

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2011



ENROLLED

**COMMITTEE SUBSTITUTE
FOR**

House Bill No. 2939

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



Passed March 8, 2011

In Effect Ninety Days From Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2939

(BY DELEGATES PETHTEL, GIVENS, ENNIS, GUTHRIE,
D. POLING, DUKE AND CANTERBURY)

[Passed March 8, 2011; in effect ninety days from passage.]

AN ACT to amend and reenact §5-10-2, §5-10-18, §5-10-21, §5-10-24, §5-10-25, §5-10-44 and §5-10-48 of the Code of West Virginia, 1931, as amended, all relating to the Public Employees Retirement System; clarifying the definition of compensation for purposes of calculating required contributions to the system; changing definition of final average salary; clarifying when membership in the system terminates and how membership may be reinstated; providing that individuals first hired after July 1, 2011 must have at least five years of contributory service to retire under the “rule of eighty”; requiring retirants changing annuity options to certify that no final divorce decree or other court order prohibits the

same; clarifying that correction of errors provision applies to both employer errors and errors of the system's administrative body; providing that the correction of an error with respect to a retirant may be prospective only; and providing for reimbursement of mistaken contributions that ensures the plan's continued qualified status.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES
RETIREMENT ACT.**

§5-10-2. Definitions.

1 Unless a different meaning is clearly indicated by the
2 context, the following words and phrases as used in this
3 article, 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
8 contributions;

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

12 (3) "Actuarial equivalent" means a benefit of equal value
13 computed upon the basis of a mortality table and regular
14 interest adopted by the board of trustees from time to time:
15 *Provided*, That when used in the context of compliance with

16 the federal maximum benefit requirements of Section 415 of
17 the Internal Revenue Code, “actuarial equivalent” shall be
18 computed using the mortality tables and interest rates
19 required to comply with those requirements;

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

24 (5) “Annuity reserve” means the present value of all
25 payments to be made to a retirant or beneficiary of a retirant
26 on account of any annuity, computed upon the basis of
27 mortality and other tables of experience, and regular interest,
28 adopted by the board of trustees from time to time;

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

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

35 (8) “Compensation” means the remuneration paid a
36 member by a participating public employer for personal
37 services rendered by the member to the participating public
38 employer. In the event a member’s remuneration is not all
39 paid in money, his or her participating public employer shall
40 fix the value of the portion of the remuneration which is not
41 paid in money. Any lump sum or other payments paid to
42 members that do not constitute regular salary or wage
43 payments are not considered compensation for the purpose of
44 withholding contributions for the system or for the purpose
45 of calculating a member’s final average salary. These
46 payments include, but are not limited to, attendance or

47 performance bonuses, one-time flat fee or lump sum
48 payments, payments paid as a result of excess budget, or
49 employee recognition payments. The board shall have final
50 power to decide whether the payments shall be considered
51 compensation for purposes of this article;

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

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

61 (11) “Employee” means any person who serves regularly
62 as an officer or employee, full time, on a salary basis, whose
63 tenure is not restricted as to temporary or provisional
64 appointment, in the service of, and whose compensation is
65 payable, in whole or in part, by any political subdivision, or
66 an officer or employee whose compensation is calculated on
67 a daily basis and paid monthly or on completion of
68 assignment, including technicians and other personnel
69 employed by the West Virginia National Guard whose
70 compensation, in whole or in part, is paid by the federal
71 government: *Provided*, That an employee of the Legislature
72 whose term of employment is otherwise classified as
73 temporary and who is employed to perform services required
74 by the Legislature for its regular sessions or during the
75 interim between regular sessions and who has been or is
76 employed during regular sessions or during the interim
77 between regular sessions in seven or more consecutive
78 calendar years, as certified by the clerk of the house in which
79 the employee served, is an employee, any provision to the

