

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 450

BY SENATORS NELSON AND HUNT

[Passed March 07, 2023; in effect 90 days from passage (June 5, 2023)]

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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1 AN ACT to amend and reenact §5-10-2 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §7-14D-2, §7-14D-14, and §7-14D-15; to amend and reenact §8-22A-2; to
3 amend and reenact §15-2A-2 and §15-2A-9; to amend and reenact §16-5V-2; to amend
4 and reenact §18-7A-3 and §18-7A-25; and to amend and reenact §20-18-2, §20-18-21,
5 and §20-18-22, all relating to disability retirement medical examinations of the West
6 Virginia Public Employees Retirement System, the Deputy Sheriffs' Retirement System,
7 the Municipal Police and Firefighters Retirement System, the State Police Retirement
8 System, the Emergency Medical Services Retirement System, the Teachers Retirement
9 System, and the Natural Resources Police Officers Retirement System; defining "medical
10 examination"; and providing that board approval of disability awards and benefits be based
11 on a medical examination.

Be it enacted by the Legislature of West Virginia:

**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
2 phrases as used in this article have the following meanings:

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

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

8 (3) "Actuarial equivalent" means a benefit of equal value computed upon the basis of a
9 mortality table and regular interest adopted by the board of trustees from time to time: *Provided*,
10 That when used in the context of compliance with the federal maximum benefit requirements of
11 Section 415 of the Internal Revenue Code, actuarial equivalent shall be computed using the
12 mortality tables and interest rates required to comply with those requirements;

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

16 (5) "Annuity reserve" means the present value of all payments to be made to a retirant or
17 beneficiary of a retirant on account of any annuity, computed upon the basis of mortality and other
18 tables of experience, and regular interest, adopted by the board of trustees from time to time;

19 (6) "Beneficiary" means any person which shall include an irrevocable special needs trust,
20 as that term is defined in this section, for the benefit of one individual beneficiary and which trust
21 terminates upon the death of such individual with no further annuity benefits being payable, except
22 a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the
23 retirement system;

24 (7) "Board of Trustees" or "board" means the Board of Trustees of the West Virginia
25 Consolidated Public Retirement Board;

26 (8) "Compensation" means the remuneration paid a member by a participating public
27 employer for personal services rendered by the member to the participating public employer. In
28 the event a member's remuneration is not all paid in money, his or her participating public
29 employer shall fix the value of the portion of the remuneration which is not paid in money:
30 *Provided*, That members hired in a position for the first time on or after July 1, 2014, who receive
31 nonmonetary remuneration shall not have nonmonetary remuneration included in compensation

32 for retirement purposes and nonmonetary remuneration may not be used in calculating a
33 member's final average salary. Any lump sum or other payments paid to members that do not
34 constitute regular salary or wage payments are not considered compensation for the purpose of
35 withholding contributions for the system or for the purpose of calculating a member's final average
36 salary. These payments include, but are not limited to, attendance or performance bonuses, one-
37 time flat fee or lump sum payments, payments paid as a result of excess budget, or employee
38 recognition payments. The board shall have final power to decide whether the payments shall be
39 considered compensation for purposes of this article;

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

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

46 (11) "Employee" means any person who serves regularly as an officer or employee, full-
47 time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment,
48 in the service of, and whose compensation is payable, in whole or in part, by any political
49 subdivision, or an officer or employee whose compensation is calculated on a daily basis and
50 paid monthly or on completion of assignment, including technicians and other personnel
51 employed by the West Virginia National Guard whose compensation, in whole or in part, is paid
52 by the federal government: *Provided*, That an employee of the Legislature whose term of
53 employment is otherwise classified as temporary and who is employed to perform services
54 required by the Legislature for its regular sessions or during the interim between regular sessions
55 and who has been or is employed during regular sessions or during the interim between regular
56 sessions in seven or more consecutive calendar years, as certified by the clerk of the house in
57 which the employee served, is an employee, any provision to the contrary in this article

58 notwithstanding, and is entitled to credited service in accordance with provisions of §5-10-14 of
59 this code: *Provided, however,* That members of the legislative body of any political subdivision
60 and commissioners of the West Virginia Claims Commission are employees receiving one year
61 of service credit for each one-year term served and prorated service credit for any partial term
62 served, anything contained in this article to the contrary notwithstanding: *Provided further,* That
63 only a compensated board member of a participating public employer appointed to a board of a
64 nonlegislative body for the first time on or after July 1, 2014, who normally is required to work 12
65 months per year and 1,040 hours of service per year is an employee. In any case of doubt as to
66 who is an employee within the meaning of this article, the board of trustees shall decide the
67 question;

68 (12) "Employer error" means an omission, misrepresentation, or deliberate act in violation
69 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations
70 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
71 Regulations by the participating public employer that has resulted in an underpayment or
72 overpayment of contributions required;

73 (13) "Final average salary" means either of the following: *Provided,* That salaries for
74 determining benefits during any determination period may not exceed the maximum
75 compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and
76 Section 401 (a) (17) of the Internal Revenue Code: *Provided, however,* That the provisions of §5-
77 10-22h of this code are not applicable to the amendments made to this subdivision during the
78 2011 regular session of the Legislature;

79 (A) The average of the highest annual compensation received by a member, including a
80 member of the Legislature who participates in the retirement system in the year 1971 or thereafter,
81 during any period of three consecutive years of credited service contained within the member's
82 15 years of credited service immediately preceding the date his or her employment with a
83 participating public employer last terminated: *Provided,* That for persons who were first hired on

84 or after July 1, 2015, any period of five consecutive years of contributing service contained within
85 the member's 15 years of credited service immediately preceding the date his or her employment
86 with a participating public employer last terminated; or

87 (B) If the member has less than five years of credited service, the average of the annual
88 rate of compensation received by the member during his or her total years of credited service;
89 and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision,
90 of a member of the Legislature who participates in the retirement system as a member of the
91 Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation
92 (the total of all compensation paid under §4-2A-2, §4-2A-3, §4-2A-4, and §4-2A-5 of this code),
93 in the year 1971, or in any year thereafter, plus any other compensation he or she receives in any
94 year from any other participating public employer including the State of West Virginia, without any
95 multiple in excess of one times his or her actual legislative compensation and other compensation,
96 shall be used: *Provided*, That final average salary for any former member of the Legislature or for
97 any member of the Legislature in the year 1971 who, in either event, was a member of the
98 Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on
99 November 30 in any one or more of those three years and who participated in the retirement
100 system as a member of the Legislature in any one or more of those years means: (i) Either,
101 notwithstanding the provisions of this subdivision preceding this proviso, \$1,500 multiplied by
102 eight, plus the highest other compensation the former member or member received in any one of
103 the three years from any other participating public employer including the State of West Virginia;
104 or (ii) final average salary determined in accordance with paragraph (A) or (B) of this subdivision,
105 whichever computation produces the higher final average salary, and in determining the annual
106 compensation under subparagraph (ii) of this paragraph, the legislative compensation of the
107 former member shall be computed on the basis of \$1,500 multiplied by eight, and the legislative
108 compensation of the member shall be computed on the basis set forth in the provisions of this

109 subdivision immediately preceding this paragraph or on the basis of \$1,500 multiplied by eight,
110 whichever computation as to the member produces the higher annual compensation;

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

113 (15) "Limited credited service" means service by employees of the West Virginia
114 Educational Broadcasting Authority, in the employment of West Virginia University, during a
115 period when the employee made contributions to another retirement system, as required by West
116 Virginia University, and did not make contributions to the Public Employees Retirement
117 System: *Provided*, That while limited credited service can be used for the formula set forth in §5-
118 10-21(e) of this code, it may not be used to increase benefits calculated under §5-10-22 of this
119 code;

120 (16) "Medical examination" means an in-person or virtual examination of a member's
121 physical or mental health, or both, by a physician or physicians selected or approved by the board;
122 or, at the discretion of the board, a medical record review of the member's physical or mental
123 health, or both, by a physician selected or approved by the board.

