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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005

ENROLLED

House Bill No. 2984

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

Passed April 9, 2005

In Effect from Passage

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E N R O L L E D

H. B. 2984

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)

[BY REQUEST OF THE EXECUTIVE]

[Passed April 9, 2005; in effect from passage]

AN ACT to amend and reenact §5-5-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-10-2, §5-10-15, §5-10-17, §5-10-21, §5-10-22, §5-10-23, §5-10-26, §5-10-27, §5-10-31 and §5-10-44 of said code; to amend said code by adding thereto a new section, designated §5-10-22h; to amend and reenact §5-10A-2 and §5-10A-3 of said code; to amend said code by adding thereto a new section, designated §5-10A-11; to amend and reenact §7-14D-5, §7-14D-7, §7-14D-13 and §7-14D-23 of said code; to amend and reenact §12-8-2, §12-8-3, §12-8-4, §12-8-5, §12-8-6, §12-8-7, §12-8-8 and §12-8-10 of said code; to amend said code by adding thereto a new section designated §12-8-15; to amend and reenact §15-2-26, §15-2-27, §15-2-27a, §15-2-28, §15-2-29, §15-2-30, §15-2-31, §15-2-32, §15-2-33, §15-2-34 and §15-2-37 of said code; to amend said code by adding thereto four new sections, designated §15-2-25b, §15-2-31a, §15-2-31b and §15-2-39a; to amend and reenact §15-2A-2, §15-2A-5, §15-2A-6, §15-2A-7, §15-2A-8, §15-2A-9, §15-2A-10, §15-2A-11, §15-2A-12, §15-2A-13, §15-2A-14 and §15-2A-19 of said code; to amend said code by adding thereto four new sections,

designated §15-2A-11a, §15-2A-11b, §15-2A-21 and §15-2A-22; to amend and reenact §18-7A-3, §18-7A-14, §18-7A-17, §18-7A-18, §18-7A-18a, §18-7A-23a, §18-7A-25, §18-7A-26 and §18-7A-34 of said code; to amend said code by adding thereto three new sections, designated §18-7A-28e, §18-7A-39 and §18-7A-40; to amend and reenact §18-7B-2, §18-7B-7, §18-7B-9, §18-7B-11, §18-7B-12a and §18-7B-16 of said code; to amend and reenact said code by adding thereto two new sections, designated §18-7B-7a and §18-7B-20; to amend said code by adding thereto a new article, designated §18-7C-1, §18-7C-2, §18-7C-3, §18-7C-4, §18-7C-5, §18-7C-6, §18-7C-7, §18-7C-8, §18-7C-9, §18-7C-10, §18-7C-11, §18-7C-12, §18-7C-13 and §18-7C-14; and to amend said code by adding thereto a new section, designated §51-9-6c, all relating to state pensions and retirement generally; providing comprehensive changes to certain plans administered by the Consolidated Public Retirement Board; enacting the Governor's Pension Reform Act of 2005; rights of members' unused, accrued leave in final average salary in the Public Employees Retirement System; limitations on benefit increases; bond pledges and covenants regarding unfunded liabilities; limiting time for amortization; amending and adding definitions in the Public Employees Retirement System; clarifying use of restricted qualified military service credit to one retirement system; vesting of retirement benefits for those members of the armed forces accumulating nine or more years of credited service who are called from participating employment to compulsory military service or armed conflict and who die during, or as a result of, compulsory active service and prior to resumption of participating employment; setting time limit on application; restricting certain rights of members to select a plan beneficiary; establishing a cap on the amount certain persons may receive from the Public Employees Retirement System where that person is also receiving a pension from another pension or retirement system administered by the Consolidated Public Retirement Board; authorizing annual physician review and requiring an annual statement of earnings

from certain persons receiving disability retirement payments; providing for suspension of benefits upon failure of disability retiree to furnish certain information; providing that interest is to be included in the calculation of terminal benefits payable as the result of death of retired participants; addressing the correction of employer errors; clarifying use of members' unused, accrued leave in final average salary; making technical corrections to the Public Employees Retirement System; amending the definitions of less than honorable service and retirement plan; increasing the time to issue notice to terminate benefits; requiring prosecuting attorneys to notify retirement board of any convictions or pleas to less than honorable service; declaring policy and making legislative findings regarding pension liability redemption; setting forth definitions; providing for issuance of bonds; method of bond issuance and sale of bonds; use of bond proceeds; continuation of Pension Liability Redemption Fund and disbursements therefrom; setting forth state pledges and covenants; operation of article; relating to the Deputy Sheriff Retirement System; concurrent contributions by members and employers; credit for nondeputy sheriff service in the Public Employees Retirement System prior to transfer; treatment of withdrawals not repaid prior to transfer; providing that any person becoming a member of the Deputy Sheriff Retirement System after the first day of July, two thousand five, may not borrow from that plan; relating to the West Virginia State Police Death, Disability and Retirement Fund generally; adding general definitions to the West Virginia State Police Death, Disability and Retirement Fund; adding definitions of "law-enforcement officer", "partially disabled", "totally disabled" and "physical or mental impairment" to the West Virginia State Police Death, Disability and Retirement Fund; making technical changes in to the West Virginia State Police Death, Disability and Retirement Fund; providing for probable permanent disability status; specifying that total disability now is inability to perform any substantial gainful employment and that partial disability is inability to perform law enforcement duties;

specifying limitation on compensation rendered to health care providers; providing that member receiving annuity for partial disability incurred in performance of duty may be employed as an elected sheriff or appointed chief of police if it is shown to the Board that such employment is not inconsistent with the partial disability; allowing application for disability to be made by person acting on member's behalf; allowing Superintendent to petition Board for member's disability when he or she deems the member disabled; authorizing rules; judicial review; allowing Board to withhold payment pending judicial review; requiring disability recipient to file annual statement of earnings and setting forth penalty for refusal or failure to do so; annual report of employer's disability retirement experience in to the West Virginia State Police Death, Disability and Retirement Fund; limitation on benefit increases; relating to amending definitions in the West Virginia State Police Retirement System; determination of contributions; acquiring retirement credited service through member's use of accrued annual or sick leave days in the West Virginia State Police Retirement System; establishing starting date for payment of annuity in the West Virginia State Police Retirement System; clarifying disability provisions and technical corrections in the West Virginia State Police Retirement System; annual report of employer's disability retirement experience in to the West Virginia State Police Retirement System; limitation on benefit increases; amending provisions relating to the State Teachers Retirement System; amending, adding and alphabetizing the definitions; providing for the use of qualified military service in the State Teachers Retirement System; providing that in the case of deceased retired participants that interest is to be included in the calculation of terminal benefits payable and making other technical modifications in the State Teachers Retirement System; clarifying provisions for loan repayment in the State Teachers Retirement System; replacing earnable compensation with gross salary in the State Teachers Retirement System; clarifying maximum loan amount and making

technical corrections in the State Teachers Retirement System; making technical corrections to the Teachers Retirement System; creating the Teachers Employers Contribution Collection Account; monies to be deposited and transfer of monies in account; continuing the Teachers Retirement System Fund; monies to be deposited and use of monies in fund; discontinuing the loan program participation of teachers and nonteachers who become members of the Teachers Retirement System on or after the first day of July, two thousand five; limitation on benefits; creating Employee Pension and Health Care Benefits Fund; moneys to be deposited; use of moneys in fund; amending certain definitions in the Teachers' Defined Contribution System; clarifying participation requirement in the Teachers' Defined Contribution System; providing employer deadlines for deposit of contributions in the Teachers Defined Contribution System; establishing when payments are to be made into and out of the suspension account in the Teachers Defined Contribution System; adding the Internal Revenue Service provisions concerning incidental death benefits in the Teachers Defined Contribution System; clarifying that all years of employee service will be counted for vesting purposes in the Teachers Defined Contribution System; prohibiting involuntary cash-outs effective the thirtieth day of June, two thousand five; making technical corrections in the Teachers Defined Contribution System; requiring River Valley Child Development Services to offer pension plan for employees; allowing employees to withdraw from PERS; requiring notice; relating to the merger and consolidation of the Teachers Defined Contribution Retirement System and the State Teachers Retirement System generally; closing the Teachers Defined Contribution Retirement System to newly hired personnel; providing legislative findings and purpose; providing definitions; providing for merger and consolidation of the Teachers Defined Contribution Retirement System and the State Teachers Retirement System upon election; providing responsibilities of the Consolidated Public Retirement Board; setting forth

dates and time periods for transition and election; requiring that increase of or new benefits to the Teachers Retirement System be amortized over a ten-year time period; providing for education about election and merger for members; requiring legal notice to members; providing for transfer of assets from the Teachers Defined Contribution Retirement System to the State Teachers Retirement System upon favorable vote for consolidation and merger; providing that the Teachers Defined Contribution Retirement System shall not exist upon favorable vote for consolidation and merger; setting forth terms of merger and consolidation of the Teachers Defined Contribution Retirement System and the State Teachers Retirement System; providing for service credit in the State Teachers Retirement; requiring members of Teachers Defined Contribution Plan to pay additional amount to receive credit upon merger; providing options and loans for members moving to the remaining plan; providing service credit for transferring member; addressing withdrawals and cash outs; providing for election on the question of merger and consolidation of the Teachers Defined Contribution Retirement System and the State Teachers Retirement System; setting forth requirements of election; allowing Consolidated Public Retirement Board to contract directly for professional services for purposes of performing its responsibilities related to the merger and consolidation and conducting the election; permitting only one election; addressing qualified domestic relations orders; providing for vesting of members and minimum guarantees of benefits for them; providing for due process and right to appeal; providing for nonseverability of the new article; and limitation on benefit increases in Judges' Retirement System.

Be it enacted by the Legislature of West Virginia:

That §5-5-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5-10-2, §5-10-15, §5-10-17, §5-10-21, §5-10-22, §5-10-23, §5-10-26, §5-10-27, §5-10-31 and §5-10-44 of said code be amended and reenacted; that said code be amended by

adding thereto a new section, designated §5-10-22h; that §5-10A-2 and §5-10A-3 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §5-10A-11; that §7-14D-5, §7-14D-7, §7-14D-13 and §7-14D-23 of said code be amended and reenacted; that §12-8-2, §12-8-3, §12-8-4, §12-8-5, §12-8-6, §12-8-7, §12-8-8 and §12-8-10 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §12-8-15; that §15-2-26, §15-2-27, §15-2-27a, §15-2-28, §15-2-29, §15-2-30, §15-2-31, §15-2-32, §15-2-33, §15-2-34 and §15-2-37 of said code be amended and reenacted; that said code be amended by adding thereto four new sections, designated §15-2-25b, §15-2-31a, §15-2-31b and §15-2-39a; that §15-2A-2, §15-2A-5, §15-2A-6, §15-2A-7, §15-2A-8, §15-2A-9, §15-2A-10, §15-2A-11, §15-2A-12, §15-2A-13, §15-2A-14 and §15-2A-19 of said code be amended and reenacted; that said code be amended by adding thereto four new sections, designated §15-2A-11a, §15-2A-11b, §15-2A-21 and §15-2A-22; that §18-7A-3, §18-7A-14, §18-7A-17, §18-7a-18, §18-7a-18a, §18-7A-23a, §18-7A-25, §18-7A-26 and §18-7A-34 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §18-7A-28e, §18-7A-39 and §18-7A-40; that §18-7B-2, §18-7B-7, §18-7B-9, §18-7B-11, §18-7B-12a and §18-7B-16 of code be amended and reenacted; that said code be further amended and reenacted by adding thereto two new sections, designated §18-7B-7a and §18-7B-20; that said code be amended by adding thereto a new article, designated §18-7C-1, §18-7C-2, §18-7C-3, §18-7C-4, §18-7C-5, §18-7C-6, §18-7C-7, §18-7C-8, §18-7C-9, §18-7C-10, §18-7C-11, §18-7C-12, §18-7C-13 and §18-7C-14; and that said code be amended by adding thereto a new section, designated §51-9-6c, all to read as follows:

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

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

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**§5-10-2. Definitions.**

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

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

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

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

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

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

22 (6) "Beneficiary" means any person, except a retirant, who
23 is entitled to, or will be entitled to, an annuity or other benefit
24 payable by the retirement system;

25 (7) "Board of Trustees" or "Board" means the Board of
26 Trustees of the West Virginia Consolidated Public Retirement
27 System;

28 (8) "Compensation" means the remuneration paid a
29 member by a participating public employer for personal

30 services rendered by the member to the participating public
31 employer. In the event a member's remuneration is not all paid
32 in money, his or her participating public employer shall fix the
33 value of the portion of the remuneration which is not paid in
34 money;

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

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

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

63 chapter five of this code, and: *Provided further*, That members
64 of the legislative body of any political subdivision and judges
65 of the State Court of Claims are employees receiving one year
66 of service credit for each one year term served and pro rated
67 service credit for any partial term served, anything contained in
68 this article to the contrary notwithstanding. In any case of doubt
69 as to who is an employee within the meaning of this article, the
70 board of trustees shall decide the question;

71 (12) "Employer error" means an omission, misrepresenta-
72 tion, or violation of relevant provisions of the West Virginia
73 Code or of the West Virginia Code of State Regulations or the
74 relevant provisions of both the West Virginia Code and of the
75 West Virginia Code of State Regulations by the participating
76 public employer that has resulted in an underpayment or
77 overpayment of contributions required. A deliberate act
78 contrary to the provisions of this section by a participating
79 public employer does not constitute employer error.

80 (13) "Final average salary" means either:

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

89 (B) If the member has less than five years of credited
90 service, the average of the annual rate of compensation received
91 by the member during his or her total years of credited service;
92 and in determining the annual compensation, under either
93 paragraph (A) or (B) of this subdivision, of a member of the
94 Legislature who participates in the retirement system as a

95 member of the Legislature in the year one thousand nine
96 hundred seventy-one, or in any year thereafter, his or her actual
97 legislative compensation, (the total of all compensation paid
98 under sections two, three, four and five, article two-a, chapter
99 four of this code), in the year one thousand nine hundred
100 seventy-one, or in any year thereafter, plus any other compensa-
101 tion he or she receives in any year from any other participating
102 public employer including the State of West Virginia, without
103 any multiple in excess of one times his or her actual legislative
104 compensation and other compensation, shall be used: *Provided*,
105 That "final average salary" for any former member of the
106 Legislature or for any member of the Legislature in the year one
107 thousand nine hundred seventy-one, who, in either event, was
108 a member of the Legislature on the thirtieth day of November,
109 one thousand nine hundred sixty-eight, or the thirtieth day of
110 November, one thousand nine hundred sixty-nine, or the
111 thirtieth day of November, one thousand nine hundred seventy,
112 or on the thirtieth day of November in any one or more of those
113 three years and who participated in the retirement system as a
114 member of the Legislature in any one or more of those years
115 means: (i) Either (notwithstanding the provisions of this
116 subdivision preceding this proviso) one thousand five hundred
117 dollars multiplied by eight, plus the highest other compensation
118 the former member or member received in any one of the three
119 years from any other participating public employer including
120 the State of West Virginia; or (ii) "final average salary"
121 determined in accordance with paragraph (A) or (B) of this
122 subdivision, whichever computation produces the higher final
123 average salary (and in determining the annual compensation
124 under (ii) of this proviso, the legislative compensation of the
125 former member shall be computed on the basis of one thousand
126 five hundred dollars multiplied by eight, and the legislative
127 compensation of the member shall be computed on the basis set
128 forth in the provisions of this subdivision immediately preced-
129 ing this proviso or on the basis of one thousand five hundred

130 dollars multiplied by eight, whichever computation as to the
131 member produces the higher annual compensation);

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

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

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

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

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

159 (19) "Political subdivision" means the State of West
160 Virginia, a county, city or town in the state; a school corpora-

161 tion or corporate unit; any separate corporation or instrumental-
162 ity established by one or more counties, cities or towns, as
163 permitted by law; any corporation or instrumentality supported
164 in most part by counties, cities or towns; and any public
165 corporation charged by law with the performance of a govern-
166 mental function and whose jurisdiction is coextensive with one
167 or more counties, cities or towns: *Provided*, That any mental
168 health agency participating in the Public Employees Retirement
169 System before the first day of July, one thousand nine hundred
170 ninety-seven, is considered a political subdivision solely for the
171 purpose of permitting those employees who are members of the
172 Public Employees Retirement System to remain members and
173 continue to participate in the retirement system at their option
174 after the first day of July, one thousand nine hundred ninety-
175 seven: *Provided, however*, That the Regional Community
176 Policing Institute which participated in the Public Employees
177 Retirement System before the first day of July, two thousand,
178 is considered a political subdivision solely for the purpose of
179 permitting those employees who are members of the Public
180 Employees Retirement System to remain members and continue
181 to participate in the Public Employees Retirement System after
182 the first day of July, two thousand;

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

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

189 (22) "Required beginning date" means the first day of April
190 of the calendar year following the later of: (A) The calendar
191 year in which the member attains age seventy and one-half
192 years of age; or (B) the calendar year in which a member who
193 has attained the age seventy and one-half years of age and who

194 ceases providing service covered under this system to a
195 participating employer;

196 (23) "Retirant" means any member who commences an
197 annuity payable by the retirement system;

198 (24) "Retirement" means a member's withdrawal from the
199 employ of a participating public employer and the commence-
200 ment of an annuity by the retirement system;

201 (25) "Retirement system" or "system" means the West
202 Virginia Public Employees Retirement System created and
203 established by this article;

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

215 (27) "Service" means personal service rendered to a
216 participating public employer by an employee of a participating
217 public employer; and

218 (28) "State" means the State of West Virginia.

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

1 (a) (1) The Legislature recognizes the men and women of
2 this state who have served in the Armed Forces of the United
3 States during times of war, conflict and danger. It is the intent

4 of this section to confer military service credit upon persons
5 who are eligible at any time for public employees retirement
6 benefits for any time served in active duty in the Armed Forces
7 of the United States when the duty was during any period of
8 compulsory military service or during a period of armed
9 conflict, as defined in this section.