80 contrary in this article notwithstanding, and is entitled to
81 credited service in accordance with provisions of section
82 fourteen, article ten, chapter five of this code and: *Provided,*
83 *however,* That members of the legislative body of any
84 political subdivision and judges of the State Court of Claims
85 are employees receiving one year of service credit for each
86 one-year term served and pro rated service credit for any
87 partial term served, anything contained in this article to the
88 contrary notwithstanding. In any case of doubt as to who is
89 an employee within the meaning of this article, the Board of
90 Trustees shall decide the question;

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

101 (13) “Final average salary” means either of the following:
102 *Provided,* That salaries for determining benefits during any
103 determination period may not exceed the maximum
104 compensation allowed as adjusted for cost of living in
105 accordance with section seven, article ten-d, chapter five of
106 this code and Section 401(a)(17) of the Internal Revenue
107 Code: *Provided, however,* That the provisions of section
108 twenty-two-h of this article are not applicable to the
109 amendments made to this subdivision during the 2011 regular
110 session of the Legislature.

111 (A) The average of the highest annual compensation
112 received by a member (including a member of the Legislature

113 who participates in the retirement system in the year 1971 or
114 thereafter), during any period of three consecutive years of
115 credited service contained within the member's fifteen years
116 of credited service immediately preceding the date his or her
117 employment with a participating public employer last
118 terminated; or

119 (B) If the member has less than five years of credited
120 service, the average of the annual rate of compensation
121 received by the member during his or her total years of
122 credited service; and in determining the annual
123 compensation, under either paragraph (A) or (B) of this
124 subdivision, of a member of the Legislature who participates
125 in the retirement system as a member of the Legislature in the
126 year 1971, or in any year thereafter, his or her actual
127 legislative compensation (the total of all compensation paid
128 under sections two, three, four and five, article two-a, chapter
129 four of this code), in the year 1971, or in any year thereafter,
130 plus any other compensation he or she receives in any year
131 from any other participating public employer including the
132 State of West Virginia, without any multiple in excess of one
133 times his or her actual legislative compensation and other
134 compensation, shall be used: *Provided*, That "final average
135 salary" for any former member of the Legislature or for any
136 member of the Legislature in the year 1971, who, in either
137 event, was a member of the Legislature on November 30,
138 1968, or November 30, 1969, or November 30, 1970, or on
139 November 30 in any one or more of those three years and
140 who participated in the retirement system as a member of the
141 Legislature in any one or more of those years means: (i)
142 Either (notwithstanding the provisions of this subdivision
143 preceding this proviso) \$1,500 multiplied by eight, plus the
144 highest other compensation the former member or member
145 received in any one of the three years from any other
146 participating public employer including the State of West
147 Virginia; or (ii) "final average salary" determined in

148 accordance with paragraph (A) or (B) of this subdivision,
149 whichever computation produces the higher final average
150 salary (and in determining the annual compensation under
151 subparagraph (ii) of this proviso, the legislative compensation
152 of the former member shall be computed on the basis of
153 \$1,500 multiplied by eight, and the legislative compensation
154 of the member shall be computed on the basis set forth in the
155 provisions of this subdivision immediately preceding this
156 proviso or on the basis of \$1,500 multiplied by eight,
157 whichever computation as to the member produces the higher
158 annual compensation);

159 (14) “Internal Revenue Code” means the Internal
160 Revenue Code of 1986, as amended, codified at Title 26 of
161 the United States Code;

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

173 (16) “Member” means any person who has accumulated
174 contributions standing to his or her credit in the members’
175 deposit fund;

176 (17) “Participating public employer” means the State of
177 West Virginia, any board, commission, department,
178 institution or spending unit, and includes any agency created
179 by rule of the Supreme Court of Appeals having full-time

180 employees, which for the purposes of this article is
181 considered a department of state government; and any
182 political subdivision in the state which has elected to cover its
183 employees, as defined in this article, under the West Virginia
184 Public Employees Retirement System;

185 (18) “Plan year” means the same as referenced in section
186 forty-two of this article;