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

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

132 (19) "Plan year" means the same as referenced in §5-10-42 of this code;

133 (20) "Political subdivision" means the State of West Virginia, a county, city or town in the
134 state; a school corporation or corporate unit; any separate corporation or instrumentality

135 established by one or more counties, cities or towns, as permitted by law; any corporation or
136 instrumentality supported in most part by counties, cities or towns; and any public corporation
137 charged by law with the performance of a governmental function and whose jurisdiction is
138 coextensive with one or more counties, cities or towns: *Provided*, That any mental health agency
139 participating in the Public Employees Retirement System before July 1, 1997, is considered a
140 political subdivision solely for the purpose of permitting those employees who are members of the
141 Public Employees Retirement System to remain members and continue to participate in the
142 retirement system at their option after July 1, 1997: *Provided, however*, That the Regional
143 Community Policing Institute which participated in the Public Employees Retirement System
144 before July 1, 2000, is considered a political subdivision solely for the purpose of permitting those
145 employees who are members of the Public Employees Retirement System to remain members
146 and continue to participate in the Public Employees Retirement System after July 1, 2000;

147 (21) "Prior service" means service rendered prior to July 1, 1961, to the extent credited a
148 member as provided in this article;

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

151 (23) "Required beginning date" means April 1 of the calendar year following the later of:
152 (A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age
153 72 (if born after June 30, 1949); or (B) the calendar year in which a member ceases providing
154 service covered under this retirement system to a participating employer;

155 (24) "Retirant" means any member who commences an annuity payable by the retirement
156 system;

157 (25) "Retirement" means a member's withdrawal from the employ of a participating public
158 employer and the commencement of an annuity by the retirement system;

159 (26) "Retirement system" or "system" means the West Virginia Public Employees
160 Retirement System created and established by this article;

161 (27) "Retroactive service" means: (1) Service between July 1, 1961, and the date an
162 employer decides to become a participating member of the Public Employees Retirement System;
163 (2) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost
164 in accordance with 162 CSR 5.12; and (3) service of any member of a legislative body or
165 employees of the State Legislature whose term of employment is otherwise classified as
166 temporary for which the employee is eligible, but for which the employee did not elect to participate
167 at that time;

168 (28) "Service" means personal service rendered to a participating public employer by an
169 employee of a participating public employer;

170 (29) "Special needs trust" means a trust established pursuant to §44D-8B-13 of this code
171 for an individual beneficiary with a disability and such special needs trust is or will become
172 irrevocable by the time the retirant names the special needs trust as the beneficiary of retirant's
173 annuity benefits in place of the individual beneficiary and terminates upon the death of the
174 individual beneficiary with no further annuity benefits being payable; and

175 (30) "State" means the State of West Virginia.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14. 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
2 different meaning:

3 (a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the
4 member's final average salary multiplied by the member's years of credited service: *Provided*,
5 That members who are retired on or retire after July 1, 2018, shall have an accrued benefit of two
6 and one-half percent of the member's final average salary multiplied by the member's years of

7 credited service. A member's accrued benefit may not exceed the limits of Section 415 of the
8 Internal Revenue Code and is subject to the provisions of §7-14D-9a of this code.

9 (b) "Accumulated contributions" means the sum of all amounts deducted from the
10 compensation of a member, or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code,
11 either pursuant to §7-14D-7 of this code or §5-10-29 of this code as a result of covered
12 employment together with regular interest on the deducted amounts.

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

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

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

24 (f) "Annual compensation" means the wages paid to the member during covered
25 employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined
26 without regard to any rules that limit the remuneration included in wages based upon the nature
27 or location of employment or services performed during the plan year plus amounts excluded
28 under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense
29 allowances, cash, or noncash fringe benefits or both, deferred compensation, and welfare
30 benefits. Annual compensation for determining benefits during any determination period may not
31 exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-
32 10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

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

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

37 (i) "Base salary" means a member's cash compensation exclusive of overtime from
38 covered employment during the last 12 months of employment. Until a member has worked 12
39 months, annualized base salary is used as base salary.

40 (j) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity
41 or other benefit payable by the plan.

42 (k) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-
43 1 *et seq.* of this code.

44 (l) "County commission" has the meaning ascribed to it in §7-1-1 of this code.

45 (m) "Covered employment" means either: (1) Employment as a deputy sheriff and the
46 active performance of the duties required of a deputy sheriff; (2) the period of time which active
47 duties are not performed but disability benefits are received under §7-14D-14 or §7-14D-15 of
48 this code; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or
49 her employment as a deputy sheriff where the secondary employment requires the deputy sheriff
50 to be a member of another retirement system which is administered by the Consolidated Public
51 Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the deputy sheriff
52 contributes to the fund created in §7-14D-6 of this code the amount specified as the deputy
53 sheriff's contribution in §7-14D-7 of this code.

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

56 (o) "Deputy sheriff" means an individual employed as a county law-enforcement deputy
57 sheriff in this state and as defined by §7-14-2 of this code.

58 (p) "Dependent child" means either:

59 (1) An unmarried person under age 18 who is:

60 (A) A natural child of the member;

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

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

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

66 (2) Any unmarried child under age 23:

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

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

70 (C) Whose relationship with the member is described in subparagraph (A), (B), or (C),
71 paragraph (1) of this subdivision.

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

74 (r) "Disability service" means service credit received by a member, expressed in whole
75 years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both,
76 during which time a member receives disability benefits under §7-14D-14 or §7-14D-15 of this
77 code.

78 (s) "Early retirement age" means age 40 or over and completion of 20 years of service.

79 (t) "Employer error" means an omission, misrepresentation, or deliberate act in violation
80 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or
81 the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
82 Rules by the participating public employer that has resulted in an underpayment or overpayment
83 of contributions required.

84 (u) "Effective date" means July 1, 1998.

85 (v) "Final average salary" means the average of the highest annual compensation
86 received for covered employment by the member during any five consecutive plan years within
87 the member's last 10 years of service. If the member did not have annual compensation for the
88 five full plan years preceding the member's attainment of normal retirement age and during that
89 period, the member received disability benefits under §7-14D-14 or §7-14D-15 of this code, then
90 "final average salary" means the average of the full monthly salary determined paid to the member
91 during that period multiplied by 12.

92 (w) "Fund" means the West Virginia Deputy Sheriff Retirement Fund created pursuant to
93 §7-14D-6 of this code.

94 (x) "Hour of service" means:

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

98 (2) Each hour for which a member is paid or entitled to payment for covered employment
99 during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity
100 including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof,
101 and without regard to whether the employment relationship has terminated. Hours under this
102 paragraph shall be calculated and credited pursuant to West Virginia Division of Labor rules. A
103 member will not be credited with any hours of service for any period of time he or she is receiving
104 benefits under §7-14D-14 or §7-14D-15 of this code; and

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

110 (y) "Medical examination" means an in-person or virtual examination of a member's
111 physical or mental health, or both, by a physician or physicians selected or approved by the board;
112 or, at the discretion of the board, a medical record review of the member's physical or mental
113 health, or both, by a physician selected or approved by the board.

114 (z) "Member" means a person first hired as a deputy sheriff after the effective date of this
115 article, as defined in subdivision (u) of this section, or a deputy sheriff first hired prior to the
116 effective date and who elects to become a member pursuant to §7-14D-5 or §7-14D-17 of this
117 code. A member shall remain a member until the benefits to which he or she is entitled under this
118 article are paid or forfeited or until cessation of membership pursuant to §7-14D-5 of this code.

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

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

127 (cc) "Normal retirement age" means the first to occur of the following: (1) Attainment of
128 age 50 years and the completion of 20 or more years of service; (2) while still in covered
129 employment, attainment of at least age 50 years, and when the sum of current age plus years of
130 service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least
131 age 60 years, and completion of five years of service; or (4) attainment of age 62 years and
132 completion of five or more years of service.

133 (dd) "Partially disabled" means a member's inability to engage in the duties of deputy
134 sheriff by reason of any medically determinable physical or mental impairment that can be
135 expected to result in death or that has lasted or can be expected to last for a continuous period

136 of not less than 12 months. A member may be determined partially disabled for the purposes of
137 this article and maintain the ability to engage in other gainful employment which exists within the
138 state, but which ability would not enable him or her to earn an amount at least equal to two thirds
139 of the average annual compensation earned by all active members of this plan during the plan
140 year ending as of the most recent June 30, as of which plan data has been assembled and used
141 for the actuarial valuation of the plan.

142 (ee) "Public Employees Retirement System" means the West Virginia Public Employees
143 Retirement System created by §5-10-1 *et seq.* of this code.

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

146 (gg) "Plan year" means the 12-month period commencing on July 1 of any designated
147 year and ending the following June 30.

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

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

155 (jj) "Required beginning date" means April 1 of the calendar year following the later of: (i)
156 The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72
157 (if born after June 30, 1949); or (ii) the calendar year in which he or she retires or otherwise
158 separates from covered employment.

159 (kk) "Retire" or "retirement" means a member's withdrawal from the employ of a
160 participating public employer and the commencement of an annuity by the plan.

161 (ll) "Retirement income payments" means the annual retirement income payments
162 payable under the plan.

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

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

167 (oo) "Totally disabled" means a member's inability to engage in substantial gainful activity
168 by reason of any medically determined physical or mental impairment that can be expected to
169 result in death or that has lasted or can be expected to last for a continuous period of not less
170 than 12 months. For purposes of this subdivision:

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

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

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

186	Hours of Service	Years of Service Credited
187	Less than 500	0
188	500 to 999	1/3
189	1,000 to 1,499	2/3
190	1,500 or more	1

191 During a member's first and last years of covered employment, the member shall be
192 credited with one-twelfth of a year of service for each month during the plan year in which the
193 member is credited with an hour of service. A member is not entitled to credit for years of service
194 for any time period during which he or she received disability payments under §7-14D-14 or §7-
195 14D-15 of this code. Except as specifically excluded, years of service include covered
196 employment prior to the effective date. Years of service which are credited to a member prior to
197 his or her receipt of accumulated contributions upon termination of employment pursuant to §7-
198 14D-13 or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the
199 member repays the accumulated contributions with interest pursuant to §7-14D-13 of this code
200 or had prior to the effective date made the repayment pursuant to §5-10-18 of this code.