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

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

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

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

29 (4) If a member of the Public Employees Retirement
30 System enters the active service of the United States and serves
31 during any period of compulsory military service or during any
32 period of armed conflict, during the period of the armed service
33 and until the member's return to the employ of a participating
34 public employer, the member's contributions to the retirement
35 system is suspended and any credit balance remaining in the

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

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

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

60 (7) The Board may consider a petition by any member
61 whose tour of duty, in a territory that would reasonably be
62 considered hostile and dangerous, was extended beyond the
63 period in which an armed conflict was officially recognized, if
64 that tour of duty commenced during a period of armed conflict,
65 and the member was assigned to duty stations within the hostile
66 territory throughout the period for which service credit is being
67 sought. The Board has the authority to evaluate the facts and
68 circumstances peculiar to the petition, and rule on whether

69 granting service credit for the extended tour of duty is consis-
70 tent with the objectives of this article. In that determination, the
71 Board may grant full credit for the period under petition subject
72 to the limitations otherwise applicable, or to grant credit for any
73 part of the period as the board considers appropriate, or to deny
74 credit altogether.

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

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

81 (1) "Period of armed conflict" means the Spanish-American
82 War, the Mexican border period, World War I, World War II,
83 the Korean conflict, the Vietnam era, the Persian Gulf War and
84 any other period of armed conflict by the United States,
85 including, but not limited to, those periods sanctioned by a
86 declaration of war by the United States Congress or by execu-
87 tive or other order of the President.

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

98 (3) "The Mexican border period" means the period begin-
99 ning on the ninth day of May, one thousand nine hundred
100 sixteen, and ending on the fifth day of April, one thousand nine

101 hundred seventeen, in the case of a veteran who during the
102 period served in Mexico, on its borders or in the waters adjacent
103 to it.

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

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

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

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

128 (8) "Persian Gulf War" means the period beginning on the
129 second day of August, one thousand nine hundred ninety, and
130 ending on the eleventh day of April, one thousand nine hundred
131 ninety-one.

132 (c) Notwithstanding the preceding provisions of this
133 section, contributions, benefits and service credit with respect
134 to qualified military service shall be provided in accordance
135 with Section 414(u) of the Internal Revenue Code. For purposes
136 of this section, "qualified military service" has the same
137 meaning as in Section 414(u) of the Internal Revenue Code. No
138 military service credit may be used in more than one retirement
139 system administered by the Consolidated Public Retirement
140 Board and once used in any system, may not be used again in
141 any other system. The Board is authorized to determine all
142 questions and make all decisions relating to this section and,
143 pursuant to the authority granted to the Board in section one,
144 article ten-d of this chapter, may promulgate rules relating to
145 contributions, benefits and service credit to comply with
146 Section 414(u) of the Internal Revenue Code.

§5-10-17. Retirement system membership.

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

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

12 (b) The membership of the Public Employees Retirement
13 System shall not include any person who is an active contribut-
14 ing member of, or who has been retired by, any of the State
15 Teachers retirement systems, the Judges Retirement System,
16 any Retirement System of the West Virginia State Police, the

17 Deputy Sheriff Retirement System or any municipal retirement
18 system for either, or both, police or firefighter; and the Bureau
19 of Employment Programs, by the Commissioner of the Bureau,
20 may elect whether its employees will accept coverage under
21 this article or be covered under the authorization of a separate
22 enactment: *Provided*, That the exclusions of membership do not
23 apply to any member of the State Legislature, the Clerk of the
24 House of Delegates, the Clerk of the State Senate or to any
25 member of the legislative body of any political subdivision
26 provided he or she once becomes a contributing member of the
27 retirement system: *Provided, however*, That any retired member
28 of the State Police Death, Disability and Retirement Fund, the
29 West Virginia State Police Retirement System, the Deputy
30 Sheriff Retirement System and any retired member of any
31 municipal retirement system for either, or both, police or
32 firefighter may on and after the effective date of this section
33 become a member of the retirement system as provided in this
34 article, without receiving credit for prior service as a municipal
35 police officer or firefighter or as a member of the State Police
36 Death, Disability and Retirement Fund, the West Virginia State
37 Police Retirement System or the Deputy Sheriff Retirement
38 System: *Provided further*, That any retired member of the State
39 Police Death, Disability and Retirement Fund, the West
40 Virginia State Police Retirement System, the Deputy Sheriff
41 Retirement System and any retired member of any municipal
42 retirement system for either, or both, police or firefighters, who
43 begins participation in the retirement system established in this
44 article on or after the first day of July, two thousand five, may
45 not receive a combined retirement benefit in excess of one
46 hundred five percent of the member's highest annual salary
47 earned while either a member of the retirement system estab-
48 lished in this article or while a member of the other retirement
49 system or systems from which he or she previously retired
50 when adding the retirement benefit from the retirement system
51 created in this article to the retirement benefit received by that

52 member from the other retirement system or systems set forth
53 herein from which he or she previously retired: *And provided*
54 *further*, That the membership of the retirement system does not
55 include any person who becomes employed by the Prestera
56 Center for Mental Health Services, Valley Comprehensive
57 Mental Health Center, Westbrook Health Services or Eastern
58 Panhandle Mental Health Center on or after the first day of
59 July, one thousand nine hundred ninety-seven: *And provided*
60 *further*, That membership of the retirement system does not
61 include any person who becomes a member of the federal
62 railroad retirement act on or after the first day of July, two
63 thousand.

64 (c) Any member of the State Legislature, the Clerk of the
65 House of Delegates, the Clerk of the State Senate and any
66 employee of the State Legislature whose employment is
67 otherwise classified as temporary and who is employed to
68 perform services required by the Legislature for its regular
69 sessions or during the interim between regular sessions and who
70 has been or is employed during regular sessions or during the
71 interim between sessions in seven consecutive calendar years,
72 as certified by the Clerk of the House in which the employee
73 served, or any member of the legislative body of any other
74 political subdivision shall become a member of the retirement
75 system provided he or she notifies the retirement system in
76 writing of his or her intention to be a member of the system and
77 files a membership enrollment form as prescribed by the Board
78 of Trustees, and each person, upon filing his or her written
79 notice to participate in the retirement system, shall by that act
80 authorize the Clerk of the House of Delegates or the Clerk of
81 the State Senate or such person or legislative agency as the
82 legislative body of any other political subdivision shall design-
83 ate to deduct the member's contribution, as provided in
84 subsection (b), section twenty-nine of this article, and after the
85 deductions have been made from the member's compensation,
86 the deductions shall be forwarded to the retirement system.

87 (d) If question arises regarding the membership status of
88 any employee, the Board of Trustees has the final power to
89 decide the question.

90 (e) Any individual who is a leased employee is not eligible
91 to participate in the system. For the purposes of this article, the
92 term "leased employee" means any individual who performs
93 services as an independent contractor or pursuant to an agree-
94 ment with an employee leasing organization or other similar
95 organization. If a question arises regarding the status of an
96 individual as a leased employee, the Board has final authority
97 to decide the question.

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

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

19 (b) Any member who qualifies for deferred retirement
20 benefits in accordance with subsection (a) of this section and

21 has ten or more years of credited service in force and who has
22 attained age fifty-five as of the date of his or her separation,
23 may, prior to the effective date of his or her retirement, but not
24 thereafter, elect to receive the actuarial equivalent of his or her
25 deferred retirement annuity as a reduced annuity commencing
26 on the first day of any calendar month between his or her date
27 of separation and his or her attainment of age sixty-two years
28 and payable throughout his or her life.

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

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

52 (e) Notwithstanding any of the other provisions of this
53 section or of this article, except sections twenty-seven-a and

54 twenty-seven-b of this article, any member of the retirement
55 system may retire with full pension rights, without reduction of
56 benefits, if he or she is at least fifty-five years of age and the
57 sum of his or her age plus years of contributing service and
58 limited credited service, as defined in section two of this article,
59 equals or exceeds eighty. The member's annuity shall begin the
60 first day of the calendar month immediately following the
61 calendar month in which his or her application for the annuity
62 is filed with the Board.

§5-10-22. Retirement annuity.

1 (a) Upon a member's retirement, as provided in this article,
2 he or she shall receive a straight life annuity equal to one and
3 five-tenths percent of his or her final average salary multiplied
4 by the number of years, and fraction of a year, of his or her
5 credited service in force at the time of his or her retirement:
6 *Provided*, That the final average salary used in this calculation
7 does not include any lump sum payment for unused, accrued
8 leave of any kind or character. The credited service used for this
9 calculation may not include any period of limited credited
10 service: *Provided, however*, That after March one, one thousand
11 nine hundred seventy, all members retired and all members
12 retiring shall receive a straight life annuity equal to two percent
13 of his or her final average salary multiplied by the number of
14 years, and fraction of a year, of his or her credited service,
15 exclusive of limited credited service in force at the time of his
16 or her retirement. In either event, upon his or her retirement he
17 or she has the right to elect an option provided in section
18 twenty-four of this article. All annuity payments shall com-
19 mence effective the first day of the month following the month
20 in which a member retires or a member dies leaving a benefi-
21 ciary entitled to benefits and shall continue to the end of the
22 month in which the retirant or beneficiary dies, and the annuity
23 payments may not be prorated for any portion of a month in
24 which a member retires or retirant or beneficiary dies. Any

25 member receiving an annuity based in part upon limited
26 credited service is not eligible for the supplements provided in
27 sections twenty-two-a through twenty-two-d, inclusive, of this
28 article.

29 (b) The annuity of any member of the Legislature who
30 participates in the retirement system as a member of the
31 Legislature and who retires under this article or of any former
32 member of the Legislature who has retired under this article
33 (including any former member of the Legislature who has
34 retired under this article and whose annuity was readjusted as
35 of the first day of March, one thousand nine hundred seventy,
36 under the former provisions of this section) shall be increased
37 from time to time during the period of his or her retirement
38 when and if the legislative compensation paid under section
39 two, article two-a, chapter four of this code, to a member of the
40 Legislature shall be increased to the point where a higher
41 annuity would be payable to the retirant if he or she were
42 retiring as of the effective date of the latest increase in legisla-
43 tive compensation, but on the basis of his or her years of
44 credited service to the date of his or her actual retirement.

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

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

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

27 (c) The state will not increase any existing benefits or
28 create any new benefits for active members due to retirement,
29 death or disability of the system unless the actuarial accrued
30 liability of the plan is at least eighty-five percent funded as of
31 the last day of the prior fiscal year as determined in the actuar-
32 ial valuation for the plan completed for the Consolidated Public
33 Retirement Board as of the first day of the following fiscal year
34 as of the date the improvement is adopted by the Legislature.
35 Any additional unfunded actuarial accrued liability due to any
36 improvement in active members benefits shall be fully amor-
37 tized over not more than ten years following the date the
38 increase in benefits or new benefits become effective as
39 certified by the Consolidated Public Retirement Board. The
40 Consolidated Public Retirement Board shall include the ten year
41 amortization in the determination of the adequacy of the
42 employer contribution percentage for the system.

§5-10-23. Terminal payment following retirement.

1 (a) This section provides for the payment of the balance in
2 a retired member's account in the event that all claims to
3 benefits payable to, or on behalf of, a member expire before his
4 or her member account has been fully exhausted. The expiration
5 of the rights to benefits would be on the occasion of either the
6 death of the retired member drawing benefits under a straight
7 life annuity, or the death of a survivor annuitant drawing
8 benefits under any optional form of benefit selected by the
9 retired member, whichever occurs later.

10 (b) In the event that all claims to benefits payable to, or on
11 behalf of, a retired member expire, and the accumulated
12 contributions exceed the accumulated net benefit payments paid
13 to or on behalf of the retired member, the balance in the retired
14 member's account shall be paid to the person or persons as the
15 retired member has nominated by written designation duly
16 executed and filed with the board of trustees. If there is no
17 designated person or persons surviving the retired member
18 following the expiration of claims, the excess of the accumu-
19 lated contributions over the accumulated net benefit, if any,
20 shall be paid to the retired member's estate.

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

1 (a) At least once each year during the first five years
2 following the retirement of a member on account of disability,
3 as provided in section twenty-five of this article, and at least
4 once in each three-year period thereafter, the Board may require
5 a disability retirant, who has not attained age sixty years, to
6 undergo a medical examination to be made by or under the
7 direction of a physician designated by the board, or to submit
8 a statement signed by the disability retirant's physician certify-
9 ing continued disability, or both, and a copy of the disability
10 retirants's annual statement of earnings. If the retirant refuses
11 to submit to the medical examination or provide the certifica-

tion or statement in any period, his or her disability annuity may be discontinued by the Board until the retirant complies. If the refusal continues for one year, all the retirant's rights in and to the annuity may be revoked by the board. If, upon medical examination of a disability retirant, the physician reports to the board that the retirant is physically able and capable of resuming employment with a participating public employer, the retirant shall be returned to the employ of the participating public employer from whose employment he or she retired and his or her disability annuity shall terminate: *Provided*, That the Board concurs in the physician's report.

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

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

§5-10-27. Preretirement death annuities.

(a) In the event any member who has ten or more years of credited service or any former member with ten or more years

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

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

37 Board, the member or former member, may nominate a
38 beneficiary who has an insurable interest in the member's or
39 former member's life. As an alternative to annuity option A, the
40 member or former member may elect to have the preretirement
41 death benefit paid as a return of accumulated contributions in
42 a lump sum amount to any beneficiary or beneficiaries he or she
43 chooses in the event a waiver, as provided in this section, has
44 been presented to and accepted by the Board.

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

66 (d) In the event any member or former member does not
67 have ten or more years of credited service, no preretirement
68 death annuity may be authorized, owed or awarded under this
69 section.

§5-10-31. Employers accumulation fund; employers contributions.

1 (a) The employers accumulation fund is hereby continued.
2 It shall be the fund in which shall be accumulated the contribu-
3 tions made by the participating public employers to the retire-
4 ment system, and from which transfers shall be made as
5 provided in this section.

6 (b) Based upon the provisions of section thirteen of this
7 article, the participating public employers' contributions to the
8 retirement system, as determined by the Consolidated Public
9 Retirement Board by legislative rule promulgated in accordance
10 with the provisions of article three, chapter twenty-nine-a of
11 this code, shall be a percent of the members' total annual
12 compensation related to benefits under this retirement system.
13 In determining the amount, the Board shall give consideration
14 to setting the amount at a sum equal to an amount which, if paid
15 annually by the participating public employers, will be suffi-
16 cient to provide for the total normal cost of the benefits
17 expected to become payable to all members and to amortize any
18 unfunded liability found by application of the actuarial funding
19 method chosen for that purpose by the Consolidated Public
20 Retirement Board, over a period of years determined actuarially
21 appropriate. When proposing a rule for promulgation which
22 relates to the amount of employer contribution, the Board may
23 promulgate emergency rules pursuant to the provisions of
24 article three, chapter twenty-nine-a of this code, if the inability
25 of the board to increase employer contributions will detrimen-
26 tally affect the actuarial soundness of the retirement system. A
27 signed statement from the state actuary shall accompany the
28 statement of facts and circumstances constituting an emergency
29 which shall be filed in the State Register. For purposes of this
30 section, subdivision (2), subsection (b), section fifteen-a, article
31 three, chapter twenty-nine-a of this code is not applicable to the
32 Secretary of State's determination of whether an emergency
33 rule should be approved.

§5-10-44. Correction of errors.

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

**ARTICLE 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN
BENEFITS.****§5-10A-2. Definitions.**

1 As used in this article:

2 (a) "Retirement plan" or "plan" means the Public Employ-
3 ees Retirement Act, pursuant to article ten, chapter five of this
4 code; each municipal employees retirement plan, pursuant to
5 article twenty-two, chapter eight of this code; each policemen's
6 and firemen's pension and relief fund, pursuant to article
7 twenty-two, chapter eight of this code; the West Virginia State
8 Police Death, Disability and Retirement Fund, pursuant to

9 article two, chapter fifteen of this code; the West Virginia State
10 Police Retirement System, pursuant to article two-a, chapter
11 fifteen of this code; the State Teachers Retirement System,
12 pursuant to article seven-a, chapter eighteen of this code; the
13 Teachers' Defined Contribution Retirement System, pursuant
14 to article seven-b, chapter eighteen of this code; the Deputy
15 Sheriff Retirement System, pursuant to article fourteen-d,
16 chapter seven of this code; supplemental and additional
17 retirement plans, pursuant to section four-a, article twenty-
18 three, chapter eighteen of this code; the Judges' Retirement
19 System, pursuant to article nine, chapter fifty-one of this code;
20 and any other plan established pursuant to this code for the
21 payment of pension, annuity, disability or other benefits to any
22 person by reason of his or her service as an officer or employee
23 of this state or of any political subdivision, agency or instru-
24 mentality thereof, whenever the plan is supported in whole or
25 in part by public funds.

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

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

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

37 (e) "Less than honorable service" means:

38 (1) Impeachment and conviction of a participant under the
39 provisions of section nine, article four of the Constitution of
40 West Virginia, except for a misdemeanor;

41 (2) Conviction of a participant of a felony for conduct
42 related to his or her office or employment which he or she
43 committed while holding the office or during the employment;
44 or

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

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

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

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

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

64 (h) "Supervisory board" or "Board" means the Consoli-
65 dated Public Retirement Board; the board of trustees of any
66 municipal retirement fund; the board of trustees of any police-
67 men's or firemen's retirement plan; the governing board of any
68 supplemental retirement plan instituted pursuant to authority
69 granted by section four-a, article twenty-three, chapter eighteen
70 of this code, and any other board, commission or public body
71 having the duty to supervise and operate any retirement plan.

**§5-10A-3. Notice of intention to terminate benefits; waiver;
failure to reply.**

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

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

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

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

17 (b) The notice shall contain a concise statement of the
18 reasons why the Board believes that the participant rendered
19 less than honorable service and shall be made either by personal
20 service or by certified mail, return receipt requested, to the
21 address which the participant or beneficiary maintains for
22 purposes of corresponding with the Board. If notice is made by
23 certified mail, service shall be considered complete upon
24 mailing and a completed receipt constitute proofs of the receipt
25 of the notice. The notice shall inform the participant or benefi-
26 ciary that he or she has the right to demand that the Board seek
27 a determination in circuit court of his or her eligibility for
28 benefits and membership in the retirement plan by notifying the
29 Board of the demand within forty days. The notice shall also
30 inform the participant or beneficiary that the Board will

31 terminate the benefits in accordance with section four of this
32 article and refund the participant's contributions with interest
33 less benefits previously paid as provided in section six thereof
34 if the participant or beneficiary either waives the right to
35 demand that the Board take the matter before the circuit court
36 or fails to respond to the Board's notice within forty days after
37 service.

