuity with his or her spouse unless prior to the annuity starting date the spouse waives the form of benefit.

§16-5V-18. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

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

(b) Any member who 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 unless following his or her return to covered employment and active participation in this plan, the member redeposits in the fund the amount of the accumulated contributions withdrawn from previous covered employment, 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
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 emergency
medical services officer's reemployment in covered
employment or, if later, within sixty months of the effec-
tive date of this article.

(c) A member of this plan who has elected to transfer
from the Public Employees Retirement System into this
plan pursuant to subsection (b), section six 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
nonemergency medical services officer service withdrawn
from the Public Employees Retirement System prior to his
or her elective transfer into this plan.

(d) Every member who completes sixty months of
regular contributory service may, upon cessation of
covered employment, either withdraw his or her accumu-
lated contributions in accordance with this section or
choose not to withdraw his or her accumulated contribu-
tion and receive retirement income payments, if eligible,
upon attaining early or normal retirement age.

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

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

As used in this article, unless the context clearly requires 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) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: Provided, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

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

(5) "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: Provided, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code.
(6) "Beneficiary" means the recipient of annuity payments made under the retirement system.

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

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

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

(10) "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.

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

(12) "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 also includes retroactive payments made to a member to correct a clerical error, or made pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member's rights to employment or wages, with all retroactive salary payments to be allocated to and considered paid in the periods in which the work was or would have been done. Gross salary does not include lump sum payments for
68 bonuses, early retirement incentives, severance pay or any
69 other fringe benefit of any kind including, but not limited
70 to, transportation allowances, automobiles or automobile
71 allowances, or lump sum payments for unused, accrued
72 leave of any type or character.

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

75 (14) "Member" means any person who has accumulated
76 contributions standing to his or her credit in the State
77 Teachers Retirement System. A member shall remain a
78 member until the benefits to which he or she is entitled
79 under this article are paid or forfeited, or until cessation
80 of membership pursuant to section thirteen of this article.

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

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

89 (17) "New entrant" means a teacher who is not a present
90 teacher.

91 (18) "Nonteaching member" means any person, except a
92 teacher member, who is regularly employed for full-time
93 service by: (A) Any county board of education; (B) the
94 State Board of Education; (C) the Higher Education Policy
95 Commission; (D) the West Virginia Council for Community
96 and Technical College Education; or (E) a governing
97 board, as defined in section two, article one, chapter
98 eighteen-b of this code: Provided, That any person whose
99 employment with the Higher Education Policy Commiss-
100 ion, the West Virginia Council for Community and
Technical College Education or a governing board commences on or after July 1, 1991, is not considered a nonteaching member.

(19) "Plan year" means the twelve-month period commencing on July 1 and ending the following June 30 of any designated year.

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

(21) "Present teacher" means any person who was a teacher within the thirty-five years beginning July 1, 1934, and whose membership in the retirement system is currently active.

(22) "Prior service" means all service as a teacher completed prior to July 1, 1941, 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.

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

(24) "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.

(25) "Refund interest" means interest compounded, according to the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.

(26) "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, 162 CSR 7.
(27) "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.

(28) "Required beginning date" means April 1 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.

(29) "Retirement system" means the State Teachers Retirement System established by this article.

(30) "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 director 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 State 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; (L) an employee of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools; and (M) any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code who elects to remain a member of the State Teachers Retirement System provided in this article.

(31) "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.

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

§18-7A-14. Contributions by members; contributions by employers; correction of errors; forfeitures.

(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 a state institution of higher education shall contribute on the member's full earnable compensation, unless otherwise provided in section fourteen-a of this article. The sums are due the State Teachers Retirement System at the end of each calendar month in arrears and shall be paid not later than fifteen days following the end of the calendar month. Each remittance shall be accompanied by a detailed summary of the sums withheld from the compensation of each member for that month on forms, either paper or electronic, provided by the State Teachers Retirement System for that purpose.

(b) Annually, the contributions of each member shall be credited to the member's account in the State 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 July 1, 1994, the rate shall be seven and one-half percent; beginning on July 1, 1995, the rate shall be nine percent; beginning on July 1, 1996, the rate shall be ten and one-half percent; beginning on July 1, 1997, the rate shall be twelve percent; beginning on July 1, 1998, the rate shall be thirteen and one-half percent; and beginning on July 1, 1999, 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 State Teachers Retirement System for the first time on or after July 1, 2005, or any individual who becomes a member of the State Teachers Retirement System as a result of the voluntary transfer contemplated in article seven-d 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.