187 (19) “Political subdivision” means the State of West
188 Virginia, a county, city or town in the state; a school
189 corporation or corporate unit; any separate corporation or
190 instrumentality established by one or more counties, cities or
191 towns, as permitted by law; any corporation or
192 instrumentality supported in most part by counties, cities or
193 towns; and any public corporation charged by law with the
194 performance of a governmental function and whose
195 jurisdiction is coextensive with one or more counties, cities
196 or towns: *Provided*, That any mental health agency
197 participating in the Public Employees Retirement System
198 before July 1, 1997, is considered a political subdivision
199 solely for the purpose of permitting those employees who are
200 members of the Public Employees Retirement System to
201 remain members and continue to participate in the retirement
202 system at their option after July 1, 1997: *Provided, however*,
203 That the Regional Community Policing Institute which
204 participated in the Public Employees Retirement System
205 before July 1, 2000, is considered a political subdivision
206 solely for the purpose of permitting those employees who are
207 members of the Public Employees Retirement System to
208 remain members and continue to participate in the Public
209 Employees Retirement System after July 1, 2000;

210 (20) “Prior service” means service rendered prior to July
211 1, 1961, to the extent credited a member as provided in this
212 article;

213 (21) “Regular interest” means the rate or rates of interest
214 per annum, compounded annually, as the Board of Trustees
215 adopts from time to time;

216 (22) “Required beginning date” means April 1 of the
217 calendar year following the later of: (A) The calendar year in
218 which the member attains age seventy and one-half years of
219 age; or (B) the calendar year in which a member who has
220 attained the age seventy and one-half years of age and who
221 ceases providing service covered under this system to a
222 participating employer;

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

225 (24) “Retirement” means a member’s withdrawal from
226 the employ of a participating public employer and the
227 commencement of an annuity by the retirement system;

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

231 (26) “Retroactive service” means: (1) Service between
232 July 1, 1961, and the date an employer decides to become a
233 participating member of the Public Employees Retirement
234 System; (2) service prior to July 1, 1961, for which the
235 employee is not entitled to prior service at no cost in
236 accordance with 162 CSR 5.13; and (3) service of any
237 member of a legislative body or employees of the State
238 Legislature whose term of employment is otherwise
239 classified as temporary for which the employee is eligible,
240 but for which the employee did not elect to participate at that
241 time;

242 (27) "Service" means personal service rendered to a
243 participating public employer by an employee of a
244 participating public employer; and

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

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

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

24 (b) The Prestera Center for Mental Health Services,
25 Valley Comprehensive Mental Health Center, Westbrook
26 Health Services and Eastern Panhandle Mental Health
27 Center, and their successors in interest, shall provide for their

28 employees a pension plan in lieu of the Public Employees
29 Retirement System during the existence of the named mental
30 health centers and their successors in interest.

31 (c) The administrative bodies of the Pretera Center for
32 Mental Health Services, Valley Comprehensive Mental
33 Health Center, Westbrook Health Services and Eastern
34 Panhandle Mental Health Center shall, on or before May 1,
35 1997, give written notice to each employee who is a member
36 of the Public Employees Retirement System of the option to
37 withdraw from or remain in the system. The notice shall
38 include a copy of this section and a statement explaining the
39 member's options regarding membership. The notice shall
40 include a statement in plain language giving a full
41 explanation and actuarial projection figures in support of the
42 explanation regarding the individual member's current
43 account balance, vested and nonvested, and his or her
44 projected return upon remaining in the Public Employees
45 Retirement System until retirement, disability or death, in
46 comparison with the projected return upon withdrawing from
47 the Public Employees Retirement System and joining a
48 private pension plan provided by the Community Mental
49 Health Center and remaining therein until retirement,
50 disability or death. The administrative bodies shall keep in
51 their respective records a permanent record of each
52 employee's signature confirming receipt of the notice.

53 (d) Effective March 1, 2003, and ending December 31,
54 2004, any member may purchase credited service previously
55 forfeited by him or her and the credited service shall be
56 restored to his or her credit: *Provided*, That he or she returns
57 to the members' deposit fund the amount, if any, he or she
58 withdrew from the fund, together with interest on the
59 withdrawn amount from the date of withdrawal to the date of
60 repayment at a rate to be determined by the board. The
61 repayment under this section may be made by lump sum or

62 repaid over a period of time not to exceed sixty months.
63 Where the member elects to repay the required amount other
64 than by lump sum, the member is required to pay interest at
65 the rate determined by the board until all sums are fully
66 repaid.