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

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

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-5. Members.

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

7 (b) Any deputy sheriff employed in covered employment on
8 the effective date of this article shall within six months of that
9 effective date notify in writing both the county commission in
10 the county in which he or she is employed and the Board, of his
11 or her desire to become a member of the plan: *Provided*, That
12 this time period is extended to the thirtieth day of January, one
13 thousand nine hundred ninety-nine, in accordance with the

14 decision of the Supreme Court of Appeals in *West Virginia*
15 *Deputy Sheriffs' Association, et al v. James L. Sims, et al*, No.
16 25212: *Provided, however*, That any deputy sheriff employed
17 in covered employment on the effective date of this article has
18 an additional time period consisting of the ten-day period
19 following the day after which the amended provisions of this
20 section become law to notify in writing both the county
21 commission in the county in which he or she is employed and
22 the Board of his or her desire to become a member of the plan.
23 Any deputy sheriff who elects to become a member of the plan
24 ceases to be a member or have any credit for covered employ-
25 ment in any other retirement system administered by the Board
26 and shall continue to be ineligible for membership in any other
27 retirement system administered by the Board so long as the
28 deputy sheriff remains employed in covered employment in this
29 plan: *Provided further*, That any deputy sheriff who elects
30 during the time period from the first day of July, one thousand
31 nine hundred ninety-eight, to the thirtieth day of January, one
32 thousand nine hundred ninety-nine, or who so elects during the
33 ten-day time period occurring immediately following the day
34 after the day the amendments made during the one thousand
35 nine hundred ninety-nine legislative session become law, to
36 transfer from the Public Employees Retirement System to the
37 plan created in this article shall contribute to the plan created in
38 this article at the rate set forth in section seven of this article
39 retroactive to the first day of July, one thousand nine hundred
40 ninety-eight. Any deputy sheriff who does not affirmatively
41 elect to become a member of the plan continues to be eligible
42 for any other retirement system as is from time to time offered
43 to other county employees but is ineligible for this plan
44 regardless of any subsequent termination of employment and
45 rehire.

46 (c) Any deputy sheriff employed in covered employment on
47 the effective date of this article who has timely elected to
48 transfer into this plan as provided in subsection (b) of this

49 section shall be given credited service at the time of transfer for
50 all credited service then standing to the deputy sheriff's service
51 credit in the Public Employees Retirement System regardless of
52 whether the credited service (as that term is defined in section
53 two, article ten, chapter five of this code) was earned as a
54 deputy sheriff. All the credited service standing to the transfer-
55 ring deputy sheriff's credit in the Public Employees Retirement
56 Fund System at the time of transfer into this plan shall be
57 transferred into the plan created by this article, and the transfer-
58 ring deputy sheriff shall be given the same credit for the
59 purposes of this article for all service transferred from the
60 Public Employees Retirement System as that transferring
61 deputy sheriff would have received from the Public Employees
62 Retirement System as if the transfer had not occurred. In
63 connection with each transferring deputy sheriff receiving
64 credit for prior employment as provided in this subsection, a
65 transfer from the Public Employees Retirement System to this
66 plan shall be made pursuant to the procedures described in
67 section eight of this article: *Provided*, That a member of this
68 plan who has elected to transfer from the Public Employees
69 Retirement System into this plan pursuant to subsection (b) of
70 this section may not, after having transferred into and become
71 an active member of this plan, reinstate to his or her credit in
72 this plan any service credit relating to periods of nondeputy
73 sheriff service which were withdrawn from the Public Employ-
74 ees Retirement System prior to his or her elective transfer into
75 this plan.

76 (d) Any deputy sheriff who was employed as a deputy
77 sheriff prior to the effective date of this article, but was not
78 employed as a deputy sheriff on the effective date of this
79 article, shall become a member upon rehire as a deputy sheriff.
80 For purposes of this subsection, the member's years of service
81 and credited service in the Public Employees Retirement
82 System prior to the effective date of this article shall not be
83 counted for any purposes under this plan unless: (1) The deputy

84 sheriff has not received the return of his or her accumulated
85 contributions in the Public Employees Retirement System
86 pursuant to section thirty, article ten, chapter five of this code;
87 or (2) the accumulated contributions returned to the member
88 from the Public Employees Retirement System have been
89 repaid pursuant to section thirteen of this article. If the condi-
90 tions of subdivision (1) or (2) of this subsection are met, all
91 years of the deputy sheriff's covered employment shall be
92 counted as years of service for the purposes of this article.

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

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

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

1 (a) There shall be deducted from the monthly salary of each
2 member and paid into the Fund an amount equal to eight and
3 one-half percent of his or her monthly salary. An additional
4 amount shall be paid to the Fund by the county commission of
5 the county in which the member is employed in covered
6 employment in an amount determined by the Board: *Provided,*
7 That in no year may the total of the contributions provided in
8 this section, to be paid by the county commission, exceed ten

9 and one-half percent of the total payroll for the members in the
10 employ of the county commission for the preceding fiscal year.
11 If the Board finds that the benefits provided by this article can
12 be actually funded with a lesser contribution, then the Board
13 shall reduce the required member or employer contributions or
14 both. The sums withheld each calendar month shall be paid to
15 the Fund no later than fifteen days following the end of the
16 calendar month.

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

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

1 (a) Any member who terminates covered employment and
2 is not eligible to receive disability benefits under this article is,

3 by written request filed with the Board, entitled to receive from
4 the Fund the member's accumulated contributions. Except as
5 provided in subsection (b) of this section, upon withdrawal the
6 member shall forfeit his or her accrued benefit and cease to be
7 a member.

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

27 (c) A member of this plan who has elected to transfer from
28 the Public Employees Retirement System into this plan pursu-
29 ant to subsection (b) of section five of this article may not, after
30 having transferred into and become an active member of this
31 plan, reinstate to his or her credit in this plan any service credit
32 relating to periods of nondeputy sheriff service which were
33 withdrawn from the Public Employees Retirement System plan
34 prior to his or her elective transfer into this plan.

35 (d) Every member who completes sixty months of covered
36 employment is eligible, upon cessation of covered employment,
37 to either withdraw his or her accumulated contributions in
38 accordance with subsection (a) of this section, or to choose not
39 to withdraw his or her accumulated contribution and to receive
40 retirement income payments upon attaining normal retirement
41 age.

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

§7-14D-23. Loans to members.

1 (a) A member who is not yet receiving disability or
2 retirement income benefits from the plan may borrow from the
3 plan no more than one time in any year an amount up to one
4 half of his or her accumulated contributions, but not less than
5 five hundred dollars nor more than eight thousand dollars:
6 *Provided*, That the maximum amount of any loan shall not
7 exceed the lesser of the following: (1) Eight thousand dollars;
8 or (2) fifty percent of his or her accumulated contributions. No
9 member is eligible for more than one outstanding loan at any
10 time. No loan may be made from the plan if the Board deter-
11 mines that the loans constitute more than fifteen percent of the
12 amortized cost value of the assets of the plan as of the last day
13 of the preceding plan year. The Board may discontinue the
14 loans any time it determines that cash flow problems might
15 develop as a result of the loans. Each loan shall be repaid
16 through monthly installments over periods of six through sixty
17 months and carry interest on the unpaid balance and an annual
18 effective interest rate that is two hundred basis points higher
19 than the most recent rate of interest used by the Board for
20 determining actuarial contributions levels: *Provided, however*,
21 That interest charged shall be commercially reasonable in
22 accordance with the provisions of Section 72(p)(2) of the

23 Internal Revenue Code and federal regulations issued thereun-
24 der. Monthly loan payments shall be calculated to be as nearly
25 equal as possible with all but the final payment being an equal
26 amount. An eligible member may make additional loan
27 payments or pay off the entire loan balance at any time without
28 incurring any interest penalty. At the member's option, the
29 monthly loan payment may include a level premium sufficient
30 to provide declining term insurance with the plan as beneficiary
31 to repay the loan in full upon the member's death. If a member
32 declines the insurance and dies before the loan is repaid, the
33 unpaid balance of the loan shall be deducted from the lump sum
34 insurance benefits payable under section twenty-one of this
35 article.

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

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

57 such time as the member is entitled to receive a distribution
58 under the plan.

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

63 (e) Notwithstanding anything in this section to the contrary,
64 the loan program authorized by this section shall comply with
65 the provisions of Section 72(p)(2) and Section 401 of the
66 Internal Revenue Code and the federal regulations issued
67 thereunder. The Board may: (a) Apply and construe the
68 provisions of this section and administer the plan loan program
69 in such a manner as to comply with the provisions of Sections
70 72(p)(2) and Section 401 of the Internal Revenue Code; (b)
71 adopt plan loan policies or procedures consistent with these
72 federal law provisions; and (c) take any actions it considers
73 necessary or appropriate to administer the plan loan program
74 created under this section in accordance with these federal law
75 provisions. The Board is further authorized in connection with
76 the plan loan program to take any actions that may at any time
77 be required by the Internal Revenue Service regarding compli-
78 ance with the requirements of Section 72(p)(2) or Section 401
79 of the Internal Revenue Code, notwithstanding any provision in
80 this article to the contrary.

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

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 8. PENSION LIABILITY REDEMPTION.

§12-8-2. Declaration of policy; legislative findings; legislative intent.

1 The Legislature finds and declares that:

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

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

§12-8-3. Definitions.

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

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

6 (2) "Consolidated Public Retirement Board" means the
7 Board created to administer all public retirement plans in this
8 state under article ten-d, chapter five of this code and any board
9 or agency that succeeds to the powers and duties of the Consoli-
10 dated Public Retirement Board.

11 (3) "Costs" include, but are not limited to, amounts
12 necessary to fund any capitalized interest funds and any reserve
13 funds, any costs relating to the issuance and determination of
14 the validity of the bonds, fees for obtaining bond insurance,
15 credit enhancements or liquidity facilities, administrative costs,
16 fees incurred pursuant to subsection (f), section five of this
17 article and costs attributable to the agreements described in
18 section six of this article.

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

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

26 (6) "Executive order" means an executive order issued by
27 the Governor to authorize the issuance of bonds as provided in
28 this article.

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

33 (8) "Judges' Retirement System" means the Judicial
34 Retirement System created under article nine, chapter fifty-one
35 of this code.

36 (9) "Obligation holders" means any holder or owner of any
37 bond, any trustee or other fiduciary for any holder, or any
38 provider of a letter of credit, policy of bond insurance, surety,
39 or other credit enhancement or liquidity facility or swap relating
40 to any bond.

41 (10) "Pension Liability Redemption Fund" means the
42 special account in the State Treasury created pursuant to
43 subsection (a), section eight of this article.

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

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

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

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

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

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

66 (17) "Actuarial cost method" means a mathematical process
67 in which the cost of benefits projected to be paid after a period
68 of active employment has ended is allocated over the period of
69 active employment during which the benefits are earned.

70 (18) "Unfunded actuarial accrued liability" means the
71 aggregate of the unfunded actuarial accrued liabilities of the
72 pension systems, with the unfunded actuarial accrued liability
73 of each pension system being calculated in an actuarial valua-
74 tion report provided by the Consolidated Public Retirement
75 Board to the Department of Administration pursuant to section
76 four of this article.

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

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

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

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

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

11 (b) The aggregate principal amount of bonds issued
12 pursuant to the provisions of this article is limited to no more

13 than the lesser of the following: (1) The principal amount
14 necessary, after deduction of costs, underwriter's discount and
15 original issue discount, if any, to fund not in excess of one
16 hundred percent of the unfunded actuarial accrued liability of
17 the Death, Disability and Retirement Fund of the West Virginia
18 State Police established in article two, chapter fifteen of this
19 code, one hundred percent of the unfunded actuarial accrued
20 liability of the Judges' Retirement System established in article
21 nine, chapter fifty-one of this code, and ninety-five percent of
22 the unfunded actuarial accrued liability of the Teachers Retirement
23 System established in article seven-a, chapter eighteen of
24 this code, as certified by the Consolidated Public Retirement
25 Board to the Department of Administration pursuant to subsection
26 (e) of this section; or (2) five billion five hundred million
27 dollars; but in no event shall the aggregate principal amount of
28 bonds issued exceed the principal amount necessary, after
29 deduction of costs, underwriter's discount and original issue
30 discount, if any, to fund not in excess of the total unfunded
31 actuarial accrued liability, as certified by the Consolidated
32 Public Retirement Board to the Department of Administration
33 pursuant to subsection (e) of this section.

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

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

42 (e) No later than ten days after receipt of a request from the
43 Department of Administration, the Consolidated Public
44 Retirement Board shall provide the Department of Administration
45 with a certified statement of the amount of each pension

46 system's unfunded actuarial accrued liability calculated in an
47 actuarial valuation report that establishes the amount of the
48 unfunded actuarial accrued liability as of a date specified by the
49 Department of Administration, based upon each pension
50 system's most recent actuarial valuation as completed by the
51 Consolidated Public Retirement Board.

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

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

1 (a) Upon the adoption of a resolution by the Legislature
2 authorizing the issuance of the bonds in the amount and upon
3 the terms specified in the resolution, the bonds shall be autho-
4 rized by an executive order issued by the Governor. The
5 executive order shall be received by the Secretary of State and
6 filed in the State Register pursuant to section three, article two,
7 chapter twenty-nine-a of this code. The Governor, either in the
8 executive order authorizing the issuance of the bonds or by the
9 execution and delivery by the Governor of a trust indenture or
10 agreement authorized in the executive order, shall stipulate the
11 form of the bonds, whether the bonds are to be issued in one or
12 more series, the date or dates of issue, the time or times of
13 maturity, the rate or rates of interest payable on the bonds,
14 which may be at fixed rates or variable rates and which interest
15 may be current interest or may accrue, the denomination or
16 denominations in which the bonds are issued, the conversion or
17 registration privileges applicable to some or all of the bonds,
18 the sources and medium of payment and place or places of
19 payment, the terms of redemption, any privileges of
20 exchangeability or interchangeability applicable to the bonds,

21 and the entitlement of obligation holders to priorities of
22 payment or security in the amounts deposited in the pension
23 liability redemption fund. Bonds shall be signed by the Gover-
24 nor and attested by the Secretary of State, by either manual or
25 facsimile signatures.

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

32 (c) The Governor, in the executive order authorizing the
33 issuance of bonds or by the execution and delivery by the
34 Governor of a trust indenture or agreement authorized in the
35 executive order, may covenant as to the use and disposition of
36 or pledge of funds made available for pension liability redemp-
37 tion payments or any reserve funds established pursuant to the
38 executive order or established pursuant to any indenture
39 authorized by the executive order. All costs may be paid by or
40 upon the order of the Governor from amounts received from the
41 proceeds of the bonds and from amounts received pursuant to
42 section eight of this article.

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

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

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

51 (i) Shall select, employ and compensate one or more persons or
52 firms to serve as bond counsel or cobond counsel who shall be

53 responsible for the issuance of a final approving opinion
54 regarding the legality of the bonds issued pursuant to this
55 article; (ii) may select, employ and compensate one or more
56 persons or firms to serve as underwriter or counderwriter for
57 any issuance of bonds pursuant to this article; and (iii) may
58 select, employ and compensate one or more fiduciaries,
59 financial advisors and experts, other legal counsel, placement
60 agents, appraisers, actuaries and any other advisors, consultants
61 and agents necessary to effectuate the purposes of this article.
62 Notwithstanding the provisions of article three, chapter five of
63 this code, bond counsel may represent the state in court, render
64 advice and provide other legal services as may be requested by
65 the Governor or the Department of Administration regarding
66 any bond issuance pursuant to this article and all other matters
67 relating to the bonds.

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

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

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

17 and (v) any other commitments, contracts or agreements
18 approved by the Governor.

19 (c) The Governor may covenant as to the bonds to be issued
20 and as to the issuance of the bonds, in escrow or otherwise,
21 provide for the replacement of lost, destroyed or mutilated
22 bonds, covenant against extending the time for the payment of
23 bonds or interest on the bonds and covenant for the redemption
24 of bonds and provide the terms and conditions of the redemp-
25 tion.

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

35 (e) The Governor may vest in the obligation holders, or any
36 portion of them, the right to enforce the payment of the bonds
37 or agreements authorized in this article or any covenants
38 securing or relating to the bonds or the agreements. The
39 Governor may prescribe the procedure, if any, by which the
40 terms of any contract with obligation holders may be supple-
41 mented, amended or abrogated, prescribe which supplements or
42 amendments will require the consent of obligation holders and
43 the portion of obligation holders required to effect the consent
44 and prescribe the manner in which the consent may be given.

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

1 (a) The proceeds from the sale of bonds, other than refund-
2 ing bonds, issued pursuant to this article, after payment of any
3 costs payable at time of issuance of the bonds, shall be paid to

4 the Consolidated Public Retirement Board to fund the amount
5 of the unfunded actuarial accrued liability for the pension
6 systems provided for by the bonds.

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

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

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

12 (b) On or before the first day of November of each year, the
13 Department of Administration shall certify to the Governor and
14 the State Treasurer and deliver to the Speaker of the House of
15 Delegates and the President of the Senate a certification as to

16 the amount of pension liability redemption payments to be
17 appropriated for the next fiscal year in order to pay in full when
18 due all pension liability redemption payments that will become
19 due during the next fiscal year. The certification shall include
20 the amount and due date of each pension liability redemption
21 payment. All moneys appropriated by the Legislature in
22 accordance with a certification made pursuant to this subsection
23 shall be deposited into the Pension Liability Redemption Fund.

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

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

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

13 (b) The state hereby pledges and covenants with the
14 obligation holders, and the indenture shall so state, that the state
15 will not limit or alter the rights, powers or duties vested in any

16 state official, or that state official's successors or assigns, and
17 the obligation holders in a way that will inhibit any state
18 official, or that state official's successors or assigns, from
19 carrying out the state official's rights, powers or duties under
20 this article, nor limit or alter the rights, powers or duties of any
21 state official, or that state official's successors or assigns, in any
22 manner which would jeopardize the interest of any obligation
23 holder, or inhibit or prevent performance or fulfillment by any
24 state official, or that state official's successors or assigns, with
25 respect to the terms of any agreement made with any obligation
26 holder pursuant to section six of this article.

