

ENROLLED

## Senate Bill No. 222

(BY SENATOR FOSTER)

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[Passed March 10, 2011; in effect ninety days from passage.]

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AN ACT to amend and reenact §8-22A-12 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Municipal Police Officers and Firefighters Retirement System; and ensuring the continued qualification of the system under federal tax laws by adopting an amendment to the system required by Section 824 of the Pension Protection Act of 2006 (P.L. 109-280) permitting direct rollovers to Roth IRAs.

*Be it enacted by the Legislature of West Virginia:*

That §8-22A-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

**§8-22A-12. Direct rollovers.**

1 Notwithstanding any provision of this article to the  
2 contrary that would otherwise limit a distributee's election  
3 under this plan, a distributee may elect, at the time and in  
4 the manner prescribed by the board, to have any portion of  
5 an eligible rollover distribution paid directly to an eligible  
6 retirement plan specified by the distributee in a direct

7 rollover. For purposes of this section, the following defini-  
8 tions apply:

9 (1) “Eligible rollover distribution” means any distribution  
10 of all or any portion of the balance to the credit of the  
11 distributee, except that an eligible rollover distribution does  
12 not include any of the following: (A) Any distribution that is  
13 one of a series of substantially equal periodic payments not  
14 less frequently than annually made for the life or life  
15 expectancy of the distributee or the joint lives or the joint  
16 life expectancies of the distributee and the distributee’s  
17 designated beneficiary, or for a specified period of ten years  
18 or more; (B) any distribution to the extent the distribution is  
19 required under Section 401(a)(9) of the Internal Revenue  
20 Code; and (C) any hardship distribution described in Section  
21 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. A portion of  
22 a distribution shall not fail to be an eligible rollover distri-  
23 bution merely because the portion consists of after-tax  
24 employee contributions which are not includable in gross  
25 income. However, this portion may be paid only to an  
26 individual retirement account or annuity described in  
27 Section 408(a) or (b) of the Internal Revenue Code, or to a  
28 qualified trust described in Section 401(a) or to an annuity  
29 contract described in Section 403(a) or 403(b) of the Internal  
30 Revenue Code that agrees to separately account for amounts  
31 transferred (including interest or earnings thereon), includ-  
32 ing separately accounting for the portion of the distribution  
33 which is includable in gross income and the portion of the  
34 distribution which is not includable, or to a Roth IRA  
35 described in Section 408A of the Internal Revenue Code.

36 (2) “Eligible retirement plan” means an eligible plan under  
37 Section 457(b) of the Internal Revenue Code which is  
38 maintained by a state, political subdivision of a state, or any  
39 agency or instrumentality of a state or political subdivision  
40 of a state and which agrees to separately account for  
41 amounts transferred into the plan from this plan, an individ-  
42 ual retirement account described in Section 408(a) of the  
43 Internal Revenue Code, an individual retirement annuity  
44 described in Section 408(b) of the Internal Revenue Code, an

45 annuity plan described in Section 403(a) of the Internal  
46 Revenue Code, an annuity contract described in Section  
47 403(b) of the Internal Revenue Code, a qualified plan  
48 described in Section 401(a) of the Internal Revenue Code that  
49 accepts the distributee's eligible rollover distribution, or a  
50 Roth IRA described in Section 408A of the Internal Revenue  
51 Code: Provided, That in the case of an eligible rollover  
52 distribution to a designated beneficiary (other than a  
53 surviving spouse) as the term is defined in Section 402(c)(11)  
54 of the Internal Revenue Code, an eligible retirement plan is  
55 limited to an individual retirement account or individual  
56 retirement annuity which meets the conditions of Section  
57 402(c)(11) of the Internal Revenue Code.

58 (3) "Distributee" means an employee or former employee.  
59 In addition, the employee's or former employee's surviving  
60 spouse and the employee's or former employee's spouse or  
61 former spouse who is the alternate payee under a qualified  
62 domestic relations order, as defined in Section 414(p) of the  
63 Internal Revenue Code with respect to governmental plans,  
64 are distributees with regard to the interest of the spouse or  
65 former spouse. The term "distributee" also includes a  
66 designated beneficiary (other than a surviving spouse) as the  
67 term is defined in Section 402(c)(11) of the Internal Revenue  
68 Code.

69 (4) "Direct rollover" means a payment by the plan to the  
70 eligible retirement plan.

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

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*Chairman Senate Committee*

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*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*Acting President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the .....  
Day of ....., 2011.

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*Governor*