ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2939

(By Delegates Pethtel, Givens, Ennis, Guthrie, D. Poling, Duke and Canterbury)

Passed March 8, 2011

In Effect Ninety Days From Passage
AN ACT to amend and reenact §5-10-2, §5-10-18, §5-10-21, §5-10-24, §5-10-25, §5-10-44 and §5-10-48 of the Code of West Virginia, 1931, as amended, all relating to the Public Employees Retirement System; clarifying the definition of compensation for purposes of calculating required contributions to the system; changing definition of final average salary; clarifying when membership in the system terminates and how membership may be reinstated; providing that individuals first hired after July 1, 2011 must have at least five years of contributory service to retire under the “rule of eighty”; requiring retirants changing annuity options to certify that no final divorce decree or other court order prohibits the
same; clarifying that correction of errors provision applies to both employer errors and errors of the system’s administrative body; providing that the correction of an error with respect to a retirant may be prospective only; and providing for reimbursement of mistaken contributions that ensures the plan’s continued qualified status.

Be it enacted by the Legislature of West Virginia:

That §5-10-2, §5-10-18, §5-10-21, §5-10-24, §5-10-25, §5-10-44 and §5-10-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.

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

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

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

(3) “Actuarial equivalent” means a benefit of equal value computed upon the basis of a mortality table and regular interest adopted by the board of trustees from time to time: 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. Any lump sum or other payments paid to members that do not constitute regular salary or wage payments are not considered compensation for the purpose of withholding contributions for the system or for the purpose of calculating a member's final average salary. These payments include, but are not limited to, attendance or
performance bonuses, one-time flat fee or lump sum payments, payments paid as a result of excess budget, or employee recognition payments. The board shall have final power to decide whether the payments shall be considered compensation for purposes of this article;

(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 pro rated service credit for any
partial term served, anything contained in this article to the
contrary notwithstanding. In any case of doubt as to who is
an employee within the meaning of this article, the Board of
Trustees shall decide the question;

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

(13) "Final average salary" means either 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: Provided, however, That the provisions of section twenty-two-h of this article are not applicable to the amendments made to this subdivision during the 2011 regular session of the Legislature.

(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 fifteen 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.

§5-10-18. Termination of membership; reentry.

(a) When a member of the retirement system retires, withdraws his or her accumulated contributions, or dies, he or she ceases to be a member. When a member leaves the employ of a participating public employer for any reason other than retirement or death, and withdraws his or her accumulated contributions from the system, he or she ceases to be a member and forfeits service credited to him or her at that time. If he or she becomes reemployed by a participating public employer he or she shall be reinstated as a member of the retirement system and his or her credited service last forfeited by him or her shall be restored to his or her credit: Provided, That he or she must be reemployed for a period of one year or longer to have the service restored: Provided, however, That he or she returns to the members' deposit fund the amount, if any, he or she withdrew from the fund, together with regular interest on the withdrawn amount from the date of withdrawal to the date of repayment, and that the repayment begins within two years of the return to employment and that the full amount is repaid within five years of the return to employment. Any failure to repay the full amount in accordance with this section shall be treated as an overpayment or excess contribution subject to section forty-four of this article.

(b) The Prestera Center for Mental Health Services, Valley Comprehensive Mental Health Center, Westbrook Health Services and Eastern Panhandle Mental Health Center, and their successors in interest, shall provide for their
employees a pension plan in lieu of the Public Employees Retirement System during the existence of the named mental health centers and their successors in interest.

(c) The administrative bodies of the Prestera Center for Mental Health Services, Valley Comprehensive Mental Health Center, Westbrook Health Services and Eastern Panhandle Mental Health Center shall, on or before May 1, 1997, give written notice to each employee who is a member of the Public Employees Retirement System of the option to withdraw from or remain in the system. The notice shall include a copy of this section and a statement explaining the member’s options regarding membership. The notice shall include a statement in plain language giving a full explanation and actuarial projection figures in support of the explanation regarding the individual member’s current account balance, vested and nonvested, and his or her projected return upon remaining in the Public Employees Retirement System until retirement, disability or death, in comparison with the projected return upon withdrawing from the Public Employees Retirement System and joining a private pension plan provided by the Community Mental Health Center and remaining therein until retirement, disability or death. The administrative bodies shall keep in their respective records a permanent record of each employee’s signature confirming receipt of the notice.