27 (c) The state hereby pledges and covenants with the
28 obligation holders, and the indenture shall state, that, while any
29 of the bonds are outstanding, any changes in unfunded actuarial
30 accrued liability in any of the West Virginia state sponsored
31 pension systems resulting from the actual experience for that
32 system occurring during any fiscal year due to net differences
33 between the expected and actual experience for that year will be
34 fully amortized over no more than the ten consecutive fiscal
35 years following the date the Consolidated Public Retirement
36 Board certifies the net actuarial gain or loss to the Governor.
37 The certification shall be made on or before the thirty-first day
38 of January of each year. The net actuarial gain or loss for the
39 fiscal year shall be determined from the actuarial valuation
40 authorized by the Consolidated Public Retirement Board for
41 each plan completed at as of the first day of the following fiscal
42 year. Following the receipt of the certification of net actuarial
43 gain or loss, the Governor shall submit the amount of the
44 amortization payment or credit each year for the pension
45 systems as part of the annual budget submission or in an
46 executive message to the Legislature. The Consolidated Public
47 Retirement Board shall include the ten year amortization in the
48 determination of the adequacy of the employer contribution
49 percentage for the West Virginia Public Employees Retirement
50 System and West Virginia State Police Retirement System.

51 (d) The state hereby pledges and covenants with the
52 obligation holders, and the indenture shall state, that, while any
53 of the bonds are outstanding, if the unfunded actuarial accrued
54 liability of any of the West Virginia state sponsored pension
55 systems increases or decreases due to changes in actuarial
56 assumptions adopted by the Consolidated Public Retirement
57 Board for completion of the annual actuarial valuation for any
58 plan, the change shall be fully amortized over no more than the
59 ten consecutive fiscal years following the date the Consolidated
60 Public Retirement Board certifies the net change due to changes
61 in assumptions to the Governor. The certification shall be made
62 on or before the thirty-first day of January of each year.
63 Following the receipt of the certification of change due to
64 changes in actuarial assumptions, the Governor shall submit the
65 amount of the amortization payment each year for the pension
66 systems as part of the annual budget submission or in an
67 executive message to the Legislature. The Consolidated Public
68 Retirement Board shall include the ten year amortization in the
69 determination of the adequacy of the employer contribution
70 percentage for the Public Employees Retirement System and
71 West Virginia State Police Retirement System.

72 (e) The state hereby pledges and covenants with the
73 obligation holders, and the indenture shall state, that, while any
74 of the bonds are outstanding (1) the state will not increase any
75 existing benefits or create any new benefits for any retirees or
76 beneficiaries currently receiving monthly benefit payments
77 from any of the West Virginia state sponsored pension systems,
78 other than an increase in benefits or new benefits effected by
79 operation of law in effect on the effective date of this article, in
80 an amount that would exceed more than one percent of the
81 accrued actuarial liability of the system as of the last day of the
82 preceding fiscal year as determined in the annual actuarial
83 valuation for each plan completed for the Consolidated Public
84 Retirement Board as of the first day of the following fiscal year
85 as of the date the improvement is adopted by the Legislature;

86 and (2) if any increase of existing benefits or creation of new
87 benefits for any retirees or beneficiaries currently receiving
88 monthly benefit payments under any of the West Virginia state
89 sponsored pension systems, other than an increase in benefits
90 or new benefits effected by operation of law in effect on the
91 effective date of this article, causes any additional unfunded
92 actuarial accrued liability in any of the West Virginia state
93 sponsored pension systems as calculated in the annual actuarial
94 valuation for each plan during any fiscal year, the additional
95 unfunded actuarial accrued liability of that pension system will
96 be fully amortized over no more than the six consecutive fiscal
97 years following the date the increase in benefits or new benefits
98 become effective as certified by the Consolidated Public
99 Retirement Board. Following the receipt of the certification of
100 additional actuarial accrued liability, the Governor shall submit
101 the amount of the amortization payment each year for the
102 pension systems as part of the annual budget submission or in
103 an executive message to the Legislature. The Consolidated
104 Public Retirement Board shall include the six year amortization
105 in the determination of the adequacy of the employer contribu-
106 tion percentage for the West Virginia Public Employees
107 Retirement System and West Virginia State Police Retirement
108 System.

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

116 (g) The state hereby pledges and covenants with the
117 obligation holders, and the indenture shall state, that, while any
118 of the bonds are outstanding, the state will not increase any
119 existing benefits or create any new benefits for active members

120 due to retirement, death or disability of the West Virginia
121 Public Employees Retirement System or the West Virginia
122 State Police Retirement System unless the actuarial accrued
123 liability of the plan is at least eighty-five percent funded as of
124 the last day of the prior fiscal year as determined in the actuar-
125 ial valuation for the plan completed for the Consolidated Public
126 Retirement Board as of the first day of the following fiscal year
127 as of the date the improvement is adopted by the Legislature.
128 Any additional unfunded actuarial accrued liability due to any
129 improvement in active members benefits shall be fully amor-
130 tized over not more than ten years following the date the
131 increase in benefits or new benefits become effective as
132 certified by the Consolidated Public Retirement Board. The
133 Consolidated Public Retirement Board shall include the ten year
134 amortization in the determination of the adequacy of the
135 employer contribution percentage for the West Virginia Public
136 Employees Retirement System and West Virginia State Police
137 Retirement System.

§12-8-15. Operation of article.

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

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-25b. Definitions.

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

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

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

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

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

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

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

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

33 (h) "Totally disabled" means a member's probable perma-
34 nent inability to engage in substantial gainful activity by reason
35 of any medically determined physical or mental impairment
36 that can be expected to result in death or that has lasted or can
37 be expected to last for a continuous period of not less than
38 twelve months. For purposes of this subsection, a member is
39 totally disabled only if his or her physical or mental impair-
40 ments are so severe that he or she is not only unable to perform
41 his or her previous work as a member of the Department but
42 also cannot, considering his or her age, education and work
43 experience, engage in any other kind of substantial gainful
44 employment which exists in the state regardless of whether: (1)
45 The work exists in the immediate area in which the member
46 lives; (2) a specific job vacancy exists; or (3) the member
47 would be hired if he or she applied for work.

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

1 (a) There is continued the Death, Disability and Retirement
2 Fund created for the benefit of members of the Department and
3 any dependent of a retired or deceased member of the Depart-
4 ment.

5 (b) There shall be deducted from the monthly payroll of
6 each member of the Department and paid into the fund six
7 percent of the amount of his or her salary: *Provided, That*
8 beginning on the first day of July, one thousand nine hundred
9 ninety-four, there shall be deducted from the monthly payroll
10 of each member and paid into the Fund seven and one-half
11 percent of the amount of his or her salary: *Provided, however,*
12 That on and after the first day of July, one thousand nine
13 hundred ninety-five, there shall be deducted from the monthly
14 payroll of each member and paid into the Fund nine percent of
15 the amount of his or her salary. An additional twelve percent of

16 the monthly salary of each member of the Department shall be
17 paid by the State of West Virginia monthly into the fund out of
18 the annual appropriation for the Department: *Provided further*,
19 That beginning on the first day of July, one thousand nine
20 hundred ninety-five, the State shall pay thirteen percent of the
21 monthly salary of each member into the Fund: *And provided*
22 *further*, That beginning on the first day of July, one thousand
23 nine hundred ninety-six, the State shall pay fourteen percent of
24 the monthly salary of each member into the Fund: *And provided*
25 *further*, That on and after the first day of July, one thousand
26 nine hundred ninety-seven, the State shall pay fifteen percent of
27 the monthly salary of each member into the Retirement Fund.
28 There shall also be paid into the Fund amounts that have
29 previously been collected by the Superintendent of the Depart-
30 ment on account of payments to members for court attendance
31 and mileage, rewards for apprehending wanted persons, fees for
32 traffic accident reports and photographs, fees for criminal
33 investigation reports and photographs, fees for criminal history
34 record checks, fees for criminal history record reviews and
35 challenges or from any other sources designated by the Superin-
36 tendent. All moneys payable into the Fund shall be deposited in
37 the State Treasury and the Treasurer and Auditor shall keep a
38 separate account thereof on their respective books.

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

42 (d) The moneys in this Fund, and the right of a member to
43 a retirement allowance, to the return of contributions, or to any
44 benefit under the provisions of this article, are exempt from any
45 state or municipal tax; shall not be subject to execution,
46 garnishment, attachment or any other process whatsoever, with
47 the exception that the benefits or contributions under the Fund
48 shall be subject to "qualified domestic relations orders" as that
49 term is defined in Section 414(p) of the Internal Revenue Code

50 with respect to governmental plans; and shall be unassignable
51 except as is provided in this article. The Death, Disability and
52 Retirement Fund shall be administered by the Consolidated
53 Public Retirement Board created pursuant to article ten-d,
54 chapter five of this code.

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

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

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

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

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

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

19 (3) Being under the age of fifty years has or shall have
20 completed twenty years of service as a member of the Depart-

21 ment (excluding military service credit granted under section
22 twenty-eight of this article.)

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

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

34 (2) The sum of six thousand dollars.

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

46 (d) Any individual who is a leased employee is not eligible
47 to participate in the Fund. For purposes of this Fund, a "leased
48 employee" means any individual who performs services as an
49 independent contractor or pursuant to an agreement with an
50 employee leasing organization or other similar organization. If
51 a question arises regarding the status of an individual as a

52 leased employee, the Board has final power to decide the
53 question.

§15-2-27a. Retirement annual annuity adjustments.

1 (a) Every member of the Department who is fifty-five years
2 of age or older and who is retired by the Retirement Board
3 under the provisions of section twenty-seven of this article;
4 every member of the Department who is retired by the Retirement Board under the provisions of section twenty-nine or
5 thirty of this article; and every surviving spouse or other
6 beneficiary receiving a benefit pursuant to section thirty-three
7 or thirty-four of this article, is eligible to receive an annual
8 retirement annuity adjustment equal to three and seventy-five
9 hundredths percent of his or her retirement award or surviving
10 spouse award: *Provided*, That for any person retiring on and
11 after the fifteenth day of September, one thousand nine hundred
12 ninety-four, the annual retirement annuity adjustment shall be
13 equal to two percent of his or her retirement award or award
14 paid to a surviving spouse or other beneficiary. The adjustments
15 may not be retroactive. Yearly adjustments shall begin upon the
16 first day of July of each year. The annuity adjustments shall be
17 awarded and paid to the members from the Death, Disability
18 and Retirement Fund in equal monthly installments while the
19 member is in status of retirement. The annuity adjustments shall
20 supplement the retirement awards and benefits as provided in
21 this article.
22

23 (b) Any member or beneficiary who receives a benefit
24 pursuant to the provisions of section twenty-nine, thirty, thirty-
25 three or thirty-four of this article shall begin to receive the
26 annual annuity adjustment one year after the commencement of
27 the benefit on the next July first: *Provided*, That if the member
28 has been retired for less than one year when the first annuity
29 adjustment is given on that July first, that first annuity adjustment
30 will be a pro rata share of the full year's annuity adjustment.
31

§15-2-28. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.

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

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

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

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

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

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

26 (c) The amount of retirement pay to which any member is
27 entitled shall be calculated and determined as if he or she had
28 been receiving for the period of his or her active military duty
29 a monthly salary from the Department equal to the average
30 monthly salary which he or she actually received from the
31 Department for his or her total service with the Department
32 exclusive of the active military duty. The Superintendent shall
33 transfer and pay into the Death, Disability and Retirement Fund
34 from moneys appropriated for the Department, a sum equal to
35 eighteen percent of the aggregate of the salaries on which the
36 retirement pay of all members has been calculated and deter-
37 mined for their periods of active military duty. In addition, any
38 person who, while a member of the Department was commis-
39 sioned, enlisted or inducted into the Armed Forces of the
40 United States or, being a member of the reserve officers' corps,
41 was called to active duty in the Armed Forces between the first
42 day of September, one thousand nine hundred forty, and the
43 close of hostilities in World War II, or between the twenty-
44 seventh day of June, one thousand nine hundred fifty, and the
45 close of the armed conflict in Korea on the twenty-seventh day
46 of July, one thousand nine hundred fifty-three, between the first
47 day of August, one thousand nine hundred sixty-four and the
48 close of the armed conflict in Vietnam, or during any other
49 period of armed conflict by the United States whether sanc-
50 tioned by a declaration of war by the Congress or by executive
51 or other order of the President, is entitled to and shall receive
52 credit on the minimum period of service required by law for
53 retirement pay from the service of the West Virginia State
54 Police for a period equal to the full time he or she has or shall,
55 pursuant to the commission, enlistment, induction or call, have
56 served with the Armed Forces subject to the following:

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

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

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

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

86 (e) Notwithstanding any of the preceding provisions of this
87 section, contributions, benefits and service credit with respect
88 to qualified military service shall be provided in accordance
89 with Section 414(u) of the Internal Revenue Code. For purposes
90 of this section, "qualified military service" has the same
91 meaning as in Section 414(u) of the Internal Revenue Code.

92 The Retirement Board may determine all questions and make
93 all decisions relating to this section and, pursuant to the
94 authority granted to the Retirement Board in section one, article
95 ten-d, chapter five of this code, may promulgate rules relating
96 to contributions, benefits and service credit to comply with
97 Section 414(u) of the Internal Revenue Code.

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

1 (a) Any member of the Department who has not yet entered
2 retirement status on the basis of age and service and who
3 becomes partially disabled by injury, illness or disease resulting
4 from any occupational risk or hazard inherent in or peculiar to
5 the services required of members of the Department and
6 incurred pursuant to or while the member was engaged in the
7 performance of his or her duties as a member of the Department
8 shall, if, in the opinion of the Retirement Board, he or she is by
9 reason of that cause probably permanently unable to perform
10 adequately the duties required of him or her as a member of the
11 Department, but is able to engage in any other gainful employ-
12 ment in a field other than law enforcement, be retired from
13 active service by the Retirement Board. The member thereafter
14 is entitled to receive annually and there shall be paid to the
15 member from the Death, Disability and Retirement Fund in
16 equal monthly installments during the lifetime of the member;
17 or until the member attains the age of fifty; or until the disabil-
18 ity sooner terminates, one or the other of two amounts, which-
19 ever is greater:

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

26 (2) The sum of six thousand dollars.

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

46 (c) If any member not yet in retirement status on the basis
47 of age and service is found by the Board to be permanently and
48 totally disabled as the result of a physical or mental impairment
49 resulting from any occupational risk or hazard inherent in or
50 peculiar to the services required of members of the Department
51 and incurred pursuant to or while the member was engaged in
52 the performance of his or her duties as a member of the
53 Department, the member is entitled to receive annually and
54 there shall be paid to the member from the Death, Disability
55 and Retirement Fund in equal monthly installments during the
56 lifetime of the member or until the disability sooner terminates,
57 an amount equal to the amount of the salary received by the
58 member in the preceding twelve-month employment period:
59 *Provided, That in no event may the amount be less than fifteen*

60 thousand dollars per annum, unless required by section forty of
61 this article: *Provided, however*, That if the member had not
62 been employed with the Department for twelve months prior to
63 the disability, the amount of monthly salary shall be annualized
64 for the purpose of determining the benefit.

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

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

§15-2-30. Same — Due to other causes.

1 If any member while in active service of the Department
2 has, in the opinion of the Retirement Board, become perma-
3 nently partially or totally disabled to the extent that the member
4 cannot adequately perform the duties required of a member of

5 the Department from any cause other than those set forth in the
6 preceding section and not due to vicious habits, intemperance
7 or willful misconduct on his or her part, the member shall be
8 retired by the Retirement Board. The member is entitled to
9 receive annually and there shall be paid to the member while in
10 status of retirement, from the Death, Disability and Retirement
11 Fund in equal monthly installments during the lifetime of such
12 member or until the disability sooner terminates, a sum equal
13 to one-half the salary received in the preceding twelve-month
14 period: *Provided*, That if the member had not been employed
15 with the Department for twelve months prior to the disability,
16 the amount of monthly salary shall be annualized for the
17 purpose of determining the benefit. If the member, at the time
18 of retirement under the terms of this section, has served twenty
19 years or longer as a member of the Department, the member is
20 entitled to receive annually and there shall be paid to the
21 member from the Death, Disability and Retirement Fund in
22 equal monthly installments, commencing on the date the
23 member is retired and continuing during the lifetime of the
24 member, until the member attains the age of fifty, while in
25 status of retirement, an amount equal to one-half the salary
26 received by the member in the preceding twelve-month period:
27 *Provided, however*, That if the member had not been employed
28 with the Department for twelve months prior to the disability,
29 the amount of monthly salary shall be annualized for the
30 purpose of determining the benefit.

31 For the purposes of this section, the term "salary" does not
32 include any compensation paid for overtime service.

33 Upon attaining age fifty, the member shall receive the
34 benefit provided in subsection (c), section twenty-seven of this
35 article as it would apply to his or her aggregate career earnings
36 from the Department through the day immediately preceding
37 his or her disability. The recalculation of benefit upon a
38 member attaining age fifty shall be considered to be a retire-

39 ment under the provisions of section twenty-seven of this
40 article, for purposes of determining the amount of annual
41 annuity adjustment and for all other purposes of this article.