(f) If any change or employer error in the records of any participating public employer or the retirement system results in any member 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 member was correctly entitled shall be paid. Any employer error resulting in an underpayment to the retirement system may be corrected by the member remitting the required employee contribution and the participating public employer remitting the required employer contribution. Interest shall accumulate in accordance with the legislative rule, Retirement Board Reinstatement Interest, 162 CSR 7, 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 employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred.

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


(a) Annuitants whose annuities were approved by the retirement board effective before July 1, 1980, shall be paid the annuities which were approved by the retirement board.

(b) Annuities approved by the board effective after June 30, 1980, 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, subject to reduction if necessary to comply with the maximum benefit provisions
of Section 415 of the Internal Revenue Code and section twenty-eight-a of this article:

(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 $4,800, 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 annu-
itant 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 December 18. 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 July 1, 1941, is eligible for prior service credit and
for prior service pensions as prescribed in this section.

§18-7A-26r. Minimum benefit for certain retired members;
legislative declaration; state interest and
public purpose.

The Legislature hereby finds and declares that an
important state interest exists in providing a minimum
retirement annuity for certain retired members who are
credited with twenty or more years of total service; that
such program constitutes a public purpose; and that the
exclusion of total service for certain employees of institu-
tions of higher education is a reasonable and equitable
exclusion for purposes of determining eligibility for such
minimum benefits.

If the retirement annuity of a retired member (or if
applicable, a spouse thereof) with at least twenty years of
total service is less than $500 per month (including any supplemental or additional benefits provided by this article), then the monthly retirement annuity for any such retired member shall be increased to $500 per month: Provided, That any year of service while an employee of an institution of higher education shall not be taken into account for purposes of this section if his or her salary is capped under the retirement system at $4,800 per year pursuant to section fourteen-a of this article.

The payment of any minimum benefit under this section shall be in lieu of, and not in addition to, the payments of any retirement annuity or supplemental or additional benefits otherwise provided by this article: Provided, That the minimum benefit provided herein shall be subject to any limitations thereon under §415 of the Internal Revenue Code of 1986, as the same may be amended, and section twenty-eight-a of this article.

Any minimum benefit conferred herein shall not be retroactive to the time of retirement and shall apply only to members who have retired prior to the effective date of this section, or, if applicable, to beneficiaries receiving benefits under the retirement system prior to the effective date.

The minimum benefit provided herein shall be subject to a recommendation by the Governor for such minimum benefit through the delivery of an executive message to the Legislature and an appropriation by the Legislature for such minimum benefit, such appropriation to be made over a continuous six-year period following the effective date of this section.


Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the...
4 Internal Revenue Code and regulations under that section
to the extent applicable to governmental plans (hereafter
sometimes referred to as the “415 limitation(s)” or “415
dollar limitation(s)”), so that the annual benefit
payable under this system to a member shall not exceed
those limitations. Any annual benefit payable under this
system shall be reduced or limited if necessary to an
amount which does not exceed those limitations. The
extent to which any annuity or other annual benefit
payable under this retirement system shall be reduced, as
compared with the extent to which an annuity, contribu-
tions or other benefits under any other defined benefit
plans or defined contribution plans required to be taken
into consideration under Section 415 of the Internal
Revenue Code shall be reduced, shall be proportional on a
percentage basis to the reductions made in such other
plans administered by the board and required to be so
taken into consideration under Section 415, unless a
disproportionate reduction is determined by the board to
maximize the aggregate benefits payable to the member.
If the reduction is under this retirement system, the board
shall advise affected members of any additional limitation
on the annuities or other annual benefit required by this
section. For purposes of the 415 limitations, the “limita-
tion year” shall be the calendar year. The 415 limitations
are incorporated herein by reference, except to the extent
the following provisions may modify the default provi-
sions thereunder:

(a) The annual adjustment to the 415 dollar limitations
made by Section 415(d) of the Internal Revenue Code and
the regulations thereunder shall apply for each limitation
year. The annual adjustments to the dollar limitations
under Section 415(d) of the Internal Revenue Code which
become effective: (i) After a retirant’s severance from
employment with the employer; or (ii) after the annuity
starting date in the case of a retirant who has already
commenced receiving benefits, will apply with respect to a retirant's annual benefit in any limitation year. A retirant's annual benefit payable in any limitation year from this retirement system shall in no event be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(b) For purposes of this section, the "annual benefit" means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit, using factors prescribed in the 415 limitation regulations, before applying the 415 limitations. No actuarial adjustment to the benefit shall be made for: (1) Survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form; (2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits and post-retirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this article, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this article applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code. For this purpose an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.
(c) Adjustment for benefit forms not subject to Section 417(e)(3). – The straight life annuity that is actuarially equivalent to the member’s form of benefit shall be determined under this subsection if the form of the member’s benefit is either: (1) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse); or (2) an annuity that decreases during the life of the member merely because of: (i) The death of the survivor annuitant (but only if the reduction is not below fifty percent of the benefit payable before the death of the survivor annuitant); or (ii) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Section 411(a)(9) of the Internal Revenue Code). The actuarially equivalent straight life annuity is equal to the greater of: (I) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member’s form of benefit; and (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member’s form of benefit, computed using a five percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date.