(d) Effective the March 1, 2003, and ending December 31, 2004, any member may purchase credited service previously forfeited by him or her and the credited service shall be restored to his or her credit: Provided, That he or she returns to the members’ deposit fund the amount, if any, he or she withdrew from the fund, together with interest on the withdrawn amount from the date of withdrawal to the date of repayment at a rate to be determined by the board. The repayment under this section may be made by lump sum or
repaid over a period of time not to exceed sixty months. Where the member elects to repay the required amount other than by lump sum, the member is required to pay interest at the rate determined by the board until all sums are fully repaid.

(e) Effective July 1, 2005, and ending December 31, 2006, any emergency services personnel may purchase service credit for the time period beginning January 1, 1990, and ending December 31, 1995: Provided, That person was employed as an emergency service person in this state for that time period: Provided, however, That any person obtaining service credit under this subsection is required to pay the employee’s share and the employer’s share upon his or her actual salary for the years in question plus interest at the assumed actuarial rate of return for the plan year being repurchased.

(f) Jobs for West Virginia’s graduates and their successors in interest shall provide a pension plan in lieu of the Public Employees Retirement System for employees hired on or after July 1, 2005.

(g) Wetzel County Hospital and their successors in interest shall provide a pension plan in lieu of the Public Employees Retirement System for employees hired on or after July 1, 2005.

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

(a) Any member who has five or more years of credited service in force, of which at least three years are contributing service, and who leaves the employ of a participating public employer prior to his or her attaining age sixty years for any reason except his or her disability retirement or death, is entitled to an annuity computed according to section twenty-
two of this article, as that section was in force as of the date of his or her separation from the employ of a participating public employer: Provided, That he or she does not withdraw his or her accumulated contributions from the members’ deposit fund: Provided, however, That on and after July 1, 2002, any person who becomes a new member of this retirement system shall, in qualifying for retirement under this section, have five or more years of service, all of which years shall be actual, contributory ones. His or her annuity shall begin the first day of the calendar month next following the month in which his or her application for same is filed with the Board of Trustees on or after his or her attaining age sixty-two years.

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

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

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

(e) Notwithstanding any of the other provisions of this section or of this article, except sections twenty-seven-a and twenty-seven-b of this article, any member of the retirement system may retire with full pension rights, without reduction of benefits, if he or she is at least fifty-five years of age and the sum of his or her age plus years of contributing service and limited credited service, as defined in section two of this article, equals or exceeds eighty; Provided, That on and after July 1, 2011, any person who becomes a new member of this retirement system shall, in qualifying for retirement under this subsection, have five or more years of service, all of which years shall be actual, contributory ones. The member’s annuity shall begin the first day of the calendar month immediately following the calendar month in which his or her application for the annuity is filed with the board.


(a) Prior to the effective date of his or her retirement, but not thereafter except upon the death of a spouse, a member may elect to receive his or her annuity as a straight life
annuity payable throughout his or her life, or he or she may elect to receive the actuarial equivalent, at the time, of his or her straight life annuity in a reduced annuity payable throughout his or her life, and nominate a beneficiary, in accordance with option A or B set forth below:

**Option A -- Joint and survivor annuity.** -- Upon the death of a retirant who elected option A, his or her reduced annuity shall be continued throughout the life of and paid to the beneficiary, having an insurable interest in the retirant's life, whom the retirant nominated by written designation duly executed and filed with the Board of Trustees prior to the effective date of his or her retirement; or

**Option B -- Modified joint and survivor annuity.** -- Upon the death of a retirant who elected option B, one half of his or her reduced annuity shall be continued throughout the life of and paid to the beneficiary, having an insurable interest in the retirant's life, whom the retirant nominated by written designation duly executed and filed with the Board of Trustees prior to the effective date of his or her retirement.

(b) Upon the death of a spouse, a retirant may elect any of the retirement options offered by the provisions of this section in an amount adjusted on a fair basis to be of equal actuarial value as the annuity prospectively in effect relative to the retirant at the time the new option is elected.

(c) Upon divorce, a retirant may elect to change any of the retirement benefit options offered by the provisions of this section to a life annuity in an amount adjusted on a fair basis to be of equal actuarial value of the annuity prospectively in effect relative to the retirant at the time the option is elected: *Provided*, That the retirant furnishes to the board satisfactory proof of entry of a final decree of divorce or annulment: *Provided, however*, That the retirant certifies

under penalty of perjury that no qualified domestic relations
order, final decree of divorce, or other court order that would
restrict the election is in effect: Provided further, That no
cause of action against the board may then arise or be
maintained on the basis of having permitted the retirant to
name a new spouse as annuitant for any of the survivorship
retirement benefit options.