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

1 The Consolidated Public Retirement Board may require any
2 member who has been retired with compensation on account of
3 disability to submit to a physical and/or mental examination by
4 a physician or physicians selected or approved by the Board and
5 cause all costs incident to the examination including hospital,
6 laboratory, X ray, medical and physicians' fees to be paid out
7 of funds appropriated to defray the current expense of the
8 Department, and a report of the findings of the physician or
9 physicians shall be submitted in writing to the Consolidated
10 Public Retirement Board for its consideration. If, from the
11 report or from the report and hearing on the report, the Retirement Board is of opinion and finds that the disabled member
12 has recovered from the disability to the extent that he or she is
13 able to perform adequately the duties of a law-enforcement
14 officer, the Board shall order that all payments from the Death,
15 Disability and Retirement Fund be terminated. If, from the
16 report or the report and hearing on the report, the Board is of
17 the opinion and finds that the disabled member has recovered
18 from his or her previously determined probable permanent
19 disability to the extent that he or she is able to engage in gainful
20 employment but remains unable to adequately perform the
21 duties of a law-enforcement officer, the Board shall order the
22 payment, in monthly installments of an amount equal to two
23 thirds of the salary, in the case of a member retired under the
24 provisions of section twenty-nine of this article, or equal to one
25 half of the salary, in the case of a member retired under the
26 provisions of section thirty of this article, excluding any
27 compensation paid for overtime service, for the twelve-month
28 employment period preceding the disability: *Provided*, That if
29 the member had not been employed with the Department for
30

31 twelve months prior to the disability, the amount of monthly
32 salary shall be annualized for the purpose of determining the
33 benefit.

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

1 (a) Application for a disability benefit may be made by a
2 member or, if the member is under an incapacity, by a person
3 acting with legal authority on the member's behalf. After
4 receiving an application for a disability benefit from a member
5 or a person acting with legal authority on behalf of the member,
6 the Board shall notify the Superintendent of the Department
7 that an application has been filed: *Provided*, That when, in the
8 judgment of the Superintendent, a member is no longer physi-
9 cally or mentally fit for continued duty as a member of the
10 West Virginia State Police and the member has failed or refused
11 to make application for disability benefits under this article, the
12 Superintendent may petition the Board to retire the member on
13 the basis of disability pursuant to rules which may be estab-
14 lished by the Board. Within thirty days of the Superintendent's
15 receipt of the notice from the Board or the filing of the Superin-
16 tendent's petition with the Board, the Superintendent shall
17 forward to the Board a statement certifying the duties of the
18 member's employment, information relating to the Superinten-
19 dent's position on the work relatedness of the member's alleged
20 disability, complete copies of the member's medical file and
21 any other information requested by the Board in its processing
22 of the application, if this information is requested timely.

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

27 (c) The Board shall notify a member and the Superintendent
28 of its final action on the disability application or petition within

29 ten days of the Board's final action. The notice shall be sent by
30 certified mail, return receipt requested. If either the member or
31 the Superintendent is aggrieved by the decision of the Board
32 and intends to pursue judicial review of the Board's decision as
33 provided in section four, article five, chapter twenty-nine-a of
34 this code, the party so aggrieved shall notify the Board within
35 twenty days of the member's or Superintendent's receipt of the
36 Board's notice that they intend to pursue judicial review of the
37 Board's decision.

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

§15-2-31b. Annual report on each employer's disability retirement experience.

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

§15-2-32. Retired member not to exercise police authority; retention of group insurance.

1 A member who is retired may not, while in retirement
2 status, exercise any of the powers conferred upon active
3 members by section twelve of this article; but is entitled to
4 receive free of cost to the member and retain as his or her
5 separate property one complete standard uniform prescribed by
6 section nine of this article: *Provided*, That the uniform may be
7 worn by a member in retirement status only on occasions
8 prescribed by the Superintendent. The Superintendent shall
9 maintain at public expense for the benefit of all members in
10 retirement status that group life insurance mentioned in section
11 ten of this article. The Superintendent, when he or she is of
12 opinion that the public safety shall require, may recall to active
13 duty during any period determined by the Superintendent, any
14 member who is retired under the provisions of section
15 twenty-seven of this article, provided the consent of the
16 member to reassume duties of active membership shall first be
17 had and obtained. When any member in retirement resumes
18 status of active membership the member, during the period the
19 member remains in active status, is not entitled to receive
20 retirement pay or benefits, but in lieu thereof, is entitled to
21 receive that rate of salary and allowance pertinent to the rank or
22 grade held by the member when retired. When the member is
23 released from active duty he or she shall reassume the status of
24 retirement and shall thereupon be entitled to receive appropriate
25 benefits as provided by this article: *Provided*, That the amount
26 of the benefits shall in no event be less than the amount
27 determined by the order of the Retirement Board previously
28 made in his or her behalf.

§15-2-33. Awards and benefits to dependents of member — When member dies in performance of duty, etc.; dependent child scholarship and amount.

1 (a) The surviving spouse or the dependent child or children
2 or dependent parent or parents of any member who has lost or
3 loses his or her life by reason of injury, illness or disease
4 resulting from an occupational risk or hazard inherent in or
5 peculiar to the service required of members while the member
6 was or is engaged in the performance of his or her duties as a
7 member of the Department, or if the member dies from any
8 cause after having been retired pursuant to the provisions of
9 section twenty-nine of this article, the surviving spouse or other
10 dependent is entitled to receive and shall be paid from the
11 Death, Disability and Retirement Fund benefits as follows: To
12 the surviving spouse annually, in equal monthly installments
13 during his or her lifetime one or the other of two amounts,
14 which shall become immediately available and which shall be
15 the greater of:

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

22 (2) The sum of six thousand dollars.

23 (b) In addition thereto the surviving spouse is entitled to
24 receive and there shall be paid to the surviving spouse one
25 hundred dollars monthly for each dependent child or children.
26 If the surviving spouse dies or if there is no surviving spouse,
27 there shall be paid monthly to each dependent child or children
28 from the Death, Disability and Retirement Fund a sum equal to
29 twenty-five percent of the surviving spouse's entitlement. If
30 there is no surviving spouse and no dependent child or children,
31 there shall be paid annually in equal monthly installments from
32 the Death, Disability and Retirement Fund to the dependent
33 parents of the deceased member during their joint lifetimes a

34 sum equal to the amount which a surviving spouse, without
35 children, would have received: *Provided*, That when there is but
36 one dependent parent surviving, that parent is entitled to receive
37 during his or her lifetime one-half the amount which both
38 parents, if living, would have been entitled to receive.

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

57 (d) Awards and benefits for a member's surviving spouse
58 or dependents received under any section or any of the provi-
59 sions of this retirement system shall be in lieu of receipt of any
60 benefits for those persons under the provisions of any other
61 state retirement system. Receipt of benefits under any other
62 state retirement system shall be in lieu of any right to receive
63 any benefits under this retirement system, so that only a single
64 receipt of retirement benefits occurs.

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

§15-2-34. Same — When member dies from nonservice-connected causes.

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

29 (b) For the purposes of this section, the term "salary" does
30 not include compensation paid for overtime service.

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

1 (a) Any member who is discharged by order of the Superin-
2 tendent or otherwise terminates employment with the Depart-
3 ment, at the written request of the member to the Retirement
4 Board, is entitled to receive from the Retirement Fund a sum
5 equal to the aggregate of the principal amount of moneys
6 deducted from his or her salary and paid into the Death,
7 Disability and Retirement Fund plus four percent interest
8 compounded thereon calculated annually as provided and
9 required by this article.

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

23 (c) Every member who completes ten years of service with
24 the Department is eligible, upon separation of employment with
25 the Department, either to withdraw his or her contributions in
26 accordance with subsection (a) of this section or to choose not
27 to withdraw his or her accumulated contributions with interest.
28 Upon attainment of age sixty-two, a member who chooses not
29 to withdraw his or her contributions is eligible to receive a
30 retirement annuity. Any member choosing to receive the
31 deferred annuity under this subsection is not eligible to receive

32 the annual annuity adjustment provided in section twenty-
33 seven-a of this article. When the Retirement Board retires any
34 member under any of the provisions of this section, the Board
35 shall, by order in writing, make an award directing that the
36 member is entitled to receive annually and that there shall be
37 paid to the member from the Death, Disability and Retirement
38 Fund in equal monthly installments during the lifetime of the
39 member while in status of retirement one or the other of two
40 amounts, whichever is greater:

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

44 (2) The sum of six thousand dollars.

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

§15-2-39a. Limitations on benefit increases.

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

10 Retirement Board as of the first day of the following fiscal year
11 as of the date the improvement is adopted by the Legislature.

12 (b) If any increase of existing benefits or creation of new
13 benefits for any retirees or beneficiaries currently receiving
14 monthly benefit payments under the system, other than an
15 increase in benefits or new benefits effected by operation of law
16 in effect on the effective date of this article, causes any addi-
17 tional unfunded actuarial accrued liability in any of the West
18 Virginia state sponsored pension systems as calculated in the
19 annual actuarial valuation for the plan during any fiscal year,
20 the additional unfunded actuarial accrued liability of the system
21 shall be fully amortized over no more than the six consecutive
22 fiscal years following the date the increase in benefits or new
23 benefits become effective as certified by the consolidated
24 public retirement board. Following the receipt of the certifica-
25 tion of additional actuarial accrued liability, the Governor shall
26 submit the amount of the amortization payment each year for
27 the system as part of the annual budget submission or in an
28 executive message to the Legislature.

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

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

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-2. Definitions.

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

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

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

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

16 (4) "Department" means the West Virginia State Police.

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

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

24 (7) "Internal Revenue Code" means the Internal Revenue
25 Code of 1986, as amended.

26 (8) "Law-enforcement officer" means individuals employed
27 or otherwise engaged in either a public or private position
28 which involves the rendition of services relating to enforcement
29 of federal, state or local laws for the protection of public or

30 private safety, including, but not limited to, positions as deputy
31 sheriffs, police officers, marshals, bailiffs, court security
32 officers or any other law-enforcement position which requires
33 certification, but excluding positions held by elected sheriffs or
34 appointed chiefs of police whose duties are purely administra-
35 tive in nature.

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

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

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

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

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

59 (14) "Required beginning date" means the first day of April
60 of the calendar year following the later of: (a) The calendar year

61 in which the member attains age seventy and one half years; or
62 (b) the calendar year in which he or she retires or otherwise
63 separates from service with the Department after having
64 attained the age of seventy and one half years.

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

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

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

85 (18) "Years of service" means the months of service
86 acquired by a member while in active employment with the
87 Department divided by twelve. Years of service shall be
88 calculated in years and fraction of a year from the date of active
89 employment of the member with the Department through the
90 date of termination of employment or retirement from the
91 Department. If a member returns to active employment with the
92 Department following a previous termination of employment

93 with the Department, and the member has not received a refund
94 of contributions plus interest for the previous employment
95 under section eight of this article, service shall be calculated
96 separately for each period of continuous employment, and years
97 of service shall be the total service for all periods of employ-
98 ment. Years of service shall exclude any periods of employment
99 with the Department for which a refund of contributions plus
100 interest has been paid to the member, unless the member repays
101 the previous withdrawal, as provided in section eight of this
102 article, to reinstate the years of service.

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

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

5 (b) The state of West Virginia's contributions to the
6 retirement system, as determined by the Consolidated Public
7 Retirement Board by legislative rule promulgated in accordance
8 with the provisions of article three, chapter twenty-nine-a of
9 this code, shall be a percent of the members' total annual
10 compensation related to benefits under this retirement system.
11 In determining the amount, the Board shall give consideration
12 to setting the amount at a sum equal to an amount which, if paid
13 annually by the state, will be sufficient to provide for the total
14 normal cost of the benefits expected to become payable to all
15 members and to amortize any unfunded liability found by
16 application of the actuarial funding method chosen for that
17 purpose by the Consolidated Public Retirement Board, over a
18 period of years determined actuarially appropriate. When
19 proposing a rule for promulgation which relates to the amount
20 of employer contribution, the board may promulgate emergency
21 rules pursuant to the provisions of article three, chapter twenty-

22 nine-a of this code, if the inability of the Board to increase state
23 contributions will detrimentally affect the actuarial soundness
24 of the retirement system. A signed statement from the state
25 actuary shall accompany the statement of facts and circum-
26 stances constituting an emergency which shall be filed in the
27 State Register. For purposes of this section, subdivision (2),
28 subsection (b), section fifteen-a, article three, chapter twenty-
29 nine-a of this code is not applicable to the Secretary of State's
30 determination of whether an emergency rule should be ap-
31 proved. The state's contributions shall be paid monthly into the
32 fund created pursuant to section four of this article out of the
33 annual appropriation for the Department.

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

§15-2A-6. Retirement; commencement of benefits.

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

11 (b) When the Retirement Board retires a member with full
12 benefits under the provisions of this section, the Board, by order
13 in writing, shall make a determination that the member is
14 entitled to receive an annuity equal to two and three-fourths
15 percent of his or her final average salary multiplied by the
16 number of years, and fraction of a year, of his or her service in

17 the Department at the time of retirement. The member's annuity
18 shall begin the first day of the calendar month following the
19 month in which the member's application for the annuity is
20 filed with the Board on or after his or her attaining age and
21 service requirements, and termination of employment.

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

§15-2A-7. Annual annuity adjustment.

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

16 (b) Any member or beneficiary who receives a benefit
17 pursuant to the provisions of section nine, ten, twelve, thirteen
18 or fourteen of this article shall begin to receive the annual
19 annuity adjustment one year after the commencement of the
20 benefit on the next July first: *Provided*, That if the member has
21 been retired for less than one year when the first annuity
22 adjustment is given on that July first, that first annuity adjust-

23 ment will be a pro rata share of the full year's annuity adjust-
24 ment.

§15-2A-8. Refunds to certain members upon discharge or resignation; deferred retirement.

1 (a) Any member who is discharged by order of the Superin-
2 tendent or otherwise terminates employment with the Depart-
3 ment is, at the written request of the member to the Retirement
4 Board, entitled to receive from the Retirement Fund a sum
5 equal to the aggregate of the principal amount of moneys
6 deducted from the salary of the member and paid into the
7 Retirement Fund plus four percent interest compounded thereon
8 calculated annually as provided and required by this article.

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

18 (c) Every member who completes ten years of service with
19 the Department is eligible, upon separation of employment with
20 the Department, to either withdraw his or her contributions in
21 accordance with subsection (a) of this section, or to choose not
22 to withdraw his or her accumulated contributions with interest.
23 Upon attainment of age sixty-two, a member who chooses not
24 to withdraw his or her contributions is eligible to receive a
25 retirement annuity. The annuity shall be payable during the
26 lifetime of the member, and shall be in the amount of his or her
27 accrued retirement benefit as determined under section six of
28 this article. The retiring member may choose, in lieu of a life

29 annuity, an annuity in reduced amount payable during the
30 member's lifetime, with one half of the reduced monthly
31 amount paid to his or her surviving spouse if any, for the
32 spouse's remaining lifetime after the death of the member.
33 Reduction of the monthly benefit amount shall be calculated to
34 be of equal actuarial value to the life annuity the member could
35 otherwise have chosen. Any member choosing to receive the
36 deferred annuity under this subsection is not eligible to receive
37 the annual annuity adjustment provided in section seven of this
38 article.

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

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

19 (1) An amount equal to six tenths of the base salary
20 received in the preceding twelve-month employment period:
21 *Provided*, That if the member had not been employed with the

22 Department for twelve months prior to the disability, the
23 amount of monthly salary shall be annualized for the purpose
24 of determining the benefit; or

25 (2) The sum of six thousand dollars.

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

44 (b) Any member who has not yet entered retirement status
45 on the basis of age and service and who becomes physically or
46 mentally disabled by injury, illness or disease on a probable
47 permanent basis resulting from any occupational risk or hazard
48 inherent in or peculiar to the services required of members of
49 the Department and incurred pursuant to or while the member
50 was or is engaged in the performance of his or her duties as a
51 member of the Department to the extent that the member is
52 incapacitated ever to engage in any gainful employment, the
53 member is entitled to receive annually, and there shall be paid
54 to the member from the Fund in equal monthly installments

55 during the lifetime of the member or until the disability sooner
56 terminates, an amount equal to the amount of the base salary
57 received by the member in the preceding twelve-month
58 employment period.

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

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

1 (a) If any member while in active service of the State Police
2 becomes partially or totally disabled on a probable permanent
3 basis to the extent that the member cannot adequately perform
4 the duties required of a member of the Department from any
5 cause other than those set forth in the preceding section and not
6 due to vicious habits, intemperance or willful misconduct on his
7 or her part, the member shall be retired by the Board. There
8 shall be paid annually to the member from the Fund in equal

9 monthly installments, commencing on the date the member is
10 retired and continuing during the lifetime of the member; or
11 until the member attains the age of fifty-five; while in status of
12 retirement an amount equal to one half the base salary received
13 by the member in the preceding twelve-month period: *Pro-*
14 *vided*, That if the member had not been employed with the
15 Department for twelve months prior to the disability, the
16 amount of monthly salary shall be annualized for the purpose
17 of determining the benefit.

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

§15-2A-11. Same — Physical examinations; termination.

1 The Board may require any member retired with compensa-
2 tion on account of disability to submit to a physical or mental
3 examination or both a physical and mental examination by a
4 physician or physicians selected or approved by the Board and
5 cause all costs incident to the examination including hospital,
6 laboratory, X-ray, medical and physicians' fees to be paid out
7 of funds appropriated to defray the current expenses of the
8 Department, and a report of the findings of the physician or
9 physicians shall be submitted in writing to the Board for its
10 consideration. If from the report or from the report and hearing
11 on the report, the Board is of opinion and finds that the disabled
12 member has recovered from the disability to the extent that he
13 or she is able to perform adequately the duties of a law-enforce-
14 ment officer, the Board shall order that all payments from the

15 Fund be terminated. If from the report or the report and hearing
16 on the report, the Board is of the opinion and find that the
17 disabled member has recovered from his or her previously
18 determined probable permanent disability to the extent that he
19 or she is able to engage in any gainful employment but unable
20 to adequately perform the duties of a law-enforcement officer,
21 the Board shall order, in the case of a member retired under the
22 provisions of section nine of this article, that the disabled
23 member be paid annually from the Fund an amount equal to six
24 tenths of the base salary paid to the member in the last twelve-
25 month employment period. The Board shall order, in the case
26 of a member retired under the provisions of section ten of this
27 article, that the disabled member be paid from the Fund an
28 amount equal to one fourth of the base salary paid to the
29 member in the last twelve-month employment period: *Provided,*
30 That if the member had not been employed with the Department
31 for twelve months prior to the disability, the amount of monthly
32 salary shall be annualized for the purpose of determining the
33 benefit.