(d) Adjustment for benefit forms subject to Section 417(e)(3). – The straight life annuity that is actuarially equivalent to the member’s form of benefit shall be determined under this subsection if the form of the member’s benefit is other than a benefit form described in subdivision (c) of this section. In this case, the actuarially equivalent straight life annuity shall be determined as follows: The actuarially equivalent straight life annuity is
equal to the greatest of: (1) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the interest rate specified in this retirement system and the mortality table (or other tabular factor) specified in this retirement system for adjusting benefits in the same form; (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five and a half percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date; and (3) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate defined in Treasury Regulation §1.417(e)-1(d)(3) and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

(e) Benefits payable prior to age sixty-two. —

(1) Except as provided in paragraphs (2) and (3) of this subdivision, if the member's retirement benefits become payable before age sixty-two, the 415 dollar limitation prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that the limitation (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) which is equivalent to an annual benefit in the amount of the applicable dollar limitation of
(2) The limitation reduction provided in paragraph (1) of this subdivision shall not apply if the member commencing retirement benefits before age sixty-two is a qualified participant. A qualified participant for this purpose is a participant in a defined benefit plan maintained by a state, or any political subdivision of a state, with respect to whom the service taken into account in determining the amount of the benefit under the defined benefit plan includes at least fifteen years of service: (i) As a full-time employee of any police or fire department organized and operated by the state or political subdivision maintaining the defined benefit plan to provide police protection, firefighting services or emergency medical services for any area within the jurisdiction of such state or political subdivision; or (ii) as a member of the armed forces of the United States.

(3) The limitation reduction provided in paragraph (1) of this subdivision shall not be applicable to preretirement disability benefits or preretirement death benefits.

(4) For purposes of adjusting the 415 dollar limitation for benefit commencement before age sixty-two or after age sixty-five (if the plan provides for such adjustment), no adjustment is made to reflect the probability of a member's death: (i) After the annuity starting date and before age sixty-two; or (ii) after age sixty-five and before the annuity starting date.

(f) Adjustment when member has less than ten years of participation. — In the case of a member who has less than ten years of participation in the retirement system (within the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the 415 dollar limitation (as adjusted pursuant to Section 415(b)(1)(A) of the Internal Revenue Code (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) beginning at age sixty-two.)
(d) of the Internal Revenue Code and subdivision (e) of this section) shall be reduced by multiplying the otherwise applicable limitation by a fraction, the numerator of which is the number of years of participation in the plan (or one, if greater), and the denominator of which is ten. This adjustment shall not be applicable to preretirement disability benefits or preretirement death benefits.

(g) The application of the provisions of this section shall not cause the maximum annual benefit provided to a member to be less than the member's accrued benefit as of December 31, 2008 (the end of the limitation year that is immediately prior to the effective date of the final regulations for this retirement system as defined in Treasury Regulation §1.415(a)-1(g)(2)), under provisions of the retirement system that were both adopted and in effect before April 5, 2007, provided that such provisions satisfied the applicable requirements of statutory provisions, regulations and other published guidance relating to Section 415 of the Internal Revenue Code in effect as of December 31, 2008, as described in Treasury Regulation §1.415(a)-1(g)(4). If additional benefits are accrued for a member under this retirement system after January 1, 2009, then the sum of the benefits described under the first sentence of this subdivision and benefits accrued for a member after January 1, 2009, must satisfy the requirements of Section 415, taking into account all applicable requirements of the final 415 Treasury Regulations.

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

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this retirement system. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined
and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder.

For this purpose, the following provisions apply:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

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

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

(1) If a member's interest is payable to a beneficiary, distributions may be made over the life or over a period certain not greater than the life expectancy of the beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's beneficiary is the surviving spouse, the date distributions are required to begin shall not be earlier than the later of:
(A) December 31 of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) December 31 of the calendar year following the calendar year in which the member died; or (ii) December 31 of the calendar year following the calendar year in which the spouse died.

§18-7A-28c. Direct rollovers.