§7-14D-14. Awards and benefits for disability – duty related.

- 1 (a) Any member who after the effective date of this article and during covered employment:
- 2 (1) Has been or becomes either totally or partially disabled by injury, illness, or disease;
- 3 and
- 4 (2) The disability is a result of an occupational risk or hazard inherent in or peculiar to the
- 5 services required of members; or
- 6 (3) The disability was incurred while performing law-enforcement functions during either
- 7 scheduled work hours or at any other time; and
- 8 (4) In the opinion of the board based on a medical examination, the member is by reason
- 9 of the disability unable to perform adequately the duties required of a deputy sheriff, is entitled to

10 receive and shall be paid from the fund in monthly installments the compensation under either
11 subsection (b) or (c) of this section.

12 (b) If the member is totally disabled, the member shall receive 90 percent of his or her
13 average full monthly compensation for the 12-month contributory period preceding the member's
14 disability award, or the shorter period if the member has not worked 12 months. Any member
15 retired under this subsection, or under §7-14D-17 of this code, on or before July 1, 2020, shall
16 have his or her monthly benefit payment increased by \$400.

17 (c) If the member is partially disabled, the member shall receive 45 percent of his or her
18 average full monthly compensation for the 12-month contributory period preceding the member's
19 disability award, or the shorter period if the member has not worked 12 months.

20 (d) If the member remains partially disabled until attaining 60 years of age, the member
21 shall then receive the retirement benefit provided in §7-14D-11 and §7-14D-12 of this code.

22 (e) The disability benefit payments will begin the first day of the month following
23 termination of employment and receipt of the disability retirement application by the Consolidated
24 Public Retirement Board.

§7-14D-15. Same – Due to other causes.

1 (a) Any member who after the effective date of this article and during covered employment:
2 (1) Has been or becomes totally or partially disabled from any cause other than those set forth in
3 §7-14D-14 of this code and not due to vicious habits, intemperance or willful misconduct on his
4 or her part; and (2) in the opinion of the board based on a medical examination, he or she is by
5 reason of the disability unable to perform adequately the duties required of a deputy sheriff, is
6 entitled to receive and shall be paid from the fund in monthly installments the compensation set
7 forth in either subsection (b) or (c) of this section.

8 (b) If the member is totally disabled, he or she shall receive 66 and two-thirds percent of
9 his or her average full monthly compensation for the 12-month contributory period preceding the
10 disability award, or the shorter period, if the member has not worked 12 months.

11 (c) If the member is partially disabled, he or she shall receive 33 and one-third percent of
12 his or her average full monthly compensation for the 12-month contributory period preceding the
13 disability award, or the shorter period, if the member has not worked 12 months.

14 (d) If the member remains disabled until attaining 60 years of age, then the member shall
15 receive the retirement benefit provided in §7-14D-11 and §7-14D-12 of this code.

16 (e) The board shall propose legislative rules for promulgation in accordance with the
17 provisions of §29A-3-1 *et seq.* of this code concerning member disability payments so as to
18 ensure that the payments do not exceed 100 percent of the average current salary in any given
19 county for the position last held by the member.

20 (f) The disability benefit payments will begin the first day of the month following termination
21 of employment and receipt of the disability retirement application by the Consolidated Public
22 Retirement Board.

CHAPTER 8. MUNICIPAL CORPORATIONS:

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-2. Definitions.

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

3 (a) "Accrued benefit" means on behalf of any member 2.75 percent per year of the
4 member's final average salary for the first 20 years of credited service. Additionally, 2 percent per
5 year for 21 through 25 years and 1.5 percent per year for each year over 25 years will be credited
6 with a maximum benefit of 90 percent of a member's final average salary. A member's accrued
7 benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to
8 the provisions of §8-22A-10 of this code.

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

12 (c) "Active military duty" means full-time duty in the active military service of the United
13 States Army, Navy, Air Force, Coast Guard or Marine Corps. The term does not include regularly
14 required training or other duty performed by a member of a reserve component or National Guard
15 unless the member can substantiate that he or she was called into the full-time active military
16 service of the United States and has received no compensation during the period of that duty from
17 any board or employer other than the armed forces.

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

24 (e) "Annual compensation" means the wages paid to the member during covered
25 employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined
26 without regard to any rules that limit the remuneration included in wages based on the nature or
27 location of employment or services performed during the plan year plus amounts excluded under
28 Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense
29 allowances, cash or noncash fringe benefits, or both, deferred compensation and welfare benefits.
30 Annual compensation for determining benefits during any determination period may not exceed
31 the maximum compensation allowed as adjusted for cost-of-living in accordance with §5-10D-7
32 of this code and Section 401(a) (17) of the Internal Revenue Code.

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

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

40 (h) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity
41 or other benefit payable by the plan.

42 (i) "Board" means the Consolidated Public Retirement Board.

43 (j) "Covered employment" means either: (1) Employment as a full-time municipal police
44 officer or firefighter and the active performance of the duties required of that employment; or (2)
45 the period of time during which active duties are not performed but disability benefits are received
46 under this article; or (3) concurrent employment by a municipal police officer or firefighter in a job
47 or jobs in addition to his or her employment as a municipal police officer or firefighter in this plan
48 where the secondary employment requires the police officer or firefighter to be a member of
49 another retirement system which is administered by the Consolidated Public Retirement Board
50 pursuant to this code: *Provided*, That the police officer or firefighter contributes to the fund created
51 in this article the amount specified as the member's contribution in §8-22A-8 of this code.

52 (k) "Credited service" means the sum of a member's years of service, active military duty,
53 and disability service.

54 (l) "Dependent child" means either: (1) An unmarried person under age 18 who is: (A) A
55 natural child of the member; (B) a legally adopted child of the member; (C) a child who at the time
56 of the member's death was living with the member while the member was an adopting parent
57 during any period of probation; or (D) a stepchild of the member residing in the member's
58 household at the time of the member's death; or (2) Any unmarried child under age 23: (A) Who
59 is enrolled as a full-time student in an accredited college or university; (B) who was claimed as a

60 dependent by the member for federal income tax purposes at the time of the member's death;
61 and (C) whose relationship with the member is described in paragraph (A), (B) or (C), subdivision
62 (1) of this subsection.

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

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

68 (o) "Effective date" means January 1, 2010.

69 (p) "Employer error" means an omission, misrepresentation or deliberate act in violation
70 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations
71 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
72 Regulations by the participating public employer that has resulted in an underpayment or
73 overpayment of contributions required.

74 (q) "Final average salary" means the average of the highest annual compensation
75 received for covered employment by the member during any five consecutive plan years within
76 the member's last 10 years of service while employed, prior to any disability payment. If the
77 member did not have annual compensation for the five full plan years preceding the member's
78 attainment of normal retirement age and during that period the member received disability benefits
79 under this article, then "final average salary" means the average of the monthly compensation
80 which the member was receiving in the plan year prior to the initial disability. "Final average salary"
81 does not include any lump sum payment for unused, accrued leave of any kind or character.

82 (r) "Full-time employment" means permanent employment of an employee by a
83 participating municipality in a position which normally requires 12 months per year service and
84 requires at least 1,040 hours per year service in that position.

85 (s) "Fund" means the West Virginia Municipal Police Officers and Firefighters Retirement
86 Fund created by this article.

87 (t) "Hour of service" means: (1) Each hour for which a member is paid or entitled to
88 payment for covered employment during which time active duties are performed. These hours
89 shall be credited to the member for the plan year in which the duties are performed; and (2) each
90 hour for which a member is paid or entitled to payment for covered employment during a plan
91 year but where no duties are performed due to vacation, holiday, illness, incapacity including
92 disability, layoff, jury duty, military duty, leave of absence, or any combination thereof and without
93 regard to whether the employment relationship has terminated. Hours under this subdivision shall
94 be calculated and credited pursuant to West Virginia Division of Labor rules. A member may not
95 be credited with any hours of service for any period of time he or she is receiving benefits under
96 §8-22A-17 and §8-22A-18 of this code; and (3) each hour for which back pay is either awarded
97 or agreed to be paid by the employing municipality, irrespective of mitigation of damages. The
98 same hours of service may not be credited both under subdivision (1) or (2) of this subsection
99 and under this subdivision. Hours under this paragraph shall be credited to the member for the
100 plan year or years to which the award or agreement pertains, rather than the plan year in which
101 the award, agreement or payment is made.

102 (u) "Medical examination" means an in-person or virtual examination of a member's
103 physical or mental health, or both, by a physician or physicians selected or approved by the board;
104 or, at the discretion of the board, a medical record review of the member's physical or mental
105 health, or both, by a physician selected or approved by the board.

106 (v) "Member" means, except as provided in §8-22A-32 and §8-22A-33 of this code, a
107 person hired as a municipal police officer or municipal firefighter, as defined in this section, by a
108 participating municipal employer on or after January 1, 2010. A member shall remain a member
109 until the benefits to which he or she is entitled under this article are paid or forfeited.