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

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

8 (b) Application for a disability benefit may be made by a
9 member or, if the member is under an incapacity, by a person
10 acting with legal authority on the member's behalf. After
11 receiving an application for a disability benefit, the Board shall
12 notify the Superintendent of the Department that an application

13 has been filed: *Provided*, That when, in the judgment of the
14 Superintendent, a member is no longer physically or mentally
15 fit for continued duty as a member of the West Virginia State
16 Police and the member has failed or refused to make application
17 for disability benefits under this article, the Superintendent may
18 petition the Board to retire the member on the basis of disability
19 pursuant to legislative rules proposed in accordance with article
20 three, chapter twenty-nine-a of this code. Within thirty days of
21 the Superintendent's receipt of the notice from the Board or the
22 filing of the Superintendent's petition with the Board, the
23 Superintendent shall forward to the Board a statement certifying
24 the duties of the member's employment, information relating to
25 the Superintendent's position on the work relatedness of the
26 member's alleged disability, complete copies of the member's
27 medical file and any other information requested by the Board
28 in its processing of the application.

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

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

44 (e) The Board may require a disability benefit recipient to
45 file an annual statement of earnings and any other information

46 required in rules which may be adopted by the Board. The
47 Board may waive the requirement that a disability benefit
48 recipient file the annual statement of earnings if the Board's
49 physician certifies that the recipient's disability is ongoing. The
50 Board shall annually examine the information submitted by the
51 recipient. If a disability recipient refuses to file the statement or
52 information, the disability benefit shall be suspended until the
53 statement and information are filed.

§15-2A-11b. Annual report on each employer's disability retirement experience.

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

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

1 The surviving spouse, the dependent child or children or
2 dependent parent or parents of any member who has lost or
3 shall lose his or her life by reason of injury, illness or disease
4 resulting from an occupational risk or hazard inherent in or
5 peculiar to the service required of members while the member
6 was engaged in the performance of his or her duties as a
7 member of the Department, or the survivor of a member who

8 dies from any cause after having been retired pursuant to the
9 provisions of section nine of this article, is entitled to receive
10 and shall be paid from the Fund benefits as follows: To the
11 surviving spouse annually, in equal monthly installments during
12 his or her lifetime, one or the other of two amounts, which shall
13 become immediately available and which shall be the greater
14 of:

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

21 (2) The sum of six thousand dollars.

22 In addition thereto, the surviving spouse is entitled to
23 receive and there shall be paid to the person one hundred
24 dollars monthly for each dependent child or children. If the
25 surviving spouse dies or if there is no surviving spouse, there
26 shall be paid monthly to each dependent child or children from
27 the Fund a sum equal to one fourth of the surviving spouse's
28 entitlement. If there is no surviving spouse and no dependent
29 child or children, there shall be paid annually in equal monthly
30 installments from the Fund to the dependent parents of the
31 deceased member during their joint lifetimes a sum equal to the
32 amount which a surviving spouse, without children, would have
33 received: *Provided*, That when there is but one dependent
34 parent surviving, that parent is entitled to receive during his or
35 her lifetime one half the amount which both parents, if living,
36 would have been entitled to receive.

37 Any person qualifying as a surviving dependent child under
38 this section, in addition to any other benefits due under this or
39 other sections of this article, is entitled to receive a scholarship

40 to be applied to the career development education of that
41 person. This sum, up to but not exceeding seven thousand five
42 hundred dollars, shall be paid from the Fund to any university
43 or college in this state or to any trade or vocational school or
44 other entity in this state approved by the Board, to offset the
45 expenses of tuition, room and board, books, fees or other costs
46 incurred in a course of study at any of these institutions so long
47 as the recipient makes application to the Board on an approved
48 form and under rules provided by the Board, and maintains
49 scholastic eligibility as defined by the institution or the Board.
50 The Board may by appropriate rules define age requirements,
51 physical and mental requirements, scholastic eligibility,
52 disbursement methods, institutional qualifications and other
53 requirements as necessary and not inconsistent with this
54 section.

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

**§15-2A-13. Same — When member dies from nonservice-con-
nected causes.**

1 In any case where a member while in active service of the
2 Department, before having completed twenty years of service
3 as a member of the Department, dies from any cause other than
4 those specified in this article and not due to vicious habits,
5 intemperance or willful misconduct on his or her part, there
6 shall be paid annually in equal monthly installments from the
7 Fund to the surviving spouse of the member during his or her
8 lifetime, or until such time as the surviving spouse remarries, a
9 sum equal to one half of the base salary received in the preced-

10 ing twelve-month employment period by the deceased member:
11 *Provided*, That if the member had not been employed with the
12 Department for twelve months prior to the disability, the
13 amount of monthly salary shall be annualized for the purpose
14 of determining the benefit. If there is no surviving spouse or the
15 surviving spouse dies or remarries, there shall be paid monthly
16 to each dependent child or children from the Fund a sum equal
17 to one fourth of the surviving spouse's entitlement. If there is
18 no surviving spouse and no dependent child or children, there
19 shall be paid annually in equal monthly installments from the
20 Fund to the dependent parents of the deceased member during
21 their joint lifetimes a sum equal to the amount that a surviving
22 spouse would have been entitled to receive: *Provided, however*,
23 That when there is but one dependent parent surviving, then that
24 parent is entitled to receive during his or her lifetime one half
25 the amount which both parents, if living, would have been
26 entitled to receive.

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

1 (a) When any member of the Department has completed
2 twenty years of service or longer as a member of the Depart-
3 ment and dies from any cause or causes other than those
4 specified in this article before having been retired by the Board,
5 and when a member in retirement status has died after having
6 been retired by the Board under the provisions of this article,
7 there shall be paid annually in equal monthly installments from
8 the Fund to the surviving spouse of the member, commencing
9 on the date of the death of the member and continuing during
10 the lifetime or until remarriage of the surviving spouse, an
11 amount equal to two thirds of the retirement benefit which the
12 deceased member was receiving while in status of retirement,
13 or would have been entitled to receive to the same effect as if
14 the member had been retired under the provisions of this article

15 immediately prior to the time of his or her death. In no event
16 shall the annual benefit payable be less than five thousand
17 dollars. In addition thereto, the surviving spouse is entitled to
18 receive and there shall be paid to the surviving spouse from the
19 Fund the sum of one hundred dollars monthly for each depend-
20 ent child or children. If the surviving spouse dies or remarries,
21 or if there is no surviving spouse, there shall be paid monthly
22 from the Fund to each dependent child or children of the
23 deceased member a sum equal to one fourth of the surviving
24 spouse's entitlement. If there is no surviving spouse or no
25 surviving spouse eligible to receive benefits and no dependent
26 child or children, there shall be paid annually in equal monthly
27 installments from the Fund to the dependent parents of the
28 deceased member during their joint lifetimes a sum equal to the
29 amount which a surviving spouse without children would have
30 been entitled to receive: *Provided*, That when there is but one
31 dependent parent surviving, that parent is entitled to receive
32 during his or her lifetime one half the amount which both
33 parents, if living, would have been entitled to receive.

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

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

1 (a) Any member who has previously served on active
2 military duty is entitled to receive additional credited service

3 for the purpose of determining the amount of retirement award
4 under the provisions of this article for a period equal to the
5 active military duty not to exceed five years, subject to the
6 following:

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

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

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

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

17 (b) In addition, any person who while a member of the
18 Department was commissioned, enlisted or inducted into the
19 Armed Forces of the United States or, being a member of the
20 reserve officers' corps, was called to active duty in the Armed
21 Forces between the first day of September, one thousand nine
22 hundred forty, and the close of hostilities in World War II, or
23 between the twenty-seventh day of June, one thousand nine
24 hundred fifty, and the close of the armed conflict in Korea on
25 the twenty-seventh day of July, one thousand nine hundred
26 fifty-three, between the first day of August, one thousand nine
27 hundred sixty-four, and the close of the armed conflict in
28 Vietnam, or during any other period of armed conflict by the
29 United States whether sanctioned by a declaration of war by
30 Congress or by executive or other order of the President, is
31 entitled to and shall receive credit on the minimum period of
32 service required by law for retirement pay from the service of
33 the Department, or its predecessor agency, for a period equal to

34 the full time that he or she has or, pursuant to that commission,
35 enlistment, induction or call, shall have served with the Armed
36 Forces subject to the following:

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

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

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

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

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

§15-2A-21. Retirement credited service through member's use, as option, of accrued annual or sick leave days.

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

§15-2A-22. Limitations on benefit increases.

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

12 (b) If any increase of existing benefits or creation of new
13 benefits for any retirees or beneficiaries currently receiving
14 monthly benefit payments under the system, other than an
15 increase in benefits or new benefits effected by operation of law
16 in effect on the effective date of this article, causes any addi-

17 tional unfunded actuarial accrued liability in the system as
18 calculated in the annual actuarial valuation for the plan during
19 any fiscal year, the additional unfunded actuarial accrued
20 liability of that pension system will be fully amortized over no
21 more than the six consecutive fiscal years following the date the
22 increase in benefits or new benefits become effective as
23 certified by the Consolidated Public Retirement Board. The
24 Consolidated Public Retirement Board shall include the six year
25 amortization in the determination of the adequacy of the
26 employer contribution percentage for the system.

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

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

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

3 (1) "Accumulated contributions" means all deposits and all
4 deductions from the gross salary of a contributor plus regular
5 interest.

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

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

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

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

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

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

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

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

26 (10) "Gross salary" means the fixed annual or periodic cash
27 wages paid by a participating public employer to a member for
28 performing duties for the participating public employer for
29 which the member was hired. Gross salary shall also include
30 retroactive payments made to a member to correct a clerical

31 error, or pursuant to a court order or final order of an adminis-
32 trative agency charged with enforcing federal or state law
33 pertaining to the member's rights to employment or wages, with
34 all such retroactive salary payments to be allocated to and
35 deemed paid in the periods in which the work was or would
36 have been done. Gross salary shall not include lump sum
37 payments for bonuses, early retirement incentives, severance
38 pay, or any other fringe benefit of any kind including, but not
39 limited to, transportation allowances, automobiles or automo-
40 bile allowances, or lump sum payments for unused, accrued
41 leave of any type or character.

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

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

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

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

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

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

59 (17) "Pick-up service" means service that a member was
60 entitled to, but which the employer has not withheld or paid for.

61 (18) "Plan year" means the twelve-month period commenc-
62 ing on the first day of July and ending the following thirtieth
63 day of June of any designated year.

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

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

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

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

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

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

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

89 (26) "Regularly employed for full-time service" means
90 employment in a regular position or job throughout the employ-

91 ment term regardless of the number of hours worked or the
92 method of pay.

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

99 (28) "Retirement system" means the State Teachers
100 Retirement System provided for in this article.

101 (29) "Teacher member" means the following persons, if
102 regularly employed for full-time service: (a) Any person
103 employed for instructional service in the public schools of West
104 Virginia; (b) principals; (c) public school librarians; (d)
105 superintendents of schools and assistant county superintendents
106 of schools; (e) any county school attendance director holding a
107 West Virginia teacher's certificate; (f) the Executive Secretary
108 of the Retirement Board; (g) members of the research, exten-
109 sion, administrative or library staffs of the public schools; (h)
110 the State Superintendent of Schools, heads and assistant heads
111 of the divisions under his or her supervision, or any other
112 employee under the State Superintendent performing services
113 of an educational nature; (i) employees of the State Board of
114 Education who are performing services of an educational
115 nature; (j) any person employed in a nonteaching capacity by
116 the State Board of Education, any county board of education,
117 the State Department of Education or the Teachers Retirement
118 Board, if that person was formerly employed as a teacher in the
119 public schools; (k) all classroom teachers, principals and
120 educational administrators in schools under the supervision of
121 the Division of Corrections, the Division of Health or the
122 Division of Human Services; and (l) employees of the State
123 Board of School Finance, if that person was formerly employed
124 as a teacher in the public schools.

125 (30) "Total service" means all service as a teacher while a
126 member of the retirement system since last becoming a member
127 and, in addition thereto, credit for prior service, if any.

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

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

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

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

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

19 (c) The aggregate of employer contributions, due and
20 payable under this article, shall equal annually the total deduc-
21 tions from the gross salary of members required by this section.
22 Beginning the first day of July, one thousand nine hundred

23 ninety-four, the rate shall be seven and one-half percent;
24 beginning on the first day of July, one thousand nine hundred
25 ninety-five, the rate shall be nine percent; beginning on the first
26 day of July, one thousand nine hundred ninety-six, the rate shall
27 be ten and one-half percent; beginning on the first day of July,
28 one thousand nine hundred ninety-seven, the rate shall be
29 twelve percent; beginning on the first day of July, one thousand
30 nine hundred ninety-eight, the rate shall be thirteen and one-half
31 percent; and beginning on the first day of July, one thousand
32 nine hundred ninety-nine and thereafter, the rate shall be fifteen
33 percent: *Provided*, that the rate shall be seven and one-half
34 percent for any individual who becomes a member of the
35 Teachers Retirement System for the first time on or after the
36 first day of July, two-thousand five or any individual who
37 becomes a member of the Teachers Retirement System as a
38 result of the merger contemplated in article seven-c of this
39 chapter.

40 (d) Payment by an employer to a member of the sum
41 specified in the employment contract minus the amount of the
42 employee's deductions shall be considered to be a full dis-
43 charge of the employer's contractual obligation as to earnable
44 compensation.

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

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

1 (a) Under rules adopted by the Retirement Board, each
2 teacher shall file a detailed statement of his or her length of
3 service as a teacher for which he or she claims credit. The
4 Retirement Board shall determine what part of a year is the

5 equivalent of a year of service. In computing the service,
6 however, it shall credit no period of more than a month's
7 duration during which a member was absent without pay, nor
8 shall it credit for more than one year of service performed in
9 any calendar year.

10 (b) For the purpose of this article, the Retirement Board
11 shall grant prior service credit to new entrants and other
12 members of the retirement system for service in any of the
13 Armed Forces of the United States in any period of national
14 emergency within which a federal Selective Service Act was in
15 effect. For purposes of this section, "Armed Forces" includes
16 Women's Army Corps, women's appointed volunteers for
17 emergency service, Army Nurse Corps, SPARS, Women's
18 Reserve and other similar units officially parts of the military
19 service of the United States. The military service is considered
20 equivalent to public school teaching, and the salary equivalent
21 for each year of that service is the actual salary of the member
22 as a teacher for his or her first year of teaching after discharge
23 from military service. Prior service credit for military service
24 shall not exceed ten years for any one member, nor shall it
25 exceed twenty-five percent of total service at the time of
26 retirement. Notwithstanding the preceding provisions of this
27 subsection, contributions, benefits and service credit with
28 respect to qualified military service shall be provided in
29 accordance with Section 414(u) of the Internal Revenue Code.
30 For purposes of this section, "qualified military service" has the
31 same meaning as in Section 414(u) of the Internal Revenue
32 Code. The Retirement Board is authorized to determine all
33 questions and make all decisions relating to this section and,
34 pursuant to the authority granted to the Retirement Board in
35 section one, article ten-d, chapter five of this code, may
36 promulgate rules relating to contributions, benefits and service
37 credit to comply with Section 414(u) of the Internal Revenue
38 Code. No military service credit may be used in more than one

39 retirement system administered by the Consolidated Public
40 Retirement Board.

41 (c) For service as a teacher in the employment of the federal
42 government, or a state or territory of the United States, or a
43 governmental subdivision of that state or territory, the Retirement Board shall grant credit to the member: *Provided*, That the
44 member shall pay to the system double the amount he or she
45 contributed during the first full year of current employment,
46 times the number of years for which credit is granted, plus
47 interest at a rate to be determined by the Retirement Board. The
48 interest shall be deposited in the reserve fund and service credit
49 granted at the time of retirement shall not exceed the lesser of
50 ten years or fifty percent of the member's total service as a
51 teacher in West Virginia. Any transfer of out-of-state service,
52 as provided in this article, shall not be used to establish eligibility for a retirement allowance and the Retirement Board shall
53 grant credit for the transferred service as additional service
54 only: *Provided, however*, That a transfer of out-of-state service
55 is prohibited if the service is used to obtain a retirement benefit
56 from another retirement system: *Provided further*, That salaries
57 paid to members for service prior to entrance into the retirement
58 system shall not be used to compute the average final salary of
59 the member under the retirement system.
60
61

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

69 (e) No members shall be considered absent from service
70 while serving as a member or employee of the Legislature of
71 the state of West Virginia during any duly constituted session

72 of that body or while serving as an elected member of a county
73 commission during any duly constituted session of that body.

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

87 (g) The Teachers Retirement Board shall grant service
88 credit to any former or present member of the West Virginia
89 Public Employees Retirement System who has been a contribut-
90 ing member for more than three years, for service previously
91 credited by the Public Employees Retirement System and: (1)
92 Shall require the transfer of the member's contributions to the
93 Teachers Retirement System; or (2) shall require a repayment
94 of the amount withdrawn any time prior to the member's
95 retirement: *Provided*, That there shall be added by the member
96 to the amounts transferred or repaid under this subsection an
97 amount which shall be sufficient to equal the contributions he
98 or she would have made had the member been under the
99 Teachers Retirement System during the period of his or her
100 membership in the Public Employees Retirement System plus
101 interest at a rate to be determined by the Board compounded
102 annually from the date of withdrawal to the date of payment.
103 The interest paid shall be deposited in the reserve fund.

104 (h) For service as a teacher in an elementary or secondary
105 parochial school, located within this state and fully accredited
106 by the West Virginia Department of Education, the Retirement
107 Board shall grant credit to the member: *Provided*, That the
108 member shall pay to the system double the amount contributed
109 during the first full year of current employment, times the
110 number of years for which credit is granted, plus interest at a
111 rate to be determined by the Retirement Board. The interest
112 shall be deposited in the reserve fund and service granted at the
113 time of retirement shall not exceed the lesser of ten years or
114 fifty percent of the member's total service as a teacher in the
115 West Virginia public school system. Any transfer of parochial
116 school service, as provided in this section, may not be used to
117 establish eligibility for a retirement allowance and the Board
118 shall grant credit for the transfer as additional service only:
119 *Provided, however*, That a transfer of parochial school service
120 is prohibited if the service is used to obtain a retirement benefit
121 from another retirement system.

