

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

**Introduced**

### **House Bill 4337**

**FISCAL  
NOTE**

BY DELEGATES PAYNTER, ELDRIDGE, MAYNARD, LOVE, E.

EVANS, COOPER, MARTIN, A. EVANS, AMBLER, R. MILLER

AND HAMILTON

[Introduced January 26, 2018; Referred  
to the Committee on Pensions and Retirement then  
Finance.]

1 A BILL to amend and reenact §5-10D-1 of the Code of West Virginia, 1931, as amended, and to  
 2 amend said Code by adding thereto a new article, designated §20-17-1, §20-17-2, §20-  
 3 17-3, §20-17-4, 20-17-4a, §20-17-5, §20-17-6, §20-17-6a. §20-17-6b, §20-17-6c, §20-17-  
 4 6d, §20-17-6e, §20-17-7, §20-17-8, §20-17-9, §20-17-10, §20-17-11, §20-17-11a, §20-  
 5 17-11b, §20-17-12, §20-17-13, §20-17-14, §20-17-15, §20-17-16, §20-17-17, §20-17-18,  
 6 §20-17-19, §20-17-20, §20-17-21, §20-17-22, and §20-17-23, all relating to establishing  
 7 the West Virginia Division of Natural Resources Police Officer Retirement System.

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

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

**ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.**

**§5-10D-1. Consolidated Public Retirement Board continued; members; vacancies;  
 investment of plan funds.**

1 (a) The Consolidated Public Retirement Board is continued to administer all public  
 2 retirement plans in this state. It shall administer the Public Employees Retirement System  
 3 established in §5-10-1 *et seq.* of this code; the Teachers Retirement System established in §18-  
 4 7A-1 *et seq.* of this code; the Teachers' Defined Contribution Retirement System created by §18-  
 5 7B-1 *et seq.* of this code; the West Virginia State Police Death, Disability and Retirement Fund  
 6 created by §15-2-1 *et seq.* of this code; the West Virginia State Police Retirement System created  
 7 by §15-2A-1 *et seq.* of this code; the Deputy Sheriff Death, Disability and Retirement Fund created  
 8 by §7-14D-1 *et seq.* of this code; the Judges' Retirement System created under §51-9-1 *et seq.*  
 9 of this code; the Emergency Medical Services Retirement System established in §16-5V-1 *et seq.*  
 10 of this code; ~~and~~ the Municipal Police Officers and Firefighters Retirement System established in  
 11 §8-22A-1 *et seq.* of this code, and the West Virginia Division of Natural Resources Police Officers

12 Retirement System created by §20-17-1 et seq. of this code.

13 (b) The membership of the Consolidated Public Retirement Board consists of:

14 (1) The Governor or his or her designee;

15 (2) The State Treasurer or his or her designee;

16 (3) The State Auditor or his or her designee;

17 (4) The Secretary of the Department of Administration or his or her designee;

18 (5) Four residents of the state, who are not members, retirants or beneficiaries of any of  
19 the public retirement systems, to be appointed by the Governor, with the advice and consent of  
20 the Senate; and

21 (6) A member, annuitant or retirant of the Public Employees Retirement System who is or  
22 was a state employee; a member, annuitant or retirant of the Public Employees Retirement  
23 System who is not or was not a state employee; a member, annuitant or retirant of the Teachers  
24 Retirement System; a member, annuitant or retirant of the West Virginia State Police Death,  
25 Disability and Retirement Fund; a member, annuitant or retirant of the Deputy Sheriff Death,  
26 Disability and Retirement Fund; a member, annuitant or retirant of the Teachers' Defined  
27 Contribution Retirement System; a member, annuitant or retirant of the Emergency Medical  
28 Services Retirement System; ~~and beginning as soon as practicable after January 1, 2010, one~~  
29 ~~person who is a member, annuitant or retirant of a municipal policemen's or firemen's pension~~  
30 ~~and relief fund or the West Virginia Municipal Police Officers and Firefighters Retirement System,~~  
31 and beginning as soon as practicable after January 1, 2019, one person who is a member,  
32 annuitant or retirant of the West Virginia Division of Natural Resources Police Offices Retirement  
33 System, all to be appointed by the Governor, with the advice and consent of the Senate. The  
34 Governor shall choose the member representing the municipal policemen's or firemen's pension  
35 and relief fund or the West Virginia Municipal Police Officers and Firefighters Retirement System  
36 from two names submitted by the state's largest organization of professional police officers and  
37 two names submitted by the state's largest organization of professional firefighters.

38 Representation of the municipal police officers and firefighters shall alternate after each term on  
39 the board between persons having police officer and firefighter affiliation so that each professional  
40 group is represented on the board every other term.

41 All appointees to the board shall have recognized competence or significant experience  
42 in pension management or administration, actuarial analysis, institutional management or  
43 accounting. Those members appointed prior to January 1, 2010, shall be considered to have met  
44 these qualifications. One trustee shall be an attorney experienced in finance and pension matters  
45 and one trustee shall be a certified public accountant. Each member of the board must complete  
46 annual fiduciary training and timely complete any conflict of interest forms required to serve as a  
47 trustee.