(a) Except where otherwise stated, this section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (A) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (B) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; (C) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; and (D) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. For
distributions after December 31, 2001, a portion of a
distribution shall not fail to be an eligible rollover distri-
bution merely because the portion consists of after-tax
employee contributions which are not includable in gross
income. However, this portion may be paid only to an
individual retirement account or annuity described in
Section 408(a) or (b) of the Internal Revenue Code, or (for
taxable years beginning before January 1, 2007) to a
qualified trust which is part of a defined contribution plan
described in Section 401(a) or (for taxable years beginning
after December 31, 2006) to a qualified trust or to an
annuity contract described in Section 403(a) or (b) of the
Internal Revenue Code that agrees to separately account
for amounts transferred (including interest or earnings
thereon), including separately accounting for the portion
of the distribution which is includable in gross income and
the portion of the distribution which is not so includable,
or (for taxable years beginning after December 31, 2007)
to a Roth IRA described in Section 408(a) of the Internal
Revenue Code.

(2) "Eligible retirement plan" means an individual
retirement account described in Section 408(a) of the
Internal Revenue Code, an individual retirement annuity
described in Section 408(b) of the Internal Revenue Code,
an annuity plan described in Section 403(a) of the Internal
Revenue Code, or a qualified plan described in Section
401(a) of the Internal Revenue Code, that accepts the
distributee's eligible rollover distribution: Provided, That
in the case of an eligible rollover distribution prior to
January 1, 2002, to the surviving spouse, an eligible
retirement plan is limited to an individual retirement
account or individual retirement annuity. For distribu-
tions after December 31, 2001, an eligible retirement plan
also means an annuity contract described in Section 403(b)
of the Internal Revenue Code and an eligible plan under
Section 457(b) of the Internal Revenue Code which is
maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system. For distributions after December 31, 2007, an eligible retirement plan also means a Roth IRA described in Section 408A of the Internal Revenue Code. **Provided, however,** that in the case of an eligible rollover distribution after December 31, 2007, to a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue Code.

(3) "Distributee" means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, as applicable to governmental plans, are distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2007, "distributee" also includes a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code.

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

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

§18-7A-28d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.
(a) This section applies to rollovers and transfers as specified in this section made on or after January 1, 2002. Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the retirement system shall accept the following rollovers and plan transfers on behalf of a member solely for the purpose of purchasing permissive service credit, in whole or in part, as otherwise provided in this article or for the repayment of withdrawn or refunded contributions, in whole or in part, with respect to a previous forfeiture of service credit as otherwise provided in this article: (i) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (ii) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: Provided, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with the policies, practices and procedures established by the board from time to time. For purposes of this article, the following definitions and limitations apply:
(1) "Permissive service credit" means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code: Provided, That no more than five years of "nonqualified service credit", as defined in Section 415(n)(3)(C) of the Internal Revenue Code, may be included in the permissive service credit allowed to be purchased (other than by means of a rollover or plan transfer), and no nonqualified service credit may be included in any such purchase (other than by means of a rollover or plan transfer) before the member has at least five years of participation in the retirement system.

(2) "Repayment of withdrawn or refunded contributions" means the payment into the retirement system of the funds required pursuant to this article for the reinstatement of service credit previously forfeited on account of any refund or withdrawal of contributions permitted in this article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

(3) Any contribution (other than by means of a rollover or plan transfer) to purchase permissive service credit under any provision of this article must satisfy the special limitation rules described in Section 415(n) of the Internal Revenue Code, and shall be automatically reduced, limited or required to be paid over multiple years if necessary to ensure such compliance. To the extent any such purchased permissive service credit is qualified military service within the meaning of Section 414(u) of the Internal Revenue Code, the limitations of Section 415 of the Internal Revenue Code shall be applied to such purchase as described in Section 414(u)(1)(B) of the Internal Revenue Code.
(4) For purposes of Section 415(b) of the Internal Revenue Code, the annual benefit attributable to any rollover contribution accepted pursuant to this section shall be determined in accordance with Treasury Regulation §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity payments attributable to any rollover contribution provided under the retirement system over the annual benefit so determined shall be taken into account when applying the accrued benefit limitations of Section 415(b) of the Internal Revenue Code and section twenty-eight-a of this article.

(b) Nothing in this section shall be construed as permitting rollovers or transfers into this system or any other system administered by the retirement board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the purchase of permissive service credit or repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the purchase of service credit or repayment of withdrawn or refunded contributions except as otherwise permitted in this article.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

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

3 (1) "Annual addition" means, for purposes of the limitations under Section 415(c) of the Internal Revenue Code, the sum credited to a member's account for any limitation year of: (A) Employer contributions; (B) employee contributions; and (C) forfeitures. Repayment of cashouts or
(2) "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;

(3) "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: Provided, That annual compensation for determining contributions during any determination period may not exceed the maximum compensation allowed as adjusted for cost-of-living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code: Provided, however, That solely for purposes of applying the limitations of Section 415 of the Internal Revenue Code to any annual addition, "compensation" shall have the meaning given it in subsection (d), section thirteen of this article.