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

112 (x) "Municipality" has the meaning ascribed to it in this code.

113 (y) (1) "Municipal police officer" means an individual employed as a member of a paid
114 police department by a West Virginia municipality or municipal subdivision which has established
115 and maintains a municipal policemen's pension and relief fund, and who is not a member of, and
116 not eligible for membership in, a municipal policemen's pension and relief fund as provided in §8-
117 22-16 of this code: *Provided*, That municipal police officer also means an individual employed as
118 a member of a paid police department by a West Virginia municipality or municipal subdivision
119 which is authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid
120 police department does not mean a department whose employees are paid nominal salaries or
121 wages or are paid only for services actually rendered on an hourly basis.

122 (2) "Municipal firefighter" means an individual employed as a member of a paid fire
123 department by a West Virginia municipality or municipal subdivision which has established and
124 maintains a municipal firemen's pension and relief fund, and who is not a member of, and not
125 eligible for membership in, a municipal firemen's pension and relief fund as provided in §8-22-16
126 of this code: *Provided*, That municipal firefighter also means an individual employed as a member
127 of a paid fire department by a West Virginia municipality or municipal subdivision which is
128 authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid fire
129 department does not mean a department whose employees are paid nominal salaries or wages
130 or are paid only for services actually rendered on an hourly basis.

131 (z) "Municipal subdivision" means any separate corporation or instrumentality established
132 by one or more municipalities, as permitted by law; and any public corporation charged by law
133 with the performance of a governmental function and whose jurisdiction is coextensive with one
134 or more municipalities.

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

141 (bb) "Normal retirement age" means the first to occur of the following: (1) Attainment of
142 age 50 years and the completion of 20 or more years of regular contributory service; (2) while still
143 in covered employment, attainment of at least age 50 years and when the sum of current age plus
144 regular contributory service equals or exceeds 70 years; (3) while still in covered employment,
145 attainment of at least age 60 years and completion of 10 years of regular contributory service; or
146 (4) attainment of age 62 years and completion of five or more years of regular contributory service.

147 (cc) "Plan" means the West Virginia Municipal Police Officers and Firefighters Retirement
148 System established by this article.

149 (dd) "Plan year" means the 12-month period commencing on January 1 of any designated
150 year and ending the following December 31.

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

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

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

160 (hh) "Required beginning date" means April 1 of the calendar year following the later of:
161 (1) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age
162 72 (if born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise
163 separates from covered employment.

164 (ii) "Retirement income payments" means the monthly retirement income payments
165 payable.

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

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

170 (ll) "Totally disabled" means a member's inability to engage in substantial gainful activity
171 by reason of any medically determined physical or mental impairment that can be expected to
172 result in death or that has lasted or can be expected to last for a continuous period of not less
173 than 12 months. For purposes of this subsection: (1) A member is totally disabled only if his or
174 her physical or mental impairment or impairments are so severe that he or she is not only unable
175 to perform his or her previous work as a police officer or firefighter but also cannot, considering
176 his or her age, education and work experience, engage in any other kind of substantial gainful
177 employment which exists in the state regardless of whether: (A) The work exists in the immediate
178 area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be
179 hired if he or she applied for work. For purposes of this article, substantial gainful employment is
180 the same definition as used by the United States Social Security Administration; and (2) "Physical
181 or mental impairment" is an impairment that results from an anatomical, physiological or
182 psychological abnormality that is demonstrated by medically accepted clinical and laboratory
183 diagnostic techniques. The board may require submission of a member's annual tax return for
184 purposes of monitoring the earnings limitation.

185 (mm) "Vested" means eligible for retirement income payments after completion of five or
186 more years of regular contributory service.

187 (nn) "Year of service" means a member shall, except in his or her first and last years of
188 covered employment, be credited with years of service credit based on the hours of service
189 performed as covered employment and credited to the member during the plan year based on
190 the following schedule:

191	Hours of Service	Year of Service Credited
192	Less than 500	0
193	500 to 999	1/3
194	1,000 to 1,499	2/3
195	1,500 or more	1

196 During a member's first and last years of covered employment, the member shall be
197 credited with one-twelfth of a year of service for each month during the plan year in which the
198 member is credited with an hour of service for which contributions were received by the fund. A
199 member is not entitled to credit for years of service for any time period during which he or she
200 received disability payments under §8-22A-17 and §8-22A-18 of this code.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2A. WEST VIRGINIA STATE POLICE SYSTEM.

§15-2A-2. Definitions.

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

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

4 (2) "Active military duty" means full-time active duty with the armed forces of the United
5 States, namely, the United States Air Force, Army, Coast Guard, Marines or Navy; and service

6 with the National Guard or reserve military forces of any of the armed forces when the employee
7 has been called to active full-time duty.

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

14 (4) "Agency" means the West Virginia State Police.

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

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

19 (7) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-
20 1 *et seq.* of this code.

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

23 (A) Is under the age of 18;

24 (B) After reaching 18 years of age, continues as a full-time student in an accredited high
25 school, college, university or business or trade school until the child or children reaches the age
26 of 23 years; or

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

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

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

34 (11) "Employer error" means an omission, misrepresentation, or deliberate act in violation
35 of relevant provisions of the West Virginia Code, the West Virginia Code of State Regulations, or
36 the relevant provisions of both the West Virginia Code and the West Virginia Code of State
37 Regulations by the participating public employer that has resulted in an underpayment or
38 overpayment of contributions required.

39 (12) "Final average salary" means the average of the highest annual compensation
40 received for employment with the agency, including compensation paid for overtime service,
41 received by the employee during any five calendar years within the employee's last 10 years of
42 service: *Provided*, That annual compensation for determining benefits during any determination
43 period may not exceed the maximum compensation allowed as adjusted for cost of living in
44 accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

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

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

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

54 (16) "Medical examination" means an in-person or virtual examination of a member's
55 physical or mental health, or both, by a physician or physicians selected or approved by the board;
56 or, at the discretion of the board, a medical record review of the member's physical or mental
57 health, or both, by a physician selected or approved by the board.

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

60 (18) "Month of service" means each month for which an employee is paid or entitled to
61 payment for at least one hour of service for which contributions were remitted to the fund. These
62 months shall be credited to the member for the calendar year in which the duties are performed.

63 (19) "Partially disabled" means an employee's inability, on a probable permanent basis,
64 to perform the essential duties of a law-enforcement officer by reason of any medically
65 determinable physical or mental impairment which has lasted or can be expected to last for a
66 continuous period of not less than 12 months, but which impairment does not preclude the
67 employee from engaging in other types of nonlaw-enforcement employment.

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

71 (21) "Plan year" means the 12-month period commencing on July 1 of any designated
72 year and ending the following June 30.

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

78 (23) "Required beginning date" means April 1 of the calendar year following the later of:
79 (A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age
80 72 (if born after June 30, 1949); or (B) the calendar year in which he or she retires or otherwise
81 separates from service with the agency.

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

84 (25) "Salary" means the compensation of an employee, excluding any overtime payments.

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

87 (27) "Totally disabled" means an employee's probable permanent inability to engage in
88 substantial gainful activity by reason of any medically determined physical or mental impairment
89 that can be expected to result in death or that has lasted or can be expected to last for a
90 continuous period of not less than 12 months. For purposes of this subdivision, an employee is
91 totally disabled only if his or her physical or mental impairments are so severe that he or she is
92 not only unable to perform his or her previous work as an employee of the agency, but also cannot,
93 considering his or her age, education and work experience, engage in any other kind of substantial
94 gainful employment which exists in the state regardless of whether: (A) The work exists in the
95 immediate area in which the employee lives; (B) a specific job vacancy exists; or (C) the employee
96 would be hired if he or she applied for work.

97 (28) "Years of service" means the months of service acquired by a member while in active
98 employment with the agency divided by 12. Years of service shall be calculated in years and
99 fraction of a year from the date of active employment of the member with the agency through the
100 date of termination of employment or retirement from the agency. If a member returns to active
101 employment with the agency following a previous termination of employment with the agency and
102 the member has not received a refund of contributions plus interest for the previous employment
103 under §15-2A-8 of this code, service shall be calculated separately for each period of continuous
104 employment and years of service shall be the total service for all periods of employment. Years
105 of service shall exclude any periods of employment with the agency for which a refund of
106 contributions plus interest has been paid to the member unless the employee repays the previous
107 withdrawal, as provided in §15-2A-8 of this code, to reinstate the years of service.