122 (i) Active members who previously worked in CETA
123 (Comprehensive Employment and Training Act) may receive
124 service credit for time served in that capacity: *Provided*, That
125 in order to receive service credit under the provisions of this
126 subsection the following conditions must be met: (1) The
127 member must have moved from temporary employment with
128 the participating employer to permanent full-time employment
129 with the participating employer within one hundred twenty days
130 following the termination of the member's CETA employment;
131 (2) the Board must receive evidence that establishes to a
132 reasonable degree of certainty as determined by the Board that
133 the member previously worked in CETA; and (3) the member
134 shall pay to the Board an amount equal to the employer and
135 employee contribution plus interest at the amount set by the
136 Board for the amount of service credit sought pursuant to this
137 subsection: *Provided, however*, That the maximum service

138 credit that may be obtained under the provisions of this subsec-
139 tion is two years: *Provided further*, That a member must apply
140 and pay for the service credit allowed under this subsection and
141 provide all necessary documentation by the thirty-first day of
142 March, two thousand three: *And provided further*, That the
143 Board shall exercise due diligence to notify affected employees
144 of the provisions of this subsection.

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

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

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

159 (m) Notwithstanding any provision of this article to the
160 contrary, when a member is or has been elected to serve as a
161 member of the Legislature, and the proper discharge of his or
162 her duties of public office require that member to be absent
163 from his or her teaching or administrative duties, the time
164 served in discharge of his or her duties of the legislative office
165 are credited as time served for purposes of computing service
166 credit: *Provided*, That the Board may not require any additional
167 contributions from that member in order for the Board to credit
168 him or her with the contributing service credit earned while
169 discharging official legislative duties: *Provided, however*, That

170 nothing in this section may be construed to relieve the employer
171 from making the employer contribution at the member's regular
172 salary rate or rate of pay from that employer on the contributing
173 service credit earned while the member is discharging his or her
174 official legislative duties. These employer payments shall
175 commence as of the first day of June, two thousand: *Provided*
176 *further*, That any member to which the provisions of this
177 subsection apply may elect to pay to the Board an amount equal
178 to what his or her contribution would have been for those
179 periods of time he or she was serving in the Legislature. The
180 periods of time upon which the member paid his or her contri-
181 bution shall then be included for purposes of determining his or
182 her final average salary as well as for determining years of
183 service: *And provided further*, That a member using the
184 provisions of this subsection is not required to pay interest on
185 any contributions he or she may decide to make.

186 (n) The Teachers Retirement Board shall grant service
187 credit to any former member of the State Police Death, Disabil-
188 ity and Retirement System who has been a contributing member
189 for more than three years, for service previously credited by the
190 State Police Death, Disability and Retirement System; and: (1)
191 Shall require the transfer of the member's contributions to the
192 Teachers Retirement System; or (2) shall require a repayment
193 of the amount withdrawn any time prior to the member's
194 retirement: *Provided*, That the member shall add to the amounts
195 transferred or repaid under this paragraph an amount which is
196 sufficient to equal the contributions he or she would have made
197 had the member been under the Teachers Retirement System
198 during the period of his or her membership in the State Police
199 Death, Disability and Retirement System plus interest at a rate
200 to be determined by the Board compounded annually from the
201 date of withdrawal to the date of payment. The interest paid
202 shall be deposited in the reserve fund.

§18-7A-18. Teachers Employers Contribution Collection Account; Teachers Retirement System Fund; transfers.

1 (a) There is hereby created in the State Treasury a special
2 revenue account designated the "Teachers Employers Contribu-
3 tion Collection Account" to be administered by the Consoli-
4 dated Public Retirement Board. The Teachers Employers
5 Contribution Collection Account shall be an interest-bearing
6 account with interest credited to and deposited in the account
7 and transferred in accordance with the provisions of this
8 section.

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

11 (1) contributions of employers, through state appropria-
12 tions, and such amounts shall be included in the budget bill
13 submitted annually by the governor;

14 (2) Beginning on the first day of July, two-thousand five,
15 contributions from each county in an amount equal to fifteen
16 percent of all salary paid in excess of that authorized for
17 minimum salaries in sections two and eight-a, article four,
18 chapter eighteen-a of this code and any salary equity authorized
19 in section five of said article or any county supplement equal to
20 the amount distributed for salary equity among the counties for
21 each individual who was a member of the Teachers' Retirement
22 System before the first day of July, two-thousand five: *Pro-*
23 *vided*, That the rate shall be seven and one-half percent for any
24 individual who becomes a member of the Teachers Retirement
25 System for the first time on or after the first day of July, two-
26 thousand five or any individual who becomes a member of the
27 Teachers' Retirement System as a result of the merger contem-
28 plated in article seven-c of this chapter;

29 (3) the amounts transferred pursuant to section eighteen-a
30 of this article; and

31 (4) any other moneys, available and not otherwise ex-
32 pended, which may be appropriated or transferred to this
33 account.

34 (c) Moneys on deposit in the Teacher Employers Contribu-
35 tion Collection Account shall be transferred monthly in the
36 following order:

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

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

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

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

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

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

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

57 (3) gifts and bequests to the fund and any accretions and
58 accumulations which may properly be paid into and become a
59 part of the fund;

60 (4) specific appropriations to the fund made by the Legisla-
61 ture;

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

64 (6) any other moneys, available and not otherwise ex-
65 pended, which may be appropriated or transferred to the
66 Teachers Retirement System or the Fund.

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

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

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

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

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

6 There shall be an additional allocation in each year an
7 amount equal to the total of all irrevocably forfeited amounts in
8 the suspension account established in section eleven, article
9 seven-b of this chapter plus earnings thereon which have been
10 certified to the several contributing employers as irrevocably
11 forfeited in the prior fiscal year and subsequently used by the

12 contributing employers to reduce their total aggregate contribu-
13 tion requirements pursuant to section seventeen, article seven-b
14 of this chapter.

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

§18-7A-23a. Terminal benefits.

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

10 (b) In the event that all claims to benefits payable to, or on
11 behalf of, a retired member expire, and the accumulated
12 contributions exceed the accumulated net benefit payments paid
13 to or on behalf of the retired member, the balance in the retired
14 member's account shall be paid to the person or persons as the
15 retired member has nominated by written designation duly
16 executed and filed with the board of trustees. If there is no
17 designated person or persons surviving the retired member
18 following the expiration of the claims, the excess of the
19 accumulated contributions over the accumulated net benefit, if
20 any, shall be paid to the retired member's estate: *Provided,*
21 That the provisions of this section are retroactive to all mem-
22 bers who entered retirement status on or after the ninth day of
23 June, two thousand.

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

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

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

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

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

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

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

31 (2) His or her service as a teacher or nonteaching member
32 in West Virginia must total at least five years, and service as a

33 teacher or nonteaching member must have been terminated
34 because of disability, which disability must have caused
35 absence from service for at least six months before his or her
36 application for disability annuity is approved and the disability
37 is a direct and total result of an act of student violence directed
38 toward the member.

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

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

70 no longer exists, or if the retired teacher refuses to submit to
71 medical examination as required by this section.

§18-7A-26. Computation of annuities.

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

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

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

11 (1) Two percent of the member's average salary multiplied
12 by his or her total service credit as a teacher. In this subdivision
13 "average salary" means the average of the highest annual
14 salaries received by the member during any five years con-
15 tained within his or her last fifteen years of total service credit:
16 *Provided, That* the highest annual salary used in this calculation
17 for certain members employed by the West Virginia Higher
18 Education Policy Commission under its control shall be four
19 thousand eight hundred dollars, as provided by section
20 fourteen-a of this article;

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

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

27 (e) Upon the death of an annuitant who qualified for an
28 annuity as the surviving spouse of an active member or because
29 of permanent disability, the estate of the deceased or benefi-
30 ciary designated for such purpose shall be paid the difference,

31 if any, between the member's contributions with regular interest
32 thereon, and the sum of the annuity payments. Upon the death
33 of a spouse who was named as the member's survivor, a retirant
34 may elect an annuity option approved by the Board in an
35 amount adjusted on a fair basis to be of equal actuarial value as
36 the annuity prospectively in effect relative to the surviving
37 member at the time the new option is elected.

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

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

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

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

1 (a) The state shall not increase any existing benefits or
2 create any new benefits for any retirees or beneficiaries
3 currently receiving monthly benefit payments from the retire-
4 ment system, other than an increase in benefits or new benefits

5 effected by operation of law in effect on the effective date of
6 this article, in an amount that would exceed more than one
7 percent of the accrued actuarial liability of the system as of the
8 last day of the preceding fiscal year as determined in the annual
9 actuarial valuation for each plan completed for the Consolidated
10 Public Retirement Board as of the first day of the following
11 fiscal year.

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

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

35 (d) The provisions of this section terminate effective the
36 first day of July, two thousand thirty-four: *Provided, however,*
37 that if bonds are issued pursuant to article eight, chapter twelve
38 of this code, the provisions of this section shall not terminate
39 while any of the bonds are outstanding.

§18-7A-34. Loans to members.

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

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

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

32 (3) No member is eligible for more than one outstanding
33 loan at any time.

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

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

52 (6) The entire unpaid balance of any loan, and interest due
53 thereon, shall, at the option of the Board, become due and
54 payable without further notice or demand upon the occurrence
55 with respect to the borrowing member of any of the following
56 events of default: (A) Any payment of principal and accrued
57 interest on a loan remains unpaid after it becomes due and
58 payable under the terms of the loan or after the grace period
59 established in the discretion of the Board; (B) the borrowing
60 member attempts to make an assignment for the benefit of
61 creditors of his or her refund or benefit under the retirement
62 system; or (C) any other event of default set forth in rules
63 promulgated by the Board in accordance with the authority
64 granted pursuant to section one, article ten-d, chapter five of
65 this code: *Provided*, That any refund or offset of an unpaid loan
66 balance shall be made only at the time the member is entitled to
67 receive a distribution under the retirement system.

68 (7) Loans shall be evidenced by such form of obligations
69 and shall be made upon such additional terms as to default,

70 prepayment, security, and otherwise as the Retirement Board
71 may determine.

72 (8) Notwithstanding anything herein to the contrary, the
73 loan program authorized by this section shall comply with the
74 provisions of Section 72(p)(2) and Section 401 of the Internal
75 Revenue Code, and the federal regulations issued thereunder,
76 and accordingly, the Retirement Board is authorized to: (A)
77 Apply and construe the provisions of this section and adminis-
78 ter the plan loan program in such a manner as to comply with
79 the provisions of Section 72(p)(2) and Section 401 of the
80 Internal Revenue Code and the federal regulations issued
81 thereunder; (B) adopt plan loan policies or procedures consis-
82 tent with these federal law provisions; and (C) take such actions
83 as it deems necessary or appropriate to administer the plan loan
84 program created hereunder in accordance with these federal law
85 provisions. The Retirement Board is further authorized in
86 connection with the plan loan program to take any actions that
87 may at any time be required by the Internal Revenue Service
88 regarding compliance with the requirements of Section 72(p)(2)
89 or Section 401 of the Internal Revenue Code, and the federal
90 regulations issued thereunder, notwithstanding any provision in
91 this article to the contrary.

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

§18-7A-39. Employee Pension and Health Care Benefits Fund.

1 (a) There is hereby created in the State Treasury a special
2 revenue account designated as the "Employee Pension and
3 Health Care Benefits Fund" to be administered by the Depart-
4 ment of Administration. Funds in this account may be invested
5 in the manner permitted by the provisions of article six, chapter

6 twelve of this code, with all interest income credited to this
7 Fund.

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

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

§18-7A-40. Higher education employees.

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

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

5 (2) To affect the membership of higher education employ-
6 ees who are currently members of either the State Teachers'
7 Retirement System created in this article or the Teachers'
8 Defined Contribution Retirement System created in article

9 seven-b of this chapter: *Provided*, That if the merger contem-
10 plated by article seven-c of this chapter occurs, any higher
11 education employees who are currently members of the
12 Teachers' Defined Contribution Retirement System shall
13 become members of the Teachers Retirement System.

**ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT
SYSTEM.**

§18-7B-2. Definitions.

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

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

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

8 (3) "Existing employer" means any employer who em-
9 ployed or employs a member of the existing retirement system;

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

13 (5) "Member" or "employee" means the following persons,
14 if regularly employed for full-time service: (A) Any person
15 employed for instructional service in the public schools of West
16 Virginia; (B) principals; (C) public school librarians; (D)
17 superintendents of schools and assistant county superintendents
18 of schools; (E) any county school attendance director holding
19 a West Virginia teacher's certificate; (F) members of the
20 research, extension, administrative or library staffs of the public
21 schools; (G) the State Superintendent of Schools, heads and
22 assistant heads of the divisions under his or her supervision, or
23 any other employee under the State Superintendent performing
24 services of an educational nature; (H) employees of the State

25 Board of Education who are performing services of an educa-
26 tional nature; (I) any person employed in a nonteaching
27 capacity by the State Board of Education, any county board of
28 education or the State Department of Education if that person
29 was formerly employed as a teacher in the public schools; (J)
30 all classroom teachers, principals and educational administra-
31 tors in schools under the supervision of the Division of Correc-
32 tions and the Department of Health and Human Resources; (K)
33 any person who is regularly employed for full-time service by
34 any county board of education or the State Board of Education
35 and (L) the administrative staff of the public schools including
36 deans of instruction, deans of men and deans of women, and
37 financial and administrative secretaries;

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

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

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

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

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

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

58 (12) "Employer contribution" means an amount deposited
59 into the member's individual annuity account on a periodic
60 basis coinciding with the employee's regular pay period by an
61 employer from its own funds;

62 (13) "Annuity account" or "annuity" means an account
63 established for each member to record the deposit of member
64 contributions and employer contributions and interest, divi-
65 dends or other accumulations credited on behalf of the member;

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

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

83 (16) "Plan year" means the twelve-month period commenc-
84 ing on the first day of July of any designated year and ending on
85 the following thirtieth day of June;

86 (17) "Required beginning date" means the first day of April
87 of the calendar year following the later of: (a) The calendar year
88 in which the member attains age seventy-one and one-half
89 years; or (b) the calendar year in which the member retires or
90 otherwise ceases employment with a participating employer
91 after having attained the age of seventy and one-half years; and

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

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

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

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

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

29 (d) Any person who was, prior to the first day of July, one
30 thousand nine hundred ninety-one, a member of the existing

31 Teachers Retirement System who left participating employment
32 before the creation of the Teachers' Defined Contribution
33 Retirement System on the first day of July, one thousand nine
34 hundred ninety-one, and who later returned to participating
35 employment after that date and who was precluded from
36 returning to the existing Teachers Retirement System as a result
37 of prior provisions of this section, may elect, pursuant to the
38 provisions of this section, readmission to the existing Teachers
39 Retirement System: *Provided*, That persons who are eligible to,
40 and who make the election to, terminate their participation in
41 the Defined Contribution System and to return to participation
42 in the existing Teachers Retirement System as provided in this
43 section shall make the election, on a form approved by and filed
44 with the West Virginia Consolidated Public Retirement Board
45 on or before the thirtieth day of June, two thousand two:
46 *Provided, however*, That as a condition of the right of readmis-
47 sion to the existing Teachers Retirement System, a person
48 making the election provided in this section whose Defined
49 Contribution Account had not, prior to election, been divided by
50 a qualified domestic relations order, shall pay an additional
51 contribution to the existing Teachers Retirement System equal
52 to one and one-half percent of his or her annual gross compen-
53 sation earned for each year during which he or she participated
54 in the Defined Contribution System and shall consent and agree
55 to the transfer of his or her total account balance in the Defined
56 Contribution System as of the most recent plan valuation
57 immediately preceding his or her transfer to the existing
58 Teachers Retirement System. For a person making the election
59 provided in this section whose defined contribution account
60 had, prior to the election, previously been divided by a qualified
61 domestic relations order, the cost to transfer to the existing
62 Teachers Retirement System shall be actuarially determined by
63 the Consolidated Public Retirement Board. Upon verification of
64 that person's eligibility to return to participation in the existing
65 Teachers Retirement System and the tender and transfer of
66 funds as provided in this subsection, a person making this
67 election shall receive service credit for the time the member
68 participated in the Defined Contribution System as if his or her
69 participation had been in the existing Teachers Retirement

70 System: *Provided further*, That the right to terminate participa-
71 tion in the Defined Contribution System and to resume partici-
72 pation in the existing Teachers Retirement System as provided
73 in this section is irrevocable and shall not apply to any person
74 who, while a member of the Teachers Retirement System,
75 voluntarily elected to terminate his or her membership in the
76 Teachers Retirement System and to become a participant in the
77 Defined Contribution System pursuant to section eight of this
78 article.

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

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

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

94 (h) Any individual who is not a "member" or "employee"
95 as defined by section two of this article and any individual who
96 is a leased employee is not eligible to participate in the Teachers
97 Defined Contribution System. For purposes of this section,
98 a "leased" employee means any individual who performs
99 services as an independent contractor or pursuant to an agree-
100 ment with an employee leasing organization or other similar
101 organization. In all cases in which a question exists as to
102 whether an individual is eligible for membership in this system,
103 the Consolidated Public Retirement Board shall decide the
104 question.

105 (i) Effective the first day of July, two thousand five and
106 continuing through the first day of two thousand six, any
107 employee of River Valley Child Development Services, Inc.,
108 who is a member of the teachers' defined contribution retire-
109 ment system may elect to withdraw from membership and join
110 the private pension plan provided by River Valley Child
111 Development Services, Inc.

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

122 (k) The administrative body of River Valley Child Develop-
123 ment Services, Inc., shall, on or before the first day of June, two
124 thousand five, give written notice to each employee who is a
125 member of the teachers' defined contribution retirement system
126 of the option to withdraw from or remain in the system. The
127 notice shall include a copy of this section and a statement
128 explaining the member's options regarding membership. The
129 notice shall include a statement in plain language giving a full
130 explanation and actuarial projection figures, prepared by an
131 independent actuary, in support of the explanation regarding the
132 individual member's current account balance, vested and
133 nonvested, and his or her projected return upon remaining in the
134 teacher's defined contribution retirement system until retire-
135 ment, disability or death, in comparison with the projected
136 return upon withdrawing from the teachers' defined contribu-
137 tion retirement system and joining a private pension plan
138 provided by River Valley Child Development Center, Inc., and
139 remaining therein until retirement, disability or death. The
140 administrative body shall keep in its records a permanent record
141 of each employee's signature confirming receipt of the notice.

