

COMMITTEE SUBSTITUTE

FOR

H. B. 2939

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

(Originating in the Committee on Finance)
[February 15, 2011]

A BILL 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’ deposit
7 fund, together with regular interest on the contributions;

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

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

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

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

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

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

34 (8) “Compensation” means the remuneration paid a
35 member by a participating public employer for personal
36 services rendered by the member to the participating public
37 employer. In the event a member’s remuneration is not all
38 paid in money, his or her participating public employer shall
39 fix the value of the portion of the remuneration which is not
40 paid in money. Any lump sum or other payments paid to
41 members that do not constitute regular salary or wage

42 payments are not considered compensation for the purpose of
43 withholding contributions for the system or for the purpose
44 of calculating a member's final average salary. These
45 payments include, but are not limited to, attendance or
46 performance bonuses, one-time flat fee or lump sum
47 payments, payments paid as a result of excess budget, or
48 employee recognition payments. The board shall have final
49 power to decide whether the payments shall be considered
50 compensation for purposes of this article;

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

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

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

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

90 (12) “Employer error” means an omission,
91 misrepresentation, or violation of relevant provisions of the
92 West Virginia Code or of the West Virginia Code of State
93 Regulations or the relevant provisions of both the West
94 Virginia Code and of the West Virginia Code of State
95 Regulations by the participating public employer that has
96 resulted in an underpayment or overpayment of contributions
97 required. A deliberate act contrary to the provisions of this

98 section by a participating public employer does not constitute
99 employer error.

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

110 (A) The average of the highest annual compensation
111 received by a member (including a member of the
112 Legislature who participates in the retirement system in the
113 year 1971 or thereafter), during any period of three
114 consecutive years of credited service contained within the
115 member’s ~~ten~~ fifteen years of credited service immediately
116 preceding the date his or her employment with a participating
117 public employer last terminated; or

118 (B) If the member has less than five years of credited
119 service, the average of the annual rate of compensation
120 received by the member during his or her total years of
121 credited service; and in determining the annual
122 compensation, under either paragraph (A) or (B) of this
123 subdivision, of a member of the Legislature who participates
124 in the retirement system as a member of the Legislature in
125 the year 1971, or in any year thereafter, his or her actual
126 legislative compensation (the total of all compensation paid
127 under sections two, three, four and five, article two-a, chapter
128 four of this code), in the year 1971, or in any year thereafter,
129 plus any other compensation he or she receives in any year
130 from any other participating public employer including the
131 State of West Virginia, without any multiple in excess of one
132 times his or her actual legislative compensation and other
133 compensation, shall be used: *Provided*, That “final average
134 salary” for any former member of the Legislature or for any
135 member of the Legislature in the year 1971, who, in either
136 event, was a member of the Legislature on November 30,

137 1968, or November 30, 1969, or November 30, 1970, or on
138 November 30 in any one or more of those three years and
139 who participated in the retirement system as a member of the
140 Legislature in any one or more of those years means: (i)
141 Either (notwithstanding the provisions of this subdivision
142 preceding this proviso) \$1,500 multiplied by eight, plus the
143 highest other compensation the former member or member
144 received in any one of the three years from any other
145 participating public employer including the State of West
146 Virginia; or (ii) “final average salary” determined in
147 accordance with paragraph (A) or (B) of this subdivision,
148 whichever computation produces the higher final average
149 salary (and in determining the annual compensation under
150 subparagraph (ii) of this proviso, the legislative
151 compensation of the former member shall be computed on
152 the basis of \$1,500 multiplied by eight, and the legislative
153 compensation of the member shall be computed on the basis
154 set forth in the provisions of this subdivision immediately
155 preceding this proviso or on the basis of \$1,500 multiplied by

156 eight, whichever computation as to the member produces the
157 higher annual compensation);

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

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

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

175 (17) “Participating public employer” means the State of
176 West Virginia, any board, commission, department,
177 institution or spending unit, and includes any agency created
178 by rule of the Supreme Court of Appeals having full-time
179 employees, which for the purposes of this article is
180 considered a department of state government; and any
181 political subdivision in the state which has elected to cover
182 its employees, as defined in this article, under the West
183 Virginia Public Employees Retirement System;