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

1 (a) Any employee of the agency who has not yet entered retirement status on the basis of
2 age and service and who becomes partially disabled by injury, illness, or disease resulting from
3 any occupational risk or hazard inherent in or peculiar to the services required of employees of
4 the agency or incurred pursuant to or while the employee was engaged in the performance of his
5 or her duties as an employee of the agency shall, if, in the opinion of the board based on a medical
6 examination, he or she is, by reason of that cause, unable to perform adequately the duties
7 required of him or her as an employee of the agency, but is able to engage in other gainful
8 employment in a field other than law enforcement, be retired from active service by the board.
9 The retirant thereafter is entitled to receive annually from the fund in equal monthly installments
10 during his or her lifetime, or until the retirant attains the age of 55 or until the disability eligibility
11 sooner terminates, one or the other of two amounts, whichever is greater:

12 (1) An amount equal to six tenths of the base salary received in the preceding 12-month
13 employment period: *Provided*, That if the member had not been employed with the agency for 12
14 months prior to the disability, the amount of monthly salary shall be annualized for the purpose of
15 determining the benefit; or

16 (2) The sum of \$6,000. The first day of the month following the date in which the retirant
17 attains age 55, the retirant shall receive the benefit provided in section six of this article as it would
18 apply to his or her final average salary based on earnings from the agency through the day
19 immediately preceding his or her disability. The recalculation of benefit upon a retirant attaining
20 age 55 shall be considered to be a retirement under the provisions of section six of this article for
21 purposes of determining the amount of annual annuity adjustment and for all other purposes of
22 this article: *Provided*, That a retirant who is partially disabled under this article may not, while in
23 receipt of benefits for partial disability, be employed as a law-enforcement officer: *Provided*,
24 *however*, That a retirant on a partial disability under this article may serve as an elected sheriff or
25 appointed chief of police in the state without a loss of disability retirement benefits as long as the

26 elected or appointed position is shown, to the satisfaction of the board, to require the performance
27 of administrative duties and functions only, as opposed to the full range of duties of a law-
28 enforcement officer.

29 (b) If, in the opinion of the board based on a medical examination, any member who has
30 not yet entered retirement status on the basis of age and service, and who becomes physically
31 or mentally disabled by injury, illness, or disease on a probable permanent basis resulting from
32 any occupational risk or hazard inherent in or peculiar to the services required of employees of
33 the agency or incurred pursuant to or while the employee was or is engaged in the performance
34 of his or her duties as an employee of the agency to the extent that the employee is incapacitated
35 ever to engage in any gainful employment, the employee is entitled to receive annually, and there
36 shall be paid from the fund in equal monthly installments during his or her lifetime or until the
37 disability sooner terminates, an amount equal to the base salary received by the employee in the
38 preceding full 12-month employment period. Until a member has worked 12 months, the amount
39 of monthly base salary shall be annualized for the purpose of determining the benefit.

40 (c) Disability benefit payments made pursuant to subsection (a) or (b) of this section will
41 begin the first day of the month following board approval and termination of employment or as
42 ordered by a court of competent jurisdiction.

43 (d) The superintendent of the agency may expend moneys from funds appropriated for
44 the agency in payment of medical, surgical, laboratory, x-ray, hospital, ambulance and dental
45 expenses and fees and reasonable costs and expenses incurred in the purchase of artificial limbs
46 and other approved appliances which may be reasonably necessary for any retirant who is
47 temporarily, permanently or totally disabled by injury, illness, or disease resulting from any
48 occupational risk or hazard inherent in or peculiar to the service required of employees of the
49 agency or incurred pursuant to or while the employee was or shall be engaged in the performance
50 of duties as an employee of the agency. Whenever the superintendent determines that any
51 disabled retirant is ineligible to receive any of the benefits in this section at public expense, the

52 superintendent shall, at the request of the disabled retirant, refer the matter to the board for
53 hearing and final decision. In no case will the compensation rendered to health care providers for
54 medical and hospital services exceed the then current rate schedule approved by the West
55 Virginia Insurance Commission. Upon termination of employment and receipt of properly
56 executed forms from the agency and the member, the board shall process the member's disability
57 retirement benefit and commence annuity 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
2 different meaning:

3 (a) "Accrued benefit" means on behalf of any member two and six-tenths percent per year
4 of the member's final average salary for the first 20 years of credited service. Additionally, two
5 percent per year for 21 through 25 years and one and one-half percent per year for each year
6 over 25 years will be credited with a maximum benefit of 67 percent. A member's accrued benefit
7 may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the
8 provisions of §16-5V-12 of this code.

9 (1) The board may, upon the recommendation of the board's actuary, increase the
10 employees' contribution rate to 10 and five-tenths percent should the funding of the plan not reach
11 70 percent funded by July 1, 2012. The board shall decrease the contribution rate to eight and
12 one-half percent once the plan funding reaches the 70 percent support objective as of any later
13 actuarial valuation date.

14 (2) Upon reaching the 75 percent actuarial funded level, as of an actuarial valuation date,
15 the board shall increase the two and six-tenths percent to two and three-quarter percent for the

16 first 20 years of credited service. The maximum benefit will also be increased from 67 percent to
17 90 percent.

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

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

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

28 (e) "Annual compensation" means the wages paid to the member during covered
29 employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined
30 without regard to any rules that limit the remuneration included in wages based upon the nature
31 or location of employment or services performed during the plan year plus amounts excluded
32 under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense
33 allowances, cash, or noncash fringe benefits or both, deferred compensation and welfare benefits.
34 Annual compensation for determining benefits during any determination period may not exceed
35 the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of
36 this code and Section 401(a)(17) of the Internal Revenue Code.

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

38 (g) "Annuity starting date" means the first day of the month for which an annuity is payable
39 after submission of a retirement application. For purposes of this subsection, if retirement income
40 payments commence after the normal retirement age, "retirement" means the first day of the
41 month following or coincident with the latter of the last day the member worked in covered

42 employment or the member's normal retirement age and after completing proper written
43 application for retirement on an application supplied by the board.

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

45 (i) "Contributing service" or "contributory service" means service rendered by a member
46 while employed by a participating public employer for which the member made contributions to
47 the plan.

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

49 (k) "Covered employment" means either: (1) Employment as a full-time emergency
50 medical technician, emergency medical technician/paramedic, or emergency medical
51 services/registered nurse and the active performance of the duties required of emergency medical
52 services officers; or (2) the period of time during which active duties are not performed but
53 disability benefits are received under this article; or (3) concurrent employment by an emergency
54 medical services officer in a job or jobs in addition to his or her employment as an emergency
55 medical services officer where the secondary employment requires the emergency medical
56 services officer to be a member of another retirement system which is administered by the
57 Consolidated Public Retirement Board pursuant to this code: *Provided*, That the emergency
58 medical services officer contributes to the fund created in this article the amount specified as the
59 member's contribution in §16-5V-8 of this code.

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

62 (m) "Dependent child" means either:

63 (1) An unmarried person under age 18 who is:

64 (A) A natural child of the member;

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

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

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

70 (2) Any unmarried child under age 23:

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

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

74 (C) Whose relationship with the member is described in paragraph (A), (B) or (C),
75 subdivision (1) of this subsection.

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

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

81 (p) "Early retirement age" means age 45 or over and completion of 20 years of contributory
82 service.

83 (q) "Effective date" means January 1, 2008.

84 (r) "Emergency medical services officer" means an individual employed by the state,
85 county or other political subdivision as a medical professional who is qualified to respond to
86 medical emergencies, aids the sick and injured and arranges or transports to medical facilities,
87 as defined by the West Virginia Office of Emergency Medical Services. This definition is construed
88 to include employed ambulance providers and other services such as law enforcement, rescue
89 or fire department personnel who primarily perform these functions and are not provided any other
90 credited service benefits or retirement plans. These persons may hold the rank of emergency
91 medical technician/basic, emergency medical technician/paramedic, emergency medical
92 services/registered nurse, or others as defined by the West Virginia Office of Emergency Medical
93 Services and the Consolidated Public Retirement Board.

94 (s) "Employer error" means an omission, misrepresentation or deliberate act in violation
95 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or
96 the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
97 Rules by the participating public employer that has resulted in an underpayment or overpayment
98 of contributions required.

99 (t) "Final average salary" means the average of the highest annual compensation received
100 for covered employment by the member during any five consecutive plan years within the
101 member's last 10 years of service while employed, prior to any disability payment. If the member
102 did not have annual compensation for the five full plan years preceding the member's attainment
103 of normal retirement age and during that period the member received disability benefits under this
104 article, then "final average salary" means the average of the monthly salary determined paid to
105 the member during that period as determined under §16-5V-19 of this code multiplied by 12. Final
106 average salary does not include any lump sum payment for unused, accrued leave of any kind or
107 character.

108 (u) "Full-time employment" means permanent employment of an employee by a
109 participating public employer in a position which normally requires 12 months per year service
110 and requires at least 1,040 hours per year service in that position.

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

113 (w) "Hour of service" means:

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

117 (2) Each hour for which a member is paid or entitled to payment for covered employment
118 during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity
119 including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof

120 and without regard to whether the employment relationship has terminated. Hours under this
121 subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A
122 member will not be credited with any hours of service for any period of time he or she is receiving
123 benefits under §16-5V-19 or §16-5V-20 of this code; and

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

130 (x) "Medical examination" means an in-person or virtual examination of a member's
131 physical or mental health, or both, by a physician or physicians selected or approved by the board;
132 or, at the discretion of the board, a medical record review of the member's physical or mental
133 health, or both, by a physician selected or approved by the board.