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

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

(6) "Employer" means the agency of and within the State of West Virginia which has employed or employs a member;
(7) "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;

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

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

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

(11) "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; (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; and (M) any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code who elects to remain a member of the Teachers' Defined Contribution Retirement System established by this article;

(12) "Member contribution" means an amount reduced from the employee's regular pay periods, and deposited into the member's individual annuity account within the Teachers' Defined Contribution Retirement System;

(13) "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 July 1, 2005, 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;

(14) "Plan year" means the twelve-month period commencing on July 1 of any designated year and ending on the following June 30;

(15) "Public schools" means all publicly supported schools, including normal schools, colleges and universities in this state;
(16) "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;

(17) "Required beginning date" means April 1 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 otherwise ceases employment with a participating employer after having attained the age of seventy and one-half years;

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

(19) "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.

§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 December 31, 1986. 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. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(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 December 31 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 December 31 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) December 31 of the calendar year in which the member would have attained age seventy and one-half years; or
(B) The earlier of: (i) December 31 of the calendar year in which the member died; or (ii) December 31 of the calendar year following the calendar year in which the spouse died.

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

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

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

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

(c) Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code (as such limitations are adjusted for cost of living in accordance with Section 415(d) of the Internal Revenue Code) and Treasury Regulations thereunder to the extent applicable to governmental plans (hereafter sometimes referred to as the "415 limitation(s)" or "415 annual addition limitation(s)") so that an annual addition
made under this system shall not exceed those limitations.
Any annual addition made under this system shall be reduced or limited if necessary to an amount which does not exceed those limitations. The extent to which an annual addition under this retirement system shall be reduced, as compared to the extent which an annual addition under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced, shall be proportional on a percentage basis to the reductions made in such other plans administered by the board and required to be so taken into consideration under Section 415, unless a disproportionate reduction is determined by the board to maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annual addition required by this section. The 415 limitations shall apply as if the total annual additions under all defined contribution plans in which a member has been a member were payable from one plan for any member who has at any time been a member in any other defined contribution plan maintained by the member's participating employer. For purposes of the 415 limitations, the "limitation year" shall be the calendar year.

(d) Solely for purposes of calculating and applying the 415 limitations, a member's compensation for a limitation year is defined to be wages within the meaning of Section 3401(a) of the Internal Revenue Code (including amounts that would be included in wages but for an election under Section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b) of the Internal Revenue Code), plus all other payments of compensation to a member by a participating employer (in the course of the employer's trade or business) for which the employer is required to furnish the employee a written statement under Sections 6041(d),
60 6051(a)(3) and 6052 of the Internal Revenue Code, and 
61 determined without regard to any rules that limit the 
62 remuneration included in wages based upon the nature or 
63 location of employment or services performed. In addi-
64 tion:

65 (1) For limitation years beginning on or after January 1, 
66 2009, compensation for a limitation year shall also in-
67 clude:

68 (A) Compensation paid by the later of two and one-half 
69 months after a member's severance from employment with 
70 the employer or the end of the limitation year that in-
71 cludes the date of the member's severance from employ-
72 ment with the employer maintaining the plan, if the 
73 payment is regular compensation for services during the 
74 member's regular working hours, or compensation for 
75 services outside the employee's regular working hours 
76 (such as overtime or shift differential), commissions, 
77 bonuses, or other similar payments and, absent a sever-
78 ance from employment, the payments would have been 
79 paid to the member while the member continued in 
80 employment with the employer;

81 (B) Back pay, within the meaning of Treasury Regulation 
82 §1.415(c)-2(g)(8), for the limitation year to which the back 
83 pay relates, but only to the extent the back pay represents 
84 wages and compensation that would otherwise be included 
85 in compensation under this definition; and

86 (C) For an employee in qualified military service (within 
87 the meaning of Section 414(u)(5) of the Internal Revenue 
88 Code), compensation such employee would have received 
89 during such period if the employee were not in qualified 
90 military service, to the extent required pursuant to Section 
91 414(u)(7) of the Internal Revenue Code.

92 (2) For limitation years beginning on or after January 1, 
93 2009, compensation for a limitation year may not exceed
the maximum compensation allowed as adjusted for cost
of living in accordance with section seven, article ten-d,
chapter five of this code and Section 401(a)(17) of the
Internal Revenue Code.