§18-7B-7a. Plan closed to persons employed for the first time after June, 2005; former employees.

1 The Retirement System created and established in this
2 article shall be closed and no new members accepted in the
3 system after the thirtieth day of June, two thousand five.
4 Notwithstanding the provisions of sections seven and eight of
5 this article, all persons who are regularly employed for full-time
6 service as a member or an employee whose initial employment
7 commences after the thirtieth day of June, two thousand five,
8 shall become a member of the State Teachers' Retirement
9 System created and established in article seven-a of this
10 chapter: *Provided*, That any person rehired after the thirtieth
11 day of June, two thousand five, shall become a member of the
12 Teachers' Defined Contribution Retirement System created and
13 established in this article, or of the Teachers Retirement System
14 created and established in article seven-a of this chapter,
15 depending upon which system he or she last contributed to
16 while he or she was employed with an employer mandating
17 membership and contributions to one of those plans: *Provided*,
18 *however*, That if, and only if, the Teachers' Defined Contribu-
19 tion Retirement System is merged and consolidated with the
20 Teachers Retirement System pursuant to the provisions of
21 article seven-c of this chapter, then all employees shall be a
22 member of the Teachers Retirement System as of the first day
23 of July, two thousand six, as provided in article seven-c of this
24 chapter.

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

1 (a) Each employee who is a member of the Defined
2 Contribution System shall contribute four and one-half percent
3 of his or her gross compensation by salary deduction. The
4 salary deductions shall be made by the employer and shall be
5 paid to the Teachers' Defined Contribution Retirement System
6 within fifteen days of the end of the pay period: *Provided*, That
7 the Board may require any employer to make the payments
8 within such shorter period as it may determine, upon at least
9 sixty days notice to the employer, if the Board determines the

10 employer has the technological capacity to transfer the funds
11 within the shorter period. The employer payments shall be
12 remitted by the Board within five working days to the private
13 pension, insurance, annuity, mutual fund, or other qualified
14 company or companies designated by the Board to administer
15 the day-to-day operations of the system.

16 (b) All member contributions shall be immediately depos-
17 ited to an account or accounts established in the name of the
18 member and held in trust for the benefit of the member. An
19 account agreement shall be issued to each member setting forth
20 the terms and conditions under which contributions are re-
21 ceived, and the investment and retirement options available to
22 the member. The Board shall propose for legislative approval
23 in accordance with article three, chapter twenty-nine-a of this
24 code, pursuant to section six of this article, rules defining the
25 minimum requirements for the investment and retirement
26 options to be provided to the members.

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

31 (1) Lump sum or periodic payment distributions;

32 (2) Joint and survivor annuities;

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

34 (4) Variable annuities which gradually increase monthly
35 retirement payments: *Provided*, That said increased payments
36 are funded solely by the existing current value of the member's
37 account at the time the member's retirement payments com-
38 mence and not, to any extent, in a manner which would require
39 additional employer or employee contributions to any mem-
40 ber's account after retirement or after the cessation of employ-
41 ment; and

42 (5) The instances in which, if any, distributions or loans can
43 be made to members from their annuity account balances prior
44 to having attained the age of fifty-five.

§18-7B-11. Termination of membership.

1 (a) Any member whose employment with a participating
2 employer terminates after the completion of six complete years
3 of employment service is eligible to terminate his or her annuity
4 account and receive a distribution from the member's annuity
5 account, in an amount equal to the member's contribution plus
6 one third of the employer contributions and any earnings
7 thereon. Any member whose employment with a participating
8 employer terminates after the completion of nine complete
9 years of employment service is eligible to terminate his or her
10 annuity account and receive a distribution from the member's
11 annuity account, in an amount equal to the member's contribu-
12 tion plus two thirds of the employer's contributions and any
13 earnings thereon. Any member whose employment with a
14 participating employer terminates after the completion of
15 twelve complete years of employment service is eligible to
16 terminate his or her annuity account and receive a distribution
17 of all funds contributed and accumulated in his or her annuity
18 account. Any member whose employment with a participating
19 employer terminates prior to the completion of six complete
20 years of employment service is eligible to terminate his or her
21 annuity account and receive a distribution from the member's
22 annuity account, in an amount equal to the member's contribu-
23 tion plus any earnings thereon: *Provided*, That on the death or
24 permanent, total disability of any member, that member is
25 eligible to terminate his or her annuity account and receive all
26 funds contributed to or accumulated in his or her annuity
27 account.

28 (b) (1) Upon termination of employment, regardless of
29 whether the member has taken a distribution of all or a portion
30 of his or her vested account, the remaining balance, if any, in
31 the member's employer account that is not vested shall be
32 remitted and paid into a suspension account to be administered

33 by the Board. The Board shall propose rules for legislative
34 approval in accordance with article three, chapter twenty-nine-a
35 of this code regarding the distribution of any balance in the
36 special account created by this section: *Provided*, That any
37 funds in the account shall be used solely for the purpose of
38 reducing employer contributions in future years.

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

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

63 (d) Upon the use of the amounts irrevocably forfeited to any
64 contributing employer as a reduction in the then current fiscal
65 year contribution obligation and upon notification provided by
66 the several contributing employers to the Board of their
67 intention to use irrevocably forfeited amounts, the Board shall
68 direct the distribution of the irrevocably forfeited amounts from

69 the suspension account to be deposited on behalf of the contrib-
70 uting employer to the member annuity accounts of its then
71 current employees pursuant to section seventeen of this article:
72 *Provided*, That notwithstanding any provision of this article to
73 the contrary, when a member is or has been elected to serve as
74 a member of the Legislature, and the proper discharge of his or
75 her duties of public office requires that member to be absent
76 from his or her teaching, nonteaching or administrative duties,
77 the time served in discharge of his or her duties of the legisla-
78 tive office are credited as time served for purposes of comput-
79 ing service credit, regardless when this time was served:
80 *Provided, however*, That the Board may not require any
81 additional contributions from that member in order for the
82 Board to credit him or her with the contributing service credit
83 earned while discharging official legislative duties: *Provided*
84 *further*, That nothing herein may be construed to relieve the
85 employer from making the employer contribution at the
86 member's regular salary rate or rate of pay from that employer
87 on the contributing service credit earned while the member is
88 discharging his or her official legislative duties. These em-
89 ployer payments shall commence as of the first day of July, two
90 thousand three: *And provided further*, That any member to
91 which the provisions of this subsection apply may elect to pay
92 to the Board an amount equal to what his or her contribution
93 would have been for those periods of time he or she was serving
94 in the Legislature.

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

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

11 Section 401 (a) (9)(G) of the Internal Revenue Code and the
12 regulations thereunder. For this purpose, the following provi-
13 sions apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§18-7C-1. Short title.

1 This article may be cited as the "Teachers' Retirement
2 Equity Act".

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

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

8 (b) The Legislature finds and declares that the State of West
9 Virginia is privileged to be the home of some of the best
10 teachers and education service personnel in this nation, and that
11 our teachers and education service personnel are dedicated and
12 hard working individuals. The Legislature further finds and
13 declares that our teachers and education service personnel
14 deserve a retirement program whereby they know in advance
15 what their retirement benefit will be, a defined benefit retire-
16 ment program where our teachers and service personnel will not
17 have to bear the risk of investment performance to receive their
18 full retirement benefit. The Legislature notes that uncertainty
19 exists in the investment markets, especially in the post Septem-
20 ber eleventh era, and that placing this risk and uncertainty upon
21 the state in the form of a defined benefit plan will protect and
22 ensure a meaningful retirement benefit for our teachers and
23 educational service personnel.

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

29 (d) The Legislature also finds that a fiscally sound retire-
30 ment program with an ascertainable benefit aids in the retention
31 and recruitment of teachers and school service personnel, and
32 that the provisions of this article are designed to accomplish the
33 goals set forth in this section.

34 (e) The Legislature has studied this matter diligently and in
35 making the determination to merge the two plans has availed
36 itself of an actuarial study of the proposed merger by the
37 actuary of the Consolidated Public Retirement Board as well as
38 engaging the service of two independent actuaries.

39 (f) The Legislature further finds and declares that members
40 of a defined contribution system who must bear the attendant
41 market risk and performance of their investments are truly
42 being provided a significant and greater benefit where the
43 defined contribution system is replaced with a defined benefit
44 system in which the employer bears the risk of market fluctua-
45 tions and investment performance, especially where those
46 members decide through an election process whether to trade
47 the defined contribution system for a defined benefit system.

§18-7C-3. Definitions.

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

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

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

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

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

15 (5) "Assets" or "all assets" means all member contributions,
16 employer contributions and interest or asset appreciation in a

17 member's Defined Contribution Account, less any applicable
18 fees as approved by the Board.

19 (6) "Salary" or "annual salary" means the annual contract
20 salary for those persons working in accordance with an employ-
21 ment contract and in any other event as an annualized amount
22 determined by multiplying a person's hourly rate of pay by two
23 thousand eighty hours.

24 (7) "Date of merger" means, in the event of a positive vote
25 on the merger, the first day of July, two thousand six.

§18-7C-4. Merger.

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

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

1 (a) Commencing not later than the first day of August, two
2 thousand five, the Consolidated Public Retirement Board shall
3 begin an educational program with respect to the merger of the

4 Defined Contribution Plan with the State Teachers Retirement
5 System. This education program shall address, at a minimum,
6 the law providing for the merger, the mechanics of the merger,
7 the election process, relevant dates and time periods, the
8 benefits, potential advantages and potential disadvantages if
9 members fail or refuse to approve the merger and thereby elect
10 to remain in the Defined Contribution System, the benefits,
11 potential advantages and potential disadvantages of becoming
12 a member of the Teachers Retirement System, potential state
13 and federal tax implications in general attendant to the various
14 options available to the members and any other pertinent
15 information considered relevant by the Board. The Board shall
16 provide this information through its website, by written
17 materials, electronic materials or both written and electronic
18 materials delivered to each member and by classes or seminars,
19 if, in the best judgment of the Board, the classes and seminars
20 are required to provide the necessary education for members to
21 make an informed decision with respect to the election. The
22 Board shall also provide this information through computer
23 programs, or, at the discretion of the Board, through a program
24 of individual counseling which is optional on the part of the
25 member, and by any other educational program or programs
26 considered necessary by the Board.

27 (b) The Board shall provide each member with a copy of
28 the written or electronic educational materials and with a copy
29 of the notice of the election. The notice shall provide full and
30 appropriate disclosure regarding the merger and of the election
31 process, including the date of the election. The Board shall also
32 cause notice of the election to be published in at least ten
33 newspapers of general circulation in this state. This notice shall
34 be by Class III legal advertisement published in accordance
35 with the provisions of article three, chapter fifty-nine of this
36 code. The Board shall cause this notice to be published not later
37 than thirty days prior to the beginning of the election period and
38 not sooner than sixty days prior to the beginning of the election
39 period.

40 (c) It is the responsibility of each member of the Defined
41 Contribution Plan to keep the Board informed of his or her
42 current address. If a member does not keep the Board informed
43 of his or her current address, he or she is considered to have
44 waived his or her right to receive any information from the
45 Board with respect to the purposes of this article.

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

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

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

9 (b) Following the election, if the vote is in favor of the
10 merger, the Board shall transfer all assets in the defined
11 contribution account into the State Teachers Retirement System
12 and members have the option to pay into the State Teachers
13 Retirement System a one and one-half of one percent contribu-
14 tion for service in the Defined Contribution Plan being recog-
15 nized in the State Teachers Retirement System. This contribu-
16 tion shall be calculated based on the member's salary as of the
17 thirtieth day of June, two thousand five, and the members
18 attained age on that date, applying both an annual backward
19 salary scale projection from that date for prior years based upon
20 the salary scale assumption applied in the actuarial valuation
21 dated the first day of July, two thousand four, for the Teachers
22 Retirement System and a one year forward salary scale projec-
23 tion for the year ending on the thirtieth day of June, two
24 thousand six.

25 (c) The Board shall make available to the members a loan
26 in accordance with the provisions of section thirty-four, article
27 seven-a of this chapter to be used by the members to pay all or
28 a part of the one and one-half percent amount established in this
29 section. Notwithstanding any provision of this code, any rule or
30 any policy of the Board to the contrary, the interest rate on any
31 loan used to pay the one and one-half percent amount may not
32 exceed seven and one-half percent per annum and the amount
33 total borrowed for this section may not exceed twelve thousand
34 dollars. In the event a plan loan is used to pay the one and one-
35 half percent, the Board shall make any necessary actuarial
36 adjustments at the time the loan is made. The Board shall make
37 this plan loan available for members until the thirtieth day of
38 June, two thousand seven.

39 (d) The Board shall develop and institute a payroll deduc-
40 tion program for the repayment of the plan loan established in
41 this section.

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

50 (f) In the event a member has withdrawn or cashed out part
51 of his or her defined contribution plan, that member will not be
52 given credit for those moneys cashed out or withdrawn. The
53 Board shall make an actuarial determination as to the amount
54 of credit a member loses on the amounts he or she has with-
55 drawn or cashed out, which shall be expressed as a loss of
56 service credit: *Provided*, That a member may repay those
57 amounts he or she previously cashed out or withdrew, along
58 with interest determined by the Board and receive the same
59 credit as if the withdrawal or cash out never occurred. If the
60 repayment is five or more years following the cash out or

61 withdrawal, then he or she must repay any forfeited employer
62 contribution account balance along with interest determined by
63 the Board in addition to repaying the cash out or withdrawn
64 amount.

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

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

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

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

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

1 (a) The Board shall arrange for and hold an election for the
2 members of the defined contribution plan on the issue of
3 merging and consolidating the Defined Contribution Plan into
4 the State Teachers Retirement Plan with the result being that, if
5 a majority of the members casting ballots vote in the positive on

6 the issue, all members of the Defined Contribution Plan will
7 transfer, or have transferred, all assets held by them or on their
8 behalf in the Defined Contribution Plan to, and they shall
9 become members of and be entitled to the benefits of, the State
10 Teachers Retirement System and be governed by the provisions
11 of the State Teachers Retirement System subject to the provi-
12 sions of this article: *Provided*, That at least one-half of the
13 members of the Defined Contribution Plan must vote on the
14 question in order for the election to be valid and binding.

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

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

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

34 (e) The election provided for in this section may be held
35 through certified mail or in any other way the Board determines
36 is in the best interest of the members. Each ballot shall contain
37 the following language, in bold fifteen point type: "By casting
38 this ballot I am making an educated, informed and voluntary
39 choice as to my retirement and the retirement system of which
40 I wish to be a member. I am also certifying that I understand the
41 consequences of my vote in this election." Each ballot shall be

42 signed by the member voting. The Board shall retain the ballots
43 in a permanent file. Any unsigned ballot is void.

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

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

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

§18-7C-9. Election considered final.

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

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

§18-7C-10. Qualified domestic relations orders.

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

§18-7C-11. Vesting.

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

§18-7C-12. Minimum guarantees.

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

8 (b) A member of the Defined Contribution Plan who has
9 made contributions to the State Teachers Retirement System
10 after the thirtieth day of June, two thousand six, where the
11 Defined Contribution Plan has been merged into the State
12 Teachers Retirement System pursuant to the provisions of this
13 article, shall have, upon eligibility to receive a distribution
14 under article seven-a of this chapter, at a minimum, the follow-
15 ing three options: (1) The right to receive an annuity from the

16 State Teachers Retirement System created and established in
17 article seven-a of this chapter, based upon the benefit and
18 vesting provisions of that article; (2) the right to withdraw from
19 the State Teachers Retirement Plan and receive his or her
20 member accumulated contributions plus regular interest thereon
21 as set forth in article seven-a of this chapter; or (3) the right to
22 withdraw and receive his or her original vested defined contri-
23 bution account balance as of the date of the merger as deter-
24 mined by the Board or its professional third party benefits
25 administrator pursuant to the vesting provisions of section
26 twelve of this article.

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

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

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

§18-7C-14. Nonseverability.

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

CHAPTER 51. COURTS AND THEIR OFFICERS.

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

§51-9-6c. Limitations on benefit increases.

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

12 (b) If any increase of existing benefits or creation of new
13 benefits for any retirees or beneficiaries currently receiving
14 monthly benefit payments under the system, other than an
15 increase in benefits or new benefits effected by operation of law
16 in effect on the effective date of this article, causes any addi-
17 tional unfunded actuarial accrued liability in any of the West
18 Virginia state sponsored pension systems as calculated in the
19 annual actuarial valuation for the plan during any fiscal year,
20 the additional unfunded actuarial accrued liability of the system
21 shall be fully amortized over no more than the six consecutive
22 fiscal years following the date the increase in benefits or new
23 benefits become effective as certified by the consolidated
24 public retirement board. Following the receipt of the certifica-
25 tion of additional actuarial accrued liability, the Governor shall
26 submit the amount of the amortization payment each year for
27 the system as part of the annual budget submission or in an
28 executive message to the Legislature.

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

35 (d) The provisions of this section terminate effective the
36 first day of July, two thousand nineteen: *Provided*, That if
37 bonds are issued pursuant to article eight, chapter twelve of this
38 code, the provisions of this section shall not terminate while
39 any of the bonds are outstanding.

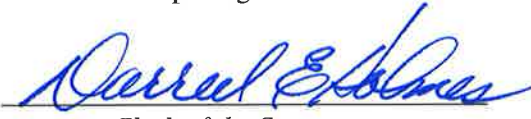
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee

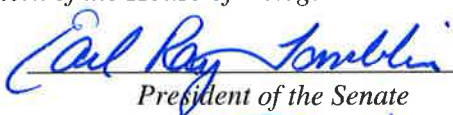

Chairman House Committee

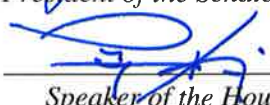
Originating in the House.

In effect from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

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


Governor

PRESENTED TO THE
GOVERNOR

MAY 2 2005

Time 4:05pm