(d) Upon remarriage, a retirant may name the new spouse
as an annuitant for any of the retirement benefit options
offered by the provisions of this section: Provided, That the
retirant shall furnish to the board proof of marriage:
Provided, however, That the retirant certifies under penalty
of perjury that no qualified domestic relations order, final
decree of divorce or other court order that would restrict the
designation is in effect: Provided further, That no cause of
action against the board may then arise or be maintained on
the basis of having permitted the retirant to name a new
spouse as annuitant for any of the survivorship retirement
benefit options. The value of the new survivorship annuity
shall be the actuarial equivalent of the retirant’s benefit
prospectively in effect at the time the new annuity is elected.

§5-10-25. Disability retirement.

(a) Upon the application of a member of the retirement
system, or his or her present or past employing authority, any
member who is in the employ of a participating public
employer or was in the employ of a participating public
employer on a date which is twelve months or less from the
date upon which the member became incapacitated, who has
ten or more years of credited service of which three years is
contributing service, and who becomes totally and
permanently incapacitated for employment, by reason of a
personal injury or disease, may be retired by the board if after
a medical examination of the member made by or under the
direction of a medical committee consisting of two physicians, one of whom shall be named by the board, and one by the member, the medical committee reports, in writing, to the board that the member is physically or mentally totally incapacitated for employment, that the incapacity will probably be permanent, and that the member should be retired. In the event the two above-mentioned examining physicians do not agree in their findings, then the board may, at its discretion, appoint a third physician to examine the member and, based upon the third physician’s report in writing, the board may retire the member. A member who was not in the employ of a participating public employer on a date which is twelve months or less from the date upon which the member became incapacitated may receive disability retirement under the provisions of this subsection if, in the opinion of the medical committee, the incapacity occurred during the time that the member was employed by a participating public employer and the incapacity otherwise qualifies the member for retirement under this subsection.

(b) A member with less than ten years of credited service shall have the service requirement provided in subsection (a) above (including the requirement of three years contributing service) waived in the event: (1) The board finds his or her total and permanent disability to be the natural and proximate result of a personal injury or disease arising out of and in the course of his or her actual performance of duty in the employ of a participating public employer; and (2) he or she is receiving or has received workers’ compensation benefits on account of the physical or mental disability.

(c) For any member retiring and any member retired, as of March 1, 1970, he or she shall receive a straight life annuity computed according to section twenty-two hereof and he or she shall have the right to elect an option provided
in section twenty-four hereof: Provided, That his or her
straight life annuity payable to his or her attainment of age
sixty-five years may not be less than fifty percent of his or
her final average salary; and his or her straight life annuity
payable from and after his or her attainment of age sixty-five
years may not be less than twenty percent of his or her final
average salary: Provided, however, That his or her annuity
shall be subject to section twenty-six hereof.

§5-10-44. Correction of errors; underpayments; overpayments.

(a) General rule: If any change or employer error in the
records of any participating public employer or the retirement
system results in any member, retirant or beneficiary
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. If correction of the error occurs
after the effective retirement date of a retirant, and as far as
is practicable, the board shall adjust the payment of the
benefit in a manner that the actuarial equivalent of the benefit
to which the retirant was correctly entitled shall be paid.

(b) Underpayments: Any error resulting in an
underpayment to the retirement system of required
contributions may be corrected by the member or retirant
remitting the required employee contribution and the
participating public employer remitting the required
employer contribution. Interest shall accumulate in
accordance with the Legislative Rule 162 CSR 7 concerning
retirement board refund, reinstatement and loan interest
factors and any accumulating interest owed on the employee
and employer contributions resulting from an 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. If the correction of an error involving an underpayment of required contributions to the retirement system will result in increased payments to a retirant, including increases to payments already made, any adjustments shall be made only after the board receives full payment of all required employee and employer contributions, including interest.

(c) Overpayments: (1) When mistaken or excess employer contributions, including any overpayments, have been made to the retirement system by a participating public employer, due to error or other reason, the board shall credit the participating public employer with an amount equal to the erroneous contributions, to be offset against the participating public employer's future liability for employer contributions to the system. Earnings or interest shall not be credited to the employer.

(2) When mistaken or excess employee contributions, including any overpayments, have been made to the retirement system, due to error or other reason, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the employee of the amounts, and may use any means authorized or permitted under the provisions of Section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the participating public employer to pay the employee the amounts as wages, with the board crediting the participating public employer with a corresponding amount to offset against its future contributions to the plan: *Provided,* That the wages paid to the employee shall not be considered compensation for any purposes under this article. Earnings or interest shall not be returned, offset, or credited under any of the means utilized by the board for returning mistaken or excess employee contributions, including any overpayments, to an employee.
§5-10-48. Reemployment after retirement; options for holder of elected public office.