§18-7B-13b. Direct rollovers.

(a) Except where otherwise stated, this section applies to
distributions made on or after January 1, 1993. Notwith-
standing any provision of this article to the contrary that
would otherwise limit a distributee's election under this
system, a distributee may elect, at the time and in the
manner prescribed by the board, to have any portion of an
eligible rollover distribution that is equal to at least $500
paid directly to an eligible retirement plan specified by the
distributee in a direct rollover. For purposes of this
section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribu-
tion of all or any portion of the balance to the credit of the
distributee, except that an eligible rollover distribution
does not include any of the following: (i) Any distribution
that is one of a series of substantially equal periodic
payments not less frequently than annually made for the
life or life expectancy of the distributee or the joint lives
or the joint life expectancies of the distributee and the
distributee's designated beneficiary, or for a specified
period of ten years or more; (ii) any distribution to the
extent such distribution is required under Section
401(a)(9) of the Internal Revenue Code; (iii) the portion of
any distribution that is not includable in gross income
determined without regard to the exclusion for net unreal-
ized appreciation with respect to employer securities; (iv)
any hardship distribution described in Section
401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v)
any other distribution or distributions reasonably ex-
pected to total less than $200 during a year. For distribu-
tions after December 31, 2001, a portion of a distribution
shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or (for taxable years beginning before January 1, 2007) to a qualified trust which is part of a defined contribution plan described in Section 401(a) or (for taxable years beginning after December 31, 2006) to a qualified trust or to an annuity contract described in Section 403(a) or (b) of the Internal Revenue Code that agrees to separately account for amounts transferred (including interest or earnings thereon), including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not so includable, or (for taxable years beginning after December 31, 2007) to a Roth IRA described in Section 408(a) of the Internal Revenue Code.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution prior to January 1, 2002, to the surviving spouse, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity. For distributions after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state or
any agency or instrumentality of a state or political
subdivision of a state and which agrees to separately
account for amounts transferred into the plan from this
system. For distributions after December 31, 2007, an
eligible retirement plan also means a Roth IRA described
in Section 408(a) of the Internal Revenue Code: Provided,
That in the case of an eligible rollover distribution after
December 31, 2007, to a designated beneficiary (other than
a surviving spouse) as such term is defined in Section
402(c)(11) of the Internal Revenue Code, an eligible
retirement plan is limited to an individual retirement
account or individual retirement annuity which meets the
conditions of Section 402(c)(11) of the Internal Revenue
Code.

(3) "Distributee" means an employee or former em-
ployee. In addition, the employee's or former employee's
surviving spouse and the employee's or former employee's
spouse or former spouse who is the alternate payee under
a qualified domestic relations order, as defined in Section
414(p) of the Internal Revenue Code with respect to
governmental plans, are distributees with regard to the
interest of the spouse or former spouse. For distributions
after December 31, 2007, "distributee" also includes a
designated beneficiary (other than a surviving spouse) as
such term is defined in Section 402(c)(11) of the Internal
Revenue Code.

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

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

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF
RECORD.
§51-9-1a. Definitions.

(a) As used in this article, the term “judge”, “judge of any court of record” or “judge of any court of record of this state” means, refers to and includes judges of the several circuit courts and justices of the Supreme Court of Appeals. For purposes of this article, the terms do not mean, refer to or include family court judges.

(b) “Actuarially equivalent” or “of equal actuarial value” means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: Provided, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, “actuarially equivalent” shall be computed using the mortality tables and interest rates required to comply with those requirements.

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

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

(e) “Final average salary” means the average of the highest thirty-six consecutive months’ compensation received by the member as a judge of any court of record of this state.

(f) “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been amended.

(g) “Member” means a judge participating in this system.

(h) “Plan year” means the twelve-month period commencing on July 1 of any designated year and ending the following June 30.
(i) "Required beginning date" means April 1 of the calendar year following the later of: (i) The calendar year in which the member attains age seventy and one-half; or (ii) the calendar year in which the member retires or otherwise separates from covered employment.

(j) "Retirement system" or "system" means the Judges' Retirement System created and established by this article. Notwithstanding any other provision of law to the contrary, the provisions of this article are applicable only to circuit judges and justices of the Supreme Court of Appeals in the manner specified in this article. No service as a family court judge may be construed to qualify a person to participate in the Judges' Retirement System or used in any manner as credit toward eligibility for retirement benefits under the Judges' Retirement System.