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

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

144 (aa) "Normal form" means a monthly annuity which is one-twelfth of the amount of the
145 member's accrued benefit which is payable for the member's life. If the member dies before the

146 sum of the payments he or she receives equals his or her accumulated contributions on the
147 annuity starting date, the named beneficiary shall receive in one lump sum the difference between
148 the accumulated contributions at the annuity starting date and the total of the retirement income
149 payments made to the member.

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

151 (1) Attainment of age 50 years and the completion of 20 or more years of regular
152 contributory service, excluding active military duty, disability service and accrued annual and sick
153 leave service;

154 (2) While still in covered employment, attainment of at least age 50 years and when the
155 sum of current age plus regular contributory years of service equals or exceeds 70 years;

156 (3) While still in covered employment, attainment of at least age 60 years and completion
157 of 10 years of regular contributory service; or

158 (4) Attainment of age 62 years and completion of five or more years of regular contributory
159 service.

160 (cc) "Participating public employer" means any county commission or political subdivision
161 in the state which has elected to cover its emergency medical services officers, as defined in this
162 article, under the West Virginia Emergency Medical Services Retirement System.

163 (dd) "Plan" means the West Virginia Emergency Medical Services Retirement System
164 established by this article.

165 (ee) "Plan year" means the 12-month period commencing on January 1 of any designated
166 year and ending the following December 31.

167 (ff) "Political subdivision" means a county, city or town in the state; any separate
168 corporation or instrumentality established by one or more counties, cities or towns, as permitted
169 by law; any corporation or instrumentality supported in most part by counties, cities or towns; and
170 any public corporation charged by law with the performance of a governmental function and
171 whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any

172 public corporation established under §7-15-4 of this code is considered a political subdivision
173 solely for the purposes of this article.

174 (gg) "Public Employees Retirement System" means the West Virginia Public Employee's
175 Retirement System created by West Virginia Code.

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

178 (ii) "Required beginning date" means April 1 of the calendar year following the later of: (1)
179 The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72
180 (if born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise
181 separates from covered employment.

182 (jj) "Retirant" means any member who commences an annuity payable by the plan.

183 (kk) "Retire" or "retirement" means a member's withdrawal from the employ of a
184 participating public employer and the commencement of an annuity by the plan.

185 (ll) "Retirement income payments" means the monthly retirement income payments
186 payable under the plan.

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

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

191 (oo) "Totally disabled" means a member's inability to engage in substantial gainful activity
192 by reason of any medically determined physical or mental impairment that can be expected to
193 result in death or that has lasted or can be expected to last for a continuous period of not less
194 than 12 months.

195 For purposes of this subsection:

196 (1) A member is totally disabled only if his or her physical or mental impairment or
197 impairments is so severe that he or she is not only unable to perform his or her previous work as

198 an emergency medical services officer but also cannot, considering his or her age, education and
199 work experience, engage in any other kind of substantial gainful employment which exists in the
200 state regardless of whether: (A) The work exists in the immediate area in which the member lives;
201 (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.
202 For purposes of this article, substantial gainful employment is the same definition as used by the
203 United States Social Security Administration.

204 (2) "Physical or mental impairment" is an impairment that results from an anatomical,
205 physiological or psychological abnormality that is demonstrated by medically accepted clinical
206 and laboratory diagnostic techniques. The board may require submission of a member's annual
207 tax return for purposes of monitoring the earnings limitation.

208 (pp) "Year of service" means a member shall, except in his or her first and last years of
209 covered employment, be credited with years of service credit based upon the hours of service
210 performed as covered employment and credited to the member during the plan year based upon
211 the following schedule:

Hours of Service	Years of Service Credited
Less than 500	0
500 to 999	1/3
1,000 to 1499	2/3
1,500 or more	1

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

215 member is not entitled to credit for years of service for any time period during which he or she
216 received disability payments under §16-5V-19 or §16-5V-20 of this code. Except as specifically
217 excluded, years of service include covered employment prior to the effective date.

218 Years of service which are credited to a member prior to his or her receipt of accumulated
219 contributions upon termination of employment pursuant to §16-5V-18 of this code or §5-10-30 of
220 this code, shall be disregarded for all purposes under this plan unless the member repays the
221 accumulated contributions with interest pursuant to section §16-5V-18 of this code or has prior to
222 the effective date made the repayment pursuant to §5-10-18 of this code.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

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

2 "Accumulated contributions" means all deposits and all deductions from the gross salary
3 of a contributor plus regular interest.

4 "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf
5 of a retired member.

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

12 "Annuities" means the annual retirement payments for life granted beneficiaries in
13 accordance with this article.

14 "Average final salary" means the average of the five highest fiscal year salaries earned as
15 a member within the last 15 fiscal years of total service credit, including military service as
16 provided in this article, or if total service is less than 15 years, the average annual salary for the
17 period on which contributions were made: *Provided*, That salaries for determining benefits during
18 any determination period may not exceed the maximum compensation allowed as adjusted for
19 cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal
20 Revenue Code.

21 "Beneficiary" means the recipient of annuity payments made under the retirement system.

22 "Contributor" means a member of the retirement system who has an account in the
23 Teachers Accumulation Fund.

24 "Deposit" means a voluntary payment to his or her account by a member.

25 "Employer" means the agency of and within the state which has employed or employs a
26 member.

27 "Employer error" means an omission, misrepresentation, or deliberate act in violation of
28 relevant provisions of the West Virginia Code, or of the West Virginia Code of State Regulations,
29 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
30 Regulations by the participating public employer that has resulted in an underpayment or
31 overpayment of contributions required.

32 "Employment term" means employment for at least 10 months, a month being defined as
33 20 employment days.

34 "Gross salary" means the fixed annual or periodic cash wages paid by a participating
35 public employer to a member for performing duties for the participating public employer for which
36 the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the
37 work was done. Gross salary also includes retroactive payments made to a member to correct a
38 clerical error, or made pursuant to a court order or final order of an administrative agency charged
39 with enforcing federal or state law pertaining to the member's rights to employment or wages, with

40 all retroactive salary payments to be allocated to and considered paid in the periods in which the
41 work was or would have been done. Gross salary does not include lump sum payments for
42 bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind
43 including, but not limited to, transportation allowances, automobiles or automobile allowances, or
44 lump sum payments for unused, accrued leave of any type or character.

45 "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been
46 amended.

47 "Medical examination" means an in-person or virtual examination of a member's physical
48 or mental health, or both, by a physician or physicians selected or approved by the board; or, at
49 the discretion of the board, a medical record review of the member's physical or mental health, or
50 both, by a physician selected or approved by the board.

51 "Member" means any person who has accumulated contributions standing to his or her
52 credit in the State Teachers Retirement System. A member shall remain a member until the
53 benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of
54 membership pursuant to §18-7A-13 of this code.

55 "Members of the administrative staff of the public schools" means deans of instruction,
56 deans of men, deans of women, and financial and administrative secretaries.

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

60 "New entrant" means a teacher who is not a present teacher.

61 "Nonteaching member" means any person, except a teacher member, who is regularly
62 employed for full-time service by: (A) Any county board of education or educational services
63 cooperative; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D)
64 the West Virginia Council for Community and Technical College Education; (E) a governing board,
65 as defined in §18B-1-2 of this code; or (F) a public charter school established pursuant to §18-

66 5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant
67 to §18-5G-7 of this code a determination to participate in the retirement systems under this article
68 and §18-7B-1 *et seq.* of this code, subject to §18-7B-7a: *Provided*, That any person whose
69 employment with the Higher Education Policy Commission, the West Virginia Council for
70 Community and Technical College Education, or a governing board commences on or after July
71 1, 1991, is not considered a nonteaching member.

72 "Plan year" means the 12-month period commencing on July 1 and ending the following
73 June 30 of any designated year.

74 "Present member" means a present teacher or nonteacher who is a member of the
75 retirement system.

76 "Present teacher" means any person who was a teacher within the 35 years beginning
77 July 1, 1934, and whose membership in the retirement system is currently active.

78 "Prior service" means all service as a teacher completed prior to July 1, 1941, and all
79 service of a present member who was employed as a teacher and did not contribute to a
80 retirement account because he or she was legally ineligible for membership during the service.

81 "Public schools" means all publicly supported schools, including colleges and universities
82 in this state.

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

86 "Regular interest" means interest at four percent compounded annually, or a higher
87 earnable rate if set forth in the formula established in legislative rules, series seven of the
88 Consolidated Public Retirement Board, 162 CSR 7.

89 "Regularly employed for full-time service" means employment in a regular position or job
90 throughout the employment term regardless of the number of hours worked or the method of pay.

91 "Required beginning date" means April 1 of the calendar year following the later of: (A)
92 The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72
93 (if born after June 30, 1949); or (B) the calendar year in which the member retires or ceases
94 covered employment under the retirement system.

95 "Retirant" means any member who commences an annuity payable by the retirement
96 system.

97 "Retirement board" means the Consolidated Public Retirement Board created pursuant to
98 §5-10D-1 *et seq.* of this code.