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

186 (19) “Political subdivision” means the State of West
187 Virginia, a county, city or town in the state; a school
188 corporation or corporate unit; any separate corporation or
189 instrumentality established by one or more counties, cities or
190 towns, as permitted by law; any corporation or
191 instrumentality supported in most part by counties, cities or
192 towns; and any public corporation charged by law with the
193 performance of a governmental function and whose

194 jurisdiction is coextensive with one or more counties, cities
195 or towns: *Provided*, That any mental health agency
196 participating in the Public Employees Retirement System
197 before July 1, 1997, is considered a political subdivision
198 solely for the purpose of permitting those employees who are
199 members of the Public Employees Retirement System to
200 remain members and continue to participate in the retirement
201 system at their option after July 1, 1997: *Provided, however*,
202 That the Regional Community Policing Institute which
203 participated in the Public Employees Retirement System
204 before July 1, 2000, is considered a political subdivision
205 solely for the purpose of permitting those employees who are
206 members of the Public Employees Retirement System to
207 remain members and continue to participate in the Public
208 Employees Retirement System after July 1, 2000;

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

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

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

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

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

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

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

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

244 (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 ~~other~~
5 reason other than retirement or death, and withdraws his or
6 her accumulated contributions from the system, he or she
7 ceases to be a member and forfeits service credited to him or
8 her at that time. If he or she becomes reemployed by a
9 participating public employer he or she shall be reinstated as
10 a member of the retirement system and his or her credited
11 service last forfeited by him or her shall be restored to his or
12 her credit: *Provided*, That he or she must be reemployed for
13 a period of one year or longer to have the service restored:
14 *Provided, however*, That he or she returns to the members'
15 deposit fund the amount, if any, he or she withdrew from the
16 fund, together with regular interest on the withdrawn amount
17 from the date of withdrawal to the date of repayment, and
18 that the 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 Pretera 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 the March 1, 2003, and ending December
54 31, 2004, any member may purchase credited service
55 previously forfeited by him or her and the credited service
56 shall be restored to his or her credit: *Provided*, That he or
57 she returns to the members' deposit fund the amount, if any,
58 he or she withdrew from the fund, together with interest on
59 the withdrawn amount from the date of withdrawal to the
60 date of repayment at a rate to be determined by the board.
61 The repayment under this section may be made by lump sum

62 or 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 the
65 rate determined by the board until all sums are fully repaid.

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

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

81 (g) Wetzel County Hospital and their successors in
82 interest shall provide a pension plan in lieu of the Public
83 Employees Retirement System for employees hired on or
84 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
23 has attained age fifty-five as of the date of his or her
24 separation, may, prior to the effective date of his or her
25 retirement, but not thereafter, elect to receive the actuarial
26 equivalent of his or her deferred retirement annuity as a
27 reduced annuity commencing on the first day of any calendar
28 month between his or her date of separation and his or her
29 attainment of age sixty-two years and payable throughout his
30 or her life.

31 (c) Any member who qualifies for deferred retirement
32 benefits in accordance with subsection (a) of this section and
33 has twenty or more years of credited service in force may

34 elect to receive the actuarial equivalent of his or her deferred
35 retirement annuity as a reduced annuity commencing on the
36 first day of any calendar month between his or her fifty-fifth
37 birthday and his or her attainment of age sixty-two years and
38 payable throughout his or her life.

39 (d) Notwithstanding any of the other provisions of this
40 section or of this article, except sections twenty-seven-a and
41 twenty-seven-b of this article, and pursuant to rules
42 promulgated by the board, any member who has thirty or
43 more years of credited service in force, at least three of which
44 are contributing service, and who elects to take early
45 retirement, which for the purposes of this subsection means
46 retirement prior to age sixty, whether an active employee or
47 a separated employee at the time of application, is entitled to
48 the full computation of annuity according to section twenty-
49 two of this article, as that section was in force as of the date
50 of retirement application, but with the reduced actuarial
51 equivalent of the annuity the member would have received if
52 his or her benefit had commenced at age sixty when he or she

53 would have been entitled to full computation of benefit
54 without any reduction.