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

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section, to the extent applicable to governmental plans (hereafter sometimes referred to as the "415 limitation(s)" or "415 dollar limitation(s)"), so that the annual benefit payable under this system to a member shall not exceed those limitations. Any annual benefit payable under this system shall be reduced or limited if necessary to an amount which does not exceed those limitations. The extent to which any annuity or other annual benefit payable under this retirement system shall be reduced as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced, shall be proportional on a percentage basis to the reductions made in such other plans administered by the
board and required to be so taken into consideration under Section 415, unless a disproportionate reduction is determined by the board to maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities or other annual benefit required by this section. For purposes of the 415 limitations, the "limitation year" shall be the calendar year. The 415 limitations are incorporated herein by reference, except to the extent the following provisions may modify the default provisions thereunder:

(a) The annual adjustment to the 415 dollar limitations made by Section 415(d) of the Internal Revenue Code and the regulations thereunder shall apply for each limitation year. The annual adjustments to the dollar limitations under Section 415(d) of the Internal Revenue Code which become effective: (i) After a retirant’s severance from employment with the employer; or (ii) after the annuity starting date in the case of a retirant who has already commenced receiving benefits, will apply with respect to a retirant’s annual benefit in any limitation year. A retirant’s annual benefit payable in any limitation year from this retirement system shall in no event be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(b) For purposes of this section, the "annual benefit" means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit, using factors prescribed in the 415 limitation regulations, before applying the 415 limitations. No actuarial adjustment to the benefit shall
be made for: (1) Survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form; (2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits and post-retirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this article, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this article applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code. For this purpose an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(c) Adjustment for benefit forms not subject to Section 417(e)(3). — The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is either: (1) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse); or (2) an annuity that decreases during the life of the member merely because of: (i) The death of the survivor annuitant (but only if the reduction is not below fifty percent of the benefit payable before the death of the survivor annuitant); or (ii) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Section 411(a)(9) of the Internal Revenue Code). The actuarially equivalent straight life annuity is equal to the greater of: (I) The annual amount of
the straight life annuity (if any) payable to the member
under the plan commencing at the same annuity starting
date as the member's form of benefit; and (II) the annual
amount of the straight life annuity commencing at the
same annuity starting date that has the same actuarial
present value as the member's form of benefit, computed
using a five percent interest rate assumption and the
applicable mortality table defined in Treasury Regulation
§1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subse-
quent Revenue Ruling modifying the applicable provisions
of Revenue Ruling 2001-62) for that annuity starting date.

(d) Adjustment for benefit forms subject to Section
417(e)(3). — The straight life annuity that is actuarially
equivalent to the member's form of benefit shall be
determined under this subsection if the form of the mem-
ber's benefit is other than a benefit form described in
subdivision (c) of this section. The actuarially equivalent
straight life annuity shall be determined as follows: The
actuarially equivalent straight life annuity is equal to the
greatest of: (1) The annual amount of the straight life
annuity commencing at the same annuity starting date
that has the same actuarial present value as the member's
form of benefit, computed using the interest rate specified
in this retirement system and the mortality table (or other
tabular factor) specified in this retirement system for
adjusting benefits in the same form; (2) the annual amount
of the straight life annuity commencing at the same
annuity starting date that has the same actuarial present
value as the member's form of benefit, computed using a
five and a half percent interest rate assumption and the
applicable mortality table defined in Treasury Regulation
§1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subse-
quent Revenue Ruling modifying the applicable provisions
of Revenue Ruling 2001-62) for that annuity starting date;
and (3) the annual amount of the straight life annuity
commencing at the same annuity starting date that has the
same actuarial present value as the member's form of
benefit, computed using the applicable interest rate
defined in Treasury Regulation §1.417(e)-1(d)(3) and the
applicable mortality table defined in Treasury Regulation
§1.417(e)-1(d)(2) (the mortality table specified in Revenue
Ruling 2001-62 or any subsequent Revenue Ruling modify-
ing the applicable provisions of Revenue Ruling 2001-62),
divided by 1.05.

(e) Benefits payable prior to age sixty-two. –

(1) Except as provided in paragraphs (2) and (3) of this
subdivision, if the member's retirement benefits become
payable before age sixty-two, the 415 dollar limitation
prescribed by this section shall be reduced in accordance
with regulations issued by the Secretary of the Treasury
pursuant to the provisions of Section 415(b) of the Internal
Revenue Code, so that the limitation (as so reduced) equals
an annual straight life benefit (when the retirement
income benefit begins) which is equivalent to an annual
benefit in the amount of the applicable dollar limitation of
Section 415(b)(1)(A) of the Internal Revenue Code (as
adjusted pursuant to Section 415(d) of the Internal
Revenue Code) beginning at age sixty-two.