99 "Retirement system" means the State Teachers Retirement System established by this
100 article.

101 "Teacher member" means the following persons, if regularly employed for full-time service:

102 (A) Any person employed for instructional service in the public schools of West Virginia; (B)
103 principals; (C) public school librarians; (D) superintendents of schools and assistant county
104 superintendents of schools; (E) any county school attendance director holding a West Virginia
105 teacher's certificate; (F) members of the research, extension, administrative, or library staffs of
106 the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the
107 divisions under his or her supervision, or any other employee under the state superintendent
108 performing services of an educational nature; (H) employees of the State Board of Education who
109 are performing services of an educational nature; (I) any person employed in a nonteaching
110 capacity by the State Board of Education, any county board of education, the State Department
111 of Education, or the State Teachers Retirement Board, if that person was formerly employed as
112 a teacher in the public schools; (J) all classroom teachers, principals, and educational
113 administrators in schools under the supervision of the Division of Corrections and Rehabilitation,
114 the Division of Health, or the Division of Human Services; (K) an employee of the State Board of
115 School Finance, if that person was formerly employed as a teacher in the public schools; (L)
116 employees of an educational services cooperative who are performing services of an educational

117 nature; (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of
118 this code who elects to remain a member of the State Teachers Retirement System provided in
119 this article; and (N) any person employed by a public charter school established pursuant to §18-
120 5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant
121 to §18-5G-7 of this code a determination to participate in the retirement systems under this article
122 and §18-7B-1 *et seq.* of this code.

123 "Total service" means all service as a teacher or nonteacher while a member of the
124 retirement system since last becoming a member and, in addition thereto, credit for prior service,
125 if any.

126 Age in excess of 70 years shall be considered to be 70 years.

§18-7A-25. Eligibility for retirement allowance.

1 (a) Except for a person who first becomes a member of the retirement system on or after
2 July 1, 2015, any actively contributing member who has attained the age of 60 years or any
3 member who has 35 years of total service as a teacher or nonteaching member in West Virginia,
4 regardless of age, is eligible for an annuity. No new entrant nor present member is eligible for an
5 annuity, however, if either has less than five years of service to his or her credit: *Provided*, That
6 on and after July 1, 2013, any person who becomes a new member of this retirement system
7 shall, in qualifying for retirement under this section, have five or more years of contributory service,
8 all of which shall be actual, contributory ones.

9 (b) Except for a person who first becomes a member of the retirement system on or after
10 July 1, 2015, any member who has attained the age of 55 years and who has served 30 years as
11 a teacher or nonteaching member in West Virginia is eligible for an annuity.

12 (c) Except for a person who first becomes a member of the retirement system on or after
13 July 1, 2015, any member who has served at least 30 but less than 35 years as a teacher or
14 nonteaching member in West Virginia and is less than 55 years of age is eligible for an annuity,

15 but the annuity shall be the reduced actuarial equivalent of the annuity the member would have
16 received if the member were age 55 at the time the annuity was applied for.

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

20 (e) A member is eligible for annuity for disability if he or she satisfies the conditions in
21 either subdivision (1) or (2) of this subsection and meets the conditions of subdivision (3) of this
22 subsection as follows:

23 (1) His or her service as a teacher or nonteaching member in West Virginia must total at
24 least 10 years and service as a teacher or nonteaching member must have been terminated
25 because of disability, which disability must have caused absence from service for at least six
26 months before his or her application for disability annuity is approved.

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

32 (3) A medical examination by a physician or physicians selected by the retirement board
33 must show that the member is at the time mentally or physically incapacitated for service as a
34 teacher or nonteaching member, that for that service the disability is total and likely to be
35 permanent and that he or she should be retired in consequence of the disability.

36 (f) Continuance of the disability of the retirant shall be established by medical examination,
37 as prescribed in subdivision (3), subsection (e) of this section, annually for five years after
38 retirement, and thereafter at such times required by the retirement board. Effective July 1, 1998,
39 a member who has retired because of a disability may select an option of payment under the
40 provisions of §18-7A-28: *Provided*, That any option selected under the provisions of §18-7A-28

41 shall be in all respects the actuarial equivalent of the straight life annuity benefit the disability
42 retirant receives or would receive if the options under said section were not available and that no
43 beneficiary or beneficiaries of the disability retirant may receive a greater benefit, nor receive any
44 benefit for a greater length of time, than the beneficiary or beneficiaries would have received had
45 the disability retirant not made any election of the options available under said section. In
46 determining the actuarial equivalence, the retirement board shall take into account the life
47 expectancies of the member and the beneficiary: *Provided, however,* That the life expectancies
48 may at the discretion of the retirement board be established by an underwriting medical director
49 of a competent insurance company offering annuities. Payment of the disability annuity provided
50 in this article shall cease immediately if the retirement board finds that the disability of the retirant
51 no longer exists, or if the retirant refuses to submit to medical examination as required by this
52 section.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 18. WEST VIRGINIA DIVISION OF NATURAL RESOURCES POLICE OFFICER RETIREMENT SYSTEM.

§20-18-2. Definitions.

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

3 (a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the
4 member's final average salary multiplied by the member's years of credited service: *Provided,*
5 That members who retire after July 1, 2025, shall have an accrued benefit of two and one-half
6 percent of the member's final average salary multiplied by the member's years of credited service.
7 A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue
8 Code and is subject to the provisions of §20-18-13 of this code.

9 (b) "Accumulated contributions" means the sum of all amounts deducted from the annual
10 compensation of a member or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code,
11 either pursuant to §20-18-8(a) or §5-10-29 of this code as a result of covered employment
12 together with regular interest on the deducted amounts.

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

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

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

24 (f) "Annual compensation" means the wages paid to the member during covered
25 employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined
26 without regard to any rules that limit the remuneration included in wages based upon the nature
27 or location of employment or services performed during the plan year plus amounts excluded
28 under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense
29 allowances, cash or noncash fringe benefits or both, deferred compensation, and welfare benefits.
30 Annual compensation for determining benefits during any determination period may not exceed
31 the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of
32 this code and Section 401(a)(17) of the Internal Revenue Code.

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

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

37 (i) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity
38 or other benefit payable by the plan.

39 (j) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-
40 1 *et seq.* of this code.

41 (k) "Covered employment" means either: (1) Employment as a Natural Resources Police
42 Officer and the active performance of the duties required of a Natural Resources Police Officer;
43 (2) the period of time which active duties are not performed but disability benefits are received
44 under §20-18-21 or §20-18-22 of this code; or (3) concurrent employment by a Natural Resources
45 Police Officer in a job or jobs in addition to his or her employment as a Natural Resources Police
46 Officer where the secondary employment requires the Natural Resources Police Officer to be a
47 member of another retirement system which is administered by the Consolidated Public
48 Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the Natural
49 Resources Police Officer contributes to the fund created in §20-18-7 of this code the amount
50 specified as the Natural Resource Police Officer's contribution in §20-18-8 of this code.

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

53 (m) "Dependent child" means either:

54 (1) An unmarried person under age 18 who is:

55 (A) A natural child of the member;

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

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

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

61 (2) Any unmarried child under age 23:

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

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

65 (C) Whose relationship with the member is described in subparagraph (A), (B), or (C),
66 paragraph (1) of this subdivision.

67 (n) "Dependent parent" means the father or mother of the member who was claimed as a
68 dependent by the member for Federal Income Tax purposes at the time of the member's death.

69 (o) "Director" means Director of the Division of Natural Resources.

70 (p) "Disability service" means service credit received by a member, expressed in whole
71 years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both,
72 during which time a member receives disability benefits under §20-18-21 or §20-18-22 of this
73 code.

74 (q) "Division of Natural Resources" or "division" means the West Virginia Division of
75 Natural Resources.

76 (r) "Effective date" means January 2, 2021.

77 (s) "Employer error" means an omission, misrepresentation, or deliberate act in violation
78 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or
79 the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
80 Rules by the participating public employer that has resulted in an underpayment or overpayment
81 of contributions required.

82 (t) "Final average salary" means the average of the highest annual compensation received
83 for covered employment by the member during any five consecutive plan years within the
84 member's last 10 years of service. If the member did not have annual compensation for the five

85 full plan years preceding the member's attainment of normal retirement age and during that period
86 the member received disability benefits under §20-18-21 or §20-18-22 of this code then "final
87 average salary" means the average of the monthly salary determined paid to the member during
88 that period determined as if the disability first commenced after the effective date of this article
89 with monthly compensation equal to that average monthly compensation which the member was
90 receiving in the plan year prior to the initial disability multiplied by 12.

91 (u) "Fund" means the West Virginia Natural Resources Police Officer Retirement Fund
92 created pursuant to §20-18-7 of this code.