(a) The Legislature finds that a compelling state interest exists in maintaining an actuarially sound retirement system and that this interest necessitates that certain limitations be placed upon an individual's ability to retire from the system and to then later return to state employment as an employee with a participating public employer while contemporaneously drawing an annuity from the system. The Legislature hereby further finds and declares that the interests of the public are served when persons having retired from public employment are permitted, within certain limitations, to render post-retirement employment in positions of public service, either in elected or appointed capacities. The Legislature further finds and declares that it has the need for qualified employees and that in many cases an employee of the Legislature will retire and be available to return to work for the Legislature as a per diem employee. The Legislature further finds and declares that in many instances these employees have particularly valuable expertise which the Legislature cannot find elsewhere. The Legislature further finds and declares that reemploying these persons on a limited per diem basis after they have retired is not only in the best interests of this state, but has no adverse effect whatsoever upon the actuarial soundness of this particular retirement system.

(b) For the purposes of this section: (1) "Regularly employed on a full-time basis" means employment of an individual by a participating public employer, in a position other than as an elected or appointed public official, which normally requires twelve months per year service and at least one thousand forty hours of service per year in that position; (2) "temporary full-time employment or temporary part-time employment" means employment of an individual on a
temporary or provisional basis by a participating public employer, other than as an elected or appointed public official, in a position which does not otherwise render the individual as regularly employed; (3) “former employee of the Legislature” means any person who has retired from employment with the Legislature and who has at least ten years’ contributing service with the Legislature; and (4) “reemployed by the Legislature” means a former employee of the Legislature who has been reemployed on a per diem basis not to exceed one hundred seventy-five days per calendar year.

(c) In the event a retirant becomes regularly employed on a full-time basis by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system. If his or her reemployment is for a period of one year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased annuity due to the additional employment, the annuity to be computed according to section twenty-two of this article. A retirant may accept temporary full-time or temporary part-time employment from a participating employer without suspending his or her retirement annuity so long as he or she does not receive annual compensation in excess of $15,000: Provided, That a retirant may be employed by the Legislature on a per diem basis without suspension of the retirement annuity if the retirant’s annual compensation from the Legislature does not exceed $20,000.

(d) In the event a member retires and is then subsequently elected to a public office or is subsequently appointed to hold an elected public office, or is a former employee of the Legislature who has been reemployed by the Legislature, he or she has the option, notwithstanding subsection (c) of this section, to either:
(1) Continue to receive payment of his or her annuity while holding public office or during any reemployment of a former employee of the Legislature on a per diem basis, in addition to the salary he or she may be entitled to as an office holder or as a per diem reemployed former employee of the Legislature; or

(2) Suspend the payment of his or her annuity and become a contributing member of the retirement system as provided in subsection (c) of this section. Notwithstanding the provisions of this subsection, a member who is participating in the system as an elected public official may not retire from his or her elected position and commence to receive an annuity from the system and then be elected or reappointed to the same position unless and until a continuous twelve-month period has passed since his or her retirement from the position: Provided, That a former employee of the Legislature may not be reemployed by the Legislature on a per diem basis until at least sixty days after the employee has retired: Provided, however, That the limitation on compensation provided by subsection (c) of this section does not apply to the reemployed former employee: Provided further, That in no event may reemployment by the Legislature of a per diem employee exceed one hundred seventy-five days per calendar year.

(e) A member who is participating in the system simultaneously as both a regular, full-time employee of a participating public employer and as an elected or appointed member of the legislative body of the state or any political subdivision may, upon meeting the age and service requirements of this article, elect to retire from his or her regular full-time state employment and may commence to receive an annuity from the system without terminating his or her position as a member of the legislative body of the state or political subdivision: Provided, That the retired member
shall not, during the term of his or her retirement and continued service as a member of the legislative body of a political subdivision, be eligible to continue his or her participation as a contributing member of the system and shall not continue to accrue any additional service credit or benefits in the system related to the continued service.

(f) Notwithstanding the provisions of section twenty-seven-b of this article, any publicly elected member of the legislative body of any political subdivision or of the State Legislature, the Clerk of the House of Delegates and the Clerk of the Senate may elect to commence receiving in-service retirement distributions from this system upon attaining the age of seventy and one-half years: Provided, That the member is eligible to retire under the provisions of section twenty or twenty-one of this article: Provided, however, That the member elects to stop actively contributing to the system while receiving the in-service distributions.

(g) The provisions of section twenty-two-h of this article are not applicable to the amendments made to this section during the 2006 regular session.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

Acting President of the Senate

The within is approved this the ___ day of _________, 2011.

Governor
PRESENTED TO THE GOVERNOR

MAR 15 2011

Time: 2:18 PM