(2) The limitation reduction provided in paragraph (1) of
this subdivision shall not apply if the member commencing
retirement benefits before age sixty-two is a qualified
participant. A qualified participant for this purpose is a
participant in a defined benefit plan maintained by a
state, or any political subdivision of a state, with respect
to whom the service taken into account in determining the
amount of the benefit under the defined benefit plan
includes at least fifteen years of service: (i) As a full-time
employee of any police or fire department organized and
operated by the state or political subdivision maintaining
the defined benefit plan to provide police protection, fire-
fighting services or emergency medical services for any
area within the jurisdiction of such state or political subdivision; or (ii) as a member of the armed forces of the United States.

(3) The limitation reduction provided in paragraph (1) of this subdivision shall not be applicable to preretirement disability benefits or preretirement death benefits.

(4) For purposes of adjusting the 415 dollar limitation for benefit commencement before age sixty-two or after age sixty-five (if the plan provides for such adjustment), no adjustment is made to reflect the probability of a member's death: (i) After the annuity starting date and before age sixty-two; or (ii) after age sixty-five and before the annuity starting date.

(f) Adjustment when member has less than ten years of participation. – In the case of a member who has less than ten years of participation in the retirement system (within the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the 415 dollar limitation (as adjusted pursuant to Section 415(d) of the Internal Revenue Code and subdivision (e) of this section) shall be reduced by multiplying the otherwise applicable limitation by a fraction, the numerator of which is the number of years of participation in the plan (or one, if greater), and the denominator of which is ten. This adjustment shall not be applicable to preretirement disability benefits or preretirement death benefits.

(g) The application of the provisions of this section shall not cause the maximum annual benefit provided to a member to be less than the member's accrued benefit as of December 31, 2008 (the end of the limitation year that is immediately prior to the effective date of the final regulations for this retirement system as defined in Treasury Regulation §1.415(a)-1(g)(2)), under provisions of the retirement system that were both adopted and in effect before April 5, 2007, provided that such provisions satis-
fied the applicable requirements of statutory provisions, regulations and other published guidance relating to Section 415 of the Internal Revenue Code in effect as of December 31, 2008, as described in Treasury Regulation §1.415(a)-1(g)(4). If additional benefits are accrued for a member under this retirement system after January 1, 2009, then the sum of the benefits described under the first sentence of this subdivision and benefits accrued for a member after January 1, 2009, must satisfy the requirements of Section 415, taking into account all applicable requirements of the final 415 Treasury Regulations.

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

1 The requirements of this section apply to any distribution of a member’s or beneficiaries’ interest and take precedence over any inconsistent provisions of this retirement system. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with Treasury Regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.
(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system shall be distributed by December 31 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 December 31 of the calendar year immediately following the calendar year in which the member died; or

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

(A) December 31 of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) December 31 of the calendar year following the calendar year in which the member died; or (ii) December 31 of the calendar year following the calendar year in which the spouse died.

§51-9-12c. Direct rollovers.

(a) Except where otherwise stated, this section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an
eligible rollover distribution that is equal to at least $500 paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution or distributions expected to total less than $200 during a year. For distributions after December 31, 2001, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or (for taxable years beginning before January 1, 2007) to a qualified trust which is part of a defined contribution plan described in Section 401(a) or (for taxable years beginning after December 31, 2006) to a qualified trust or to an annuity contract described in Section 403(a) or (b) of the Internal Revenue Code that agrees to separately account for amounts transferred
(including interest or earnings thereon), including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not so includable, or (for taxable years beginning after December 31, 2007) to a Roth IRA described in Section 408(a) of the Internal Revenue Code.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified plan described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution prior to January 1, 2002, to the surviving spouse, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity. For distributions after December 31, 2001, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system. For distributions after December 31, 2007, an eligible retirement plan also means a Roth IRA described in Section 408(a) of the Internal Revenue Code: Provided, That in the case of an eligible rollover distribution after December 31, 2007, to a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue Code.
(3) "Distributee" means a judge or former judge. In addition, the judge's or former judge's surviving spouse and the judge's or former judge's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2007, "distributee" also includes a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code.

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

(b) Nothing in this section may be construed as permitting rollovers into this system or any other system administered by the board.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

[Signature]

Chairman House Committee

[Signature]

Originated in the Senate.

In effect from passage.

Clerk of the Senate

[Signature]

Clerk of the House of Delegates

[Signature]

President of the Senate

Speaker House of Delegates

[Signature]

The within...approved...this the 7th Day of December 2009.

Governor

[Signature]
PRESENTED TO THE
GOVERNOR

DEC 2 2009

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