55 (e) Notwithstanding any of the other provisions of this
56 section or of this article, except sections twenty-seven-a and
57 twenty-seven-b of this article, any member of the retirement
58 system may retire with full pension rights, without reduction
59 of benefits, if he or she is at least fifty-five years of age and
60 the sum of his or her age plus years of contributing service
61 and limited credited service, as defined in section two of this
62 article, equals or exceeds eighty; Provided, That on and after
63 July 1, 2011, any person who becomes a new member of this
64 retirement system shall, in qualifying for retirement under
65 this subsection, have five or more years of service, all of
66 which years shall be actual, contributory ones. The member's
67 annuity shall begin the first day of the calendar month
68 immediately following the calendar month in which his or
69 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
18 or her reduced annuity shall be continued throughout the life
19 of and paid to the beneficiary, having an insurable interest in
20 the 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 ~~surviving member~~ retirant at the time the new option
28 is elected.

29 **(c)** Upon divorce, a ~~member~~ retirant may elect to change
30 any of the retirement benefit options offered by the
31 provisions of this section to a life annuity in an amount
32 adjusted on a fair basis to be of equal actuarial value of the
33 annuity prospectively in effect relative to the retirant at the
34 time the option is elected: *Provided*, That the retirant
35 furnishes to the board satisfactory proof of entry of a final
36 decree of divorce or annulment: *Provided, however*, That the
37 retirant certifies under penalty of perjury that no qualified
38 domestic relations order, final decree of divorce, or other
39 court order that would restrict ~~such an~~ the election is in
40 effect: *Provided further*, That no cause of action against the
41 board may then arise or be maintained on the basis of having

42 permitted the retirant to name a new spouse as annuitant for
43 any of the survivorship retirement benefit options.

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

§5-10-25. Disability retirement.

1 (a) Upon the application of a member ~~or former member~~
2 of the retirement system, or his or her present or past

3 employing authority, any member ~~or former member~~ who is
4 in the employ of a participating public employer or was in
5 the employ of a participating public employer on a date
6 which is twelve months or less from the date upon which the
7 ~~former~~ member became incapacitated, who has ten or more
8 years of credited service of which three years is contributing
9 service, and who becomes totally and permanently
10 incapacitated for employment, by reason of a personal injury
11 or disease, may be retired by the board if after a medical
12 examination of the ~~said member or former member~~ made by
13 or under the direction of a medical committee consisting of
14 two physicians, one of whom shall be named by the board,
15 and one by the ~~said member or former member~~, the ~~said~~
16 medical committee reports, in writing, to the board that the
17 ~~said member or former member~~ is physically or mentally
18 totally incapacitated for employment, that ~~such~~ the incapacity
19 will probably be permanent, and that the ~~said member or~~
20 ~~former member~~ should be retired. In the event the two above-
21 mentioned examining physicians do not agree in their

22 findings, then the board may, at its discretion, appoint a third
23 physician to examine ~~said~~ the member ~~or former member~~
24 and, based upon the third physician's report in writing, the
25 board may retire ~~said~~ the member ~~or former member~~. A
26 ~~former~~ member who ~~has~~ was not in the employ of ~~been~~
27 ~~employed by~~ a participating public employer on a date which
28 is twelve months or less from the date upon which the
29 member became incapacitated may receive disability
30 retirement under the provisions of this subsection if, in the
31 opinion of the medical committee, the incapacity occurred
32 during the time that the ~~former~~ member was employed by a
33 participating public employer and the incapacity otherwise
34 qualifies the ~~former~~ member for retirement under this
35 subsection.

36 (b) A member with less than ten years of credited service
37 shall have the service requirement provided ~~for~~ in subsection
38 (a) above (including the requirement of three years
39 contributing service) waived in the event: (1) The board finds
40 his or her total and permanent disability to be the natural and

41 proximate result of a personal injury or disease arising out of
42 and in the course of his or her actual performance of duty in
43 the employ of a participating public employer; and (2) he or
44 she is receiving or has received workers' compensation
45 benefits on account of ~~such~~ the physical or mental disability.