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

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

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

§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
8 of his or her separation from the employ of a participating
9 public employer: *Provided*, That he or she does not withdraw
10 his or her accumulated contributions from the members'
11 deposit fund: *Provided, however*, That on and after July 1,
12 2002, any person who becomes a new member of this
13 retirement system shall, in qualifying for retirement under
14 this section, have five or more years of service, all of which
15 years shall be actual, contributory ones. His or her annuity
16 shall begin the first day of the calendar month next following
17 the month in which his or her application for same is filed
18 with the Board of Trustees on or after his or her attaining age
19 sixty-two years.

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

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

38 (d) Notwithstanding any of the other provisions of this
39 section or of this article, except sections twenty-seven-a and

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

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

§5-10-24. Annuity options.

1 (a) Prior to the effective date of his or her retirement, but
2 not thereafter except upon the death of a spouse, a member
3 may elect to receive his or her annuity as a straight life

4 annuity payable throughout his or her life, or he or she may
5 elect to receive the actuarial equivalent, at the time, of his or
6 her straight life annuity in a reduced annuity payable
7 throughout his or her life, and nominate a beneficiary, in
8 accordance with option A or B set forth below:

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

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

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

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

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

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

§5-10-25. Disability retirement.

1 (a) Upon the application of a member of the retirement
2 system, or his or her present or past employing authority, any
3 member who is in the employ of a participating public
4 employer or was in the employ of a participating public
5 employer on a date which is twelve months or less from the
6 date upon which the member became incapacitated, who has
7 ten or more years of credited service of which three years is
8 contributing service, and who becomes totally and
9 permanently incapacitated for employment, by reason of a
10 personal injury or disease, may be retired by the board if after
11 a medical examination of the member made by or under the

12 direction of a medical committee consisting of two
13 physicians, one of whom shall be named by the board, and
14 one by the member, the medical committee reports, in
15 writing, to the board that the member is physically or
16 mentally totally incapacitated for employment, that the
17 incapacity will probably be permanent, and that the member
18 should be retired. In the event the two above-mentioned
19 examining physicians do not agree in their findings, then the
20 board may, at its discretion, appoint a third physician to
21 examine the member and, based upon the third physician's
22 report in writing, the board may retire the member. A
23 member who was not in the employ of a participating public
24 employer on a date which is twelve months or less from the
25 date upon which the member became incapacitated may
26 receive disability retirement under the provisions of this
27 subsection if, in the opinion of the medical committee, the
28 incapacity occurred during the time that the member was
29 employed by a participating public employer and the
30 incapacity otherwise qualifies the member for retirement
31 under this subsection.

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

42 (c) For any member retiring and any member retired, as
43 of March 1, 1970, he or she shall receive a straight life
44 annuity computed according to section twenty-two hereof
45 and he or she shall have the right to elect an option provided

46 in section twenty-four hereof: *Provided*, That his or her
47 straight life annuity payable to his or her attainment of age
48 sixty-five years may not be less than fifty percent of his or
49 her final average salary; and his or her straight life annuity
50 payable from and after his or her attainment of age sixty-five
51 years may not be less than twenty percent of his or her final
52 average salary: *Provided, however*, That his or her annuity
53 shall be subject to section twenty-six hereof.

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

1 (a) General rule: If any change or employer error in the
2 records of any participating public employer or the retirement
3 system results in any member, retirant or beneficiary
4 receiving from the system more or less than he or she would
5 have been entitled to receive had the records been correct, the
6 board shall correct the error. If correction of the error occurs
7 after the effective retirement date of a retirant, and as far as
8 is practicable, the board shall adjust the payment of the
9 benefit in a manner that the actuarial equivalent of the benefit
10 to which the retirant was correctly entitled shall be paid.