93 (v) "Hour of service" means:

94 (1) Each hour for which a member is paid;

95 (2) Each hour for which a member is paid but where no duties are performed due to
96 vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of
97 absence, or any combination thereof, and without regard to whether the employment relationship
98 has terminated. Hours under this paragraph shall be calculated and credited pursuant to West
99 Virginia Division of Labor rules. A member will not be credited with any hours of service for any
100 period of time he or she is receiving benefits under §20-18-21 or §20-18-22 of this code; and

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

106 (w) "Medical examination" means an in-person or virtual examination of a member's
107 physical or mental health, or both, by a physician or physicians selected or approved by the board;
108 or, at the discretion of the board, a medical record review of the member's physical or mental
109 health, or both, by a physician selected or approved by the board.

110 (x) "Member" means a person first hired as a Natural Resources Police Officer, as defined
111 in subsection (z) of this section, on or after January 2, 2021, or a Natural Resources Police Officer
112 first hired prior to the effective date and who elects to become a member pursuant to §20-18-6 of
113 this code. A member shall remain a member until the benefits to which he or she is entitled under
114 this article are paid or forfeited or until cessation of membership pursuant to §20-18-6 of this code.

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

117 (z) "Natural Resources Police Officer" means any person regularly employed in the service
118 of the division as a law-enforcement officer on or after the effective date of this article, and who
119 is eligible to participate in the fund. The term shall not include Emergency Natural Resources
120 Police Officers as defined in §20-7-1(c) of this code, Special Natural Resources Police Officers
121 as defined in §20-7-1(d) of this code, Forestry Special Natural Resources Police Officers as
122 defined in §20-7-1(e) of this code, or Federal Law Enforcement Officer as defined in §20-7-1b of
123 this code.

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

130 (bb) "Normal retirement age" means the first to occur of the following: (1) Attainment of
131 age 55 years and the completion of 15 or more years of service; (2) while still in covered
132 employment, attainment of at least age 55 years, and when the sum of current age plus years of
133 service equals or exceeds 70 years; or (3) attainment of at least age 62 years, and completion of
134 10 years of service: *Provided*, That any member shall in qualifying for retirement pursuant to this
135 article have 10 or more years of service, all of which years shall be actual, contributory ones.

136 (cc) "Partially disabled" means a member's inability to engage in the duties of a Natural
137 Resources Police Officer by reason of any medically determinable physical or mental impairment
138 that can be expected to result in death or that has lasted or can be expected to last for a
139 continuous period of not less than 12 months. A member may be determined partially disabled
140 for the purposes of this article and maintain the ability to engage in other gainful employment
141 which exists within the state but which ability would not enable him or her to earn an amount at
142 least equal to two thirds of the average annual compensation earned by all active members of
143 this plan during the plan year ending as of the most recent June 30, as of which plan data has
144 been assembled and used for the actuarial valuation of the plan.

145 (dd) "Plan" means the West Virginia Natural Resources Police Officers Retirement System
146 established by this article.

147 (ee) "Plan year" means the 12-month period commencing on July 1 of any designated
148 year and ending the following June 30.

149 (ff) "Public Employees Retirement System" means the West Virginia Public Employees
150 Retirement System created by §5-10-1 *et seq.* of this code.

151 (gg) "Qualified public safety employee" means any employee of the division who provides
152 police protection, fire-fighting services, or emergency medical services for any area within the
153 jurisdiction of the state or political subdivision, or such other meaning given to the term by Section
154 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they
155 may be amended from time to time.

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

158 (ii) "Required beginning date" means April 1 of the calendar year following the later of: (i)
159 The calendar year in which the member attains age 72; or (ii) the calendar year in which the
160 member retires or otherwise separates from covered employment.

161 (jj) "Retirant" means any member who commences an annuity payable by the retirement
162 system.

163 (kk) "Retire" or "retirement" means a member's termination from the employ of a
164 participating public employer and the commencement of an annuity by the plan.

165 (ll) "Retirement income payments" means the annual retirement income payments
166 payable under the plan.

167 (mm) "Substantial gainful employment" or "gainful employment" means employment in
168 which an individual may earn up to an amount that is determined by the United States Social
169 Security Administration as substantial gainful activity and still receive total disability benefits.

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

172 (oo) "Totally disabled" means a member's inability to engage in substantial gainful activity
173 by reason of any medically determined physical or mental impairment that can be expected to
174 result in death or that has lasted or can be expected to last for a continuous period of not less
175 than 12 months. For purposes of this subdivision:

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

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

187 (pp) *Year of service.* — A member shall, except in his or her first and last years of covered
188 employment, or within the plan year of the effective date, be credited with year of service credit,
189 based upon the hours of service performed as covered employment and credited to the member
190 during the plan year based upon the following schedule:

191 Hours of Service Years of Service Credited

192 Less than 500 0

193 500 to 999 1/3

194 1,000 to 1,499 2/3

195 1,500 or more 1

196 During a member's first and last years of covered employment or within the plan year of
197 the effective date, the member shall be credited with one-twelfth of a year of service for each
198 month during the plan year in which the member is credited with an hour of service. A member is
199 not entitled to credit for years of service for any time period during which he or she received
200 disability payments under §20-18-21 or §20-18-22 of this code. Except as specifically excluded,
201 years of service include covered employment prior to the effective date. Years of service which
202 are credited to a member prior to his or her receipt of accumulated contributions upon termination
203 of employment pursuant to §20-18-20 or §5-10-30 of this code, shall be disregarded for all
204 purposes under this plan unless the member repays the accumulated contributions with interest
205 pursuant to §20-18-20 of this code or had prior to the effective date made the repayment pursuant
206 to §5-10-18 of this code.

§20-18-21. Award and benefits for disability – Duty related.

- 1 (a) Any member who after the effective date of this article and during covered employment:
- 2 (1) Has been or becomes either totally or partially disabled by injury, illness, or disease; and (2)
- 3 the disability is a result of an occupational risk or hazard inherent in or peculiar to the services
- 4 required of members; or (3) the disability was incurred while performing law-enforcement
- 5 functions during either scheduled work hours or at any other time; and (4) in the opinion of two

6 physicians based on a medical examination, one of whom shall be named by the board and one
7 by the member, the member is by reason of the disability unable to perform adequately the duties
8 required of a Natural Resources Police Officer, is entitled to receive and shall be paid from the
9 fund in monthly installments the compensation under either subsection (b) or (c) of this section.

10 (b) If the member is totally disabled, the member shall receive 90 percent of his or her
11 average full monthly compensation for the 12-month contributory period preceding the member's
12 disability award, or the shorter period if the member has not worked 12 months.

13 (c) If the member is partially disabled, the member shall receive 45 percent of his or her
14 average full monthly compensation for the 12-month contributory period preceding the member's
15 disability award, or the shorter period if the member has not worked 12 months.

16 (d) If the member remains partially disabled until attaining 60 years of age, the member
17 shall then receive the retirement benefit provided in §20-18-18 and §20-18-19 of this code with
18 the accrued benefit being computed with the multiplier in effect as of his or her effective date of
19 retirement.

20 (e) The disability benefit payments will begin the first day of the month following
21 termination of employment and receipt of the disability retirement application by the Consolidated
22 Public Retirement Board.

§20-18-22. Award and benefits for disability – Due to other causes.

1 (a) Any member with 10 or more years of contributing service and who after the effective
2 date of this article and during covered employment: (1) Has been or becomes totally or partially
3 disabled from any cause other than those set forth in §20-18-21 of this code and not due to vicious
4 habits, intemperance, or willful misconduct on his or her part; and (2) in the opinion of two
5 physicians based on a medical examination, one of whom shall be named by the board and one
6 by the member, he or she is by reason of the disability unable to perform adequately the duties
7 required of a Natural Resources Police Officer, is entitled to receive and shall be paid from the

8 fund in monthly installments the compensation set forth in either subsection (b) or (c) of this
9 section.

10 (b) If the member is totally disabled, he or she shall receive 66 and two-thirds percent of
11 his or her average full monthly compensation for the 12-month contributory period preceding the
12 disability award, or the shorter period, if the member has not worked 12 months.

13 (c) If the member is partially disabled, he or she shall receive 33 and one-third percent of
14 his or her average full monthly compensation for the 12-month contributory period preceding the
15 disability award, or the shorter period, if the member has not worked 12 months.

16 (d) If the member remains disabled until attaining 60 years of age, then the member shall
17 receive the retirement benefit provided in §20-18-18 and §20-18-19 of this code with the accrued
18 benefit being computed with the multiplier in effect as of his or her effective date of retirement.

19 (e) The board shall propose legislative rules for promulgation in accordance with the
20 provisions of §29A-3-1 *et seq.* of this code concerning member disability payments so as to
21 ensure that the payments do not exceed 100 percent of the average current salary for the position
22 last held by the member.

23 (f) The disability benefit payments will begin the first day of the month following termination
24 of employment and receipt of the disability retirement application by the Consolidated Public
25 Retirement Board.

The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.

Joe Lavin
.....
Clerk of the Senate

Steve Harris
.....
Clerk of the House of Delegates

FILED
2023 MAR 23 P 3:39
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Originated in the Senate.

In effect 90 days from passage.

C. P. Bell
.....
President of the Senate

Ray Hensley
.....
Speaker of the House of Delegates

The within is *approved* this the *23rd*
Day of *March*, 2023.

James Justice
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 09 2023

Time 1:04 pm