46 (c) For any member ~~or former member~~ retiring and any
47 member retired, as of March 1, 1970, he or she shall receive
48 a straight life annuity computed according to section twenty-
49 two hereof and he or she shall have the right to elect an
50 option provided in section twenty-four hereof: *Provided*,
51 That his or her straight life annuity payable to his or her
52 attainment of age sixty-five years may not be less than fifty
53 percent of his or her final average salary; and his or her ~~said~~
54 straight life annuity payable from and after his or her
55 attainment of age sixty-five years may not be less than
56 twenty percent of his or her final average salary: *Provided*,
57 *however*, That his or her ~~said~~ annuity shall be subject to
58 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 ~~person~~ 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 ~~person~~ retirant was correctly entitled shall be
11 paid.

12 (b) Underpayments: Any ~~employer~~ error resulting in an
13 underpayment to the retirement system of required
14 contributions may be corrected by the ~~employee~~ member or
15 retirant remitting the required employee contribution and the
16 participating public employer remitting the required
17 employer contribution. Interest shall accumulate in
18 accordance with the Legislative Rule 162 CSR 7 concerning
19 retirement board refund, reinstatement and loan interest

20 factors and any accumulating interest owed on the employee
21 and employer contributions resulting from ~~the~~ an employer
22 error shall be the responsibility of the participating public
23 employer. The participating public employer may remit total
24 payment and the employee reimburse the participating public
25 employer through payroll deduction over a period equivalent
26 to the time period during which the employer error occurred.
27 If the correction of an error involving an underpayment of
28 required contributions to the retirement system will result in
29 increased payments to a retirant, including increases to
30 payments already made, any adjustments shall be made only
31 after the board receives full payment of all required
32 employee and employer contributions, including interest.

33 (c) Overpayments: (1) When mistaken or excess
34 employer contributions, including any overpayments, have
35 been made to the retirement system by a participating public
36 employer, due to error or other reason, the board shall credit
37 the participating public employer with an amount equal to the
38 erroneous contributions, to be offset against the participating

39 public employer's future liability for employer contributions
40 to the system. Earnings or interest shall not be credited to the
41 employer.

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

58 returned, offset, or credited under any of the means utilized
59 by the board for returning mistaken or excess employee
60 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 with
6 a participating public employer while contemporaneously
7 drawing an annuity from the system. The Legislature hereby
8 further finds and declares that the interests of the public are
9 served when persons having retired from public employment
10 are permitted, within certain limitations, to render
11 post-retirement employment in positions of public service,
12 either in elected or appointed capacities. The Legislature
13 further finds and declares that it has the need for qualified
14 employees and that in many cases an employee of the

15 Legislature will retire and be available to return to work for
16 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/or
30 ~~requires~~ at least one thousand forty hours of service per year
31 in that position; (2) “temporary full-time employment or
32 temporary part-time employment” means employment of an
33 individual on a temporary or provisional basis by a

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

53 twenty-two of this article. A retirant may accept temporary
54 full-time or temporary part-time employment from a
55 participating employer without suspending his or her
56 retirement annuity so long as he or she does not receive
57 annual compensation in excess of \$15,000: *Provided*, That
58 a retirant may be employed by the Legislature on a per diem
59 basis without suspension of the retirement annuity if the
60 retirant's annual compensation from the Legislature does not
61 exceed \$20,000.

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

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

72 an office holder or as a per diem reemployed former
73 employee of the Legislature; or

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

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

108 (f) Notwithstanding the provisions of section
109 twenty-seven-b of this article, any publicly elected member
110 of the legislative body of any political subdivision or of the

111 State Legislature, the Clerk of the House of Delegates and
112 the Clerk of the Senate may elect to commence receiving
113 in-service retirement distributions from this system upon
114 attaining the age of seventy and one-half years: *Provided*,
115 That the member is eligible to retire under the provisions of
116 section twenty or twenty-one of this article: *Provided*,
117 *however*, That the member elects to stop actively
118 contributing to the system while receiving ~~such~~ the in-service
119 distributions.

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