11 (b) Underpayments: Any error resulting in an
12 underpayment to the retirement system of required
13 contributions may be corrected by the member or retirant
14 remitting the required employee contribution and the
15 participating public employer remitting the required
16 employer contribution. Interest shall accumulate in
17 accordance with the Legislative Rule 162 CSR 7 concerning
18 retirement board refund, reinstatement and loan interest
19 factors and any accumulating interest owed on the employee
20 and employer contributions resulting from an employer error
21 shall be the responsibility of the participating public
22 employer. The participating public employer may remit total
23 payment and the employee reimburse the participating public
24 employer through payroll deduction over a period equivalent

25 to the time period during which the employer error occurred.
26 If the correction of an error involving an underpayment of
27 required contributions to the retirement system will result in
28 increased payments to a retirant, including increases to
29 payments already made, any adjustments shall be made only
30 after the board receives full payment of all required employee
31 and employer contributions, including interest.

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

40 (2) When mistaken or excess employee contributions,
41 including any overpayments, have been made to the
42 retirement system, due to error or other reason, the board
43 shall have sole authority for determining the means of return,
44 offset or credit to or for the benefit of the employee of the
45 amounts, and may use any means authorized or permitted
46 under the provisions of Section 401(a), *et seq.* of the Internal
47 Revenue Code and guidance issued thereunder applicable to
48 governmental plans. Alternatively, in its full and complete
49 discretion, the board may require the participating public
50 employer to pay the employee the amounts as wages, with
51 the board crediting the participating public employer with a
52 corresponding amount to offset against its future
53 contributions to the plan: *Provided*, That the wages paid to
54 the employee shall not be considered compensation for any
55 purposes under this article. Earnings or interest shall not be
56 returned, offset, or credited under any of the means utilized
57 by the board for returning mistaken or excess employee
58 contributions, including any overpayments, to an employee.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

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

25 (b) For the purposes of this section: (1) "Regularly
26 employed on a full-time basis" means employment of an
27 individual by a participating public employer, in a position
28 other than as an elected or appointed public official, which
29 normally requires twelve months per year service and at least
30 one thousand forty hours of service per year in that position;
31 (2) "temporary full-time employment or temporary part-time
32 employment" means employment of an individual on a

33 temporary or provisional basis by a participating public
34 employer, other than as an elected or appointed public
35 official, in a position which does not otherwise render the
36 individual as regularly employed; (3) “former employee of
37 the Legislature” means any person who has retired from
38 employment with the Legislature and who has at least ten
39 years’ contributing service with the Legislature; and (4)
40 “reemployed by the Legislature” means a former employee
41 of the Legislature who has been reemployed on a per diem
42 basis not to exceed one hundred seventy-five days per
43 calendar year.

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

61 (d) In the event a member retires and is then subsequently
62 elected to a public office or is subsequently appointed to hold
63 an elected public office, or is a former employee of the
64 Legislature who has been reemployed by the Legislature, he
65 or she has the option, notwithstanding subsection (c) of this
66 section, to either:

67 (1) Continue to receive payment of his or her annuity
68 while holding public office or during any reemployment of a
69 former employee of the Legislature on a per diem basis, in
70 addition to the salary he or she may be entitled to as an office
71 holder or as a per diem reemployed former employee of the
72 Legislature; or

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

91 (e) A member who is participating in the system
92 simultaneously as both a regular, full-time employee of a
93 participating public employer and as an elected or appointed
94 member of the legislative body of the state or any political
95 subdivision may, upon meeting the age and service
96 requirements of this article, elect to retire from his or her
97 regular full-time state employment and may commence to
98 receive an annuity from the system without terminating his or
99 her position as a member of the legislative body of the state
100 or political subdivision: *Provided*, That the retired member

101 shall not, during the term of his or her retirement and
102 continued service as a member of the legislative body of a
103 political subdivision, be eligible to continue his or her
104 participation as a contributing member of the system and
105 shall not continue to accrue any additional service credit or
106 benefits in the system related to the continued service.

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

118 (g) The provisions of section twenty-two-h of this article
119 are not applicable to the amendments made to this section
120 during the 2006 regular session.

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2011.

Governor