48 (c) The appointed members of the board shall serve five-year terms. A member appointed  
49 pursuant to subdivision (6), subsection (b) of this section ceases to be a member of the board if  
50 he or she ceases to be a member of the represented system. If a vacancy occurs in the appointed  
51 membership, the Governor, within sixty days, shall fill the vacancy by appointment for the  
52 unexpired term. No more than six appointees may be of the same political party.

53 (d) The Consolidated Public Retirement Board has all the powers, duties, responsibilities  
54 and liabilities of the Public Employees Retirement System established pursuant to §5-10D-1 *et*  
55 *seq.* of this code; the Teachers Retirement System established pursuant to §18-7A-1 *et seq.* of  
56 this code; the Teachers' Defined Contribution Retirement System established pursuant to §18-  
57 7B-1 *et seq.* of this code; the West Virginia State Police Death, Disability and Retirement Fund  
58 created pursuant to §15-2-1 *et seq.* of this code; the West Virginia State Police Retirement System  
59 created by §15-2A-1 *et seq.* of this code; the Deputy Sheriff Death, Disability and Retirement  
60 Fund created pursuant to §7-14D-1 *et seq.* of this code; the Judges' Retirement System created  
61 pursuant to §51-9-1 *et seq.* of this code; the Emergency Medical Services Retirement System  
62 established in §16-5V-1 *et seq.* of this code; ~~and~~ the Municipal Police Officers and Firefighters  
63 Retirement System created pursuant to §8-22A-1 *et seq.* of this code, and the West Virginia

64 Division of Natural Resources Police Officers Retirement System established pursuant to §20-17-  
65 1 et seq. of this code, and their appropriate governing boards.

66 (e) The Consolidated Public Retirement Board may propose rules for legislative approval,  
67 in accordance with §29A-3-1 et seq. of this code, necessary to effectuate its powers, duties and  
68 responsibilities: *Provided*, That the board may adopt any or all of the rules, previously  
69 promulgated, of a retirement system which it administers.

70 (f) (1) The Consolidated Public Retirement Board shall continue to transfer all funds  
71 received for the benefit of the retirement systems, including, but not limited to, all employer and  
72 employee contributions, to the West Virginia Investment Management Board: *Provided*, That the  
73 employer and employee contributions of the Teachers' Defined Contribution Retirement System,  
74 established in §18-7B-3 of this code, and voluntary deferred compensation funds invested by the  
75 West Virginia Consolidated Public Retirement Board pursuant to §5-10B-5 of this code may not  
76 be transferred to the West Virginia Investment Management Board.

77 (2) The board may recover from a participating employer that fails to pay any amount due  
78 a retirement system in a timely manner the contribution due and an additional amount not to  
79 exceed interest or other earnings lost as a result of the untimely payment, or a reasonable  
80 minimum fee, whichever is greater, as provided by legislative rule promulgated pursuant to the  
81 provisions of §29A-3-1 et seq. article three, chapter twenty-nine-a of this code. Any amounts  
82 recovered shall be administered in the same manner in which the amount due is required to be  
83 administered.

84 (g) Notwithstanding any provision of this code or any legislative rule to the contrary, all  
85 assets of the public retirement plans set forth in subsection (a) of this section shall be held in trust.  
86 The Consolidated Public Retirement Board is a trustee for all public retirement plans, except with  
87 regard to the investment of funds: *Provided*, That the Consolidated Public Retirement Board is a  
88 trustee with regard to the investments of the Teachers' Defined Contribution Retirement System  
89 and any other assets of the public retirement plans administered by the Consolidated Public

90 Retirement Board as set forth in subsection (a) of this section for which no trustee has been  
91 expressly designated in this code.

92 (h) The board may employ the West Virginia Investment Management Board to provide  
93 investment management consulting services for the investment of funds in the Teachers' Defined  
94 Contribution Retirement System.

**CHAPTER 20. NATURAL RESOURCES.**

**ARTICLE 17. WEST VIRGINIA DIVISION OF NATURAL RESOURCES POLICE**

**OFFICER RETIREMENT SYSTEM.**

**§20-17-1. Short title.**

1 This article shall be known and may be cited as the "West Virginia Division of Natural  
2 Resources Police Officer Retirement System Act".

**§20-17-2. Definitions.**

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

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

4 "Active military duty" means full-time active duty with the Armed Forces of the United  
5 States, namely, the United States Air Force, Army, Coast Guard, Marines or Navy; and service  
6 with the National Guard or reserve military forces of any of the Armed Forces when the employee  
7 has been called to active full-time duty.

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

14 “Agency” means the West Virginia Division of Natural Resources.

15 “Base salary” means compensation paid to an employee without regard to any overtime  
16 pay.

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

19 “Board” means the Consolidated Public Retirement Board created pursuant to §5-10-1 et  
20 seq. of this code.

21 “Dependent child” means any unmarried child or children born to or adopted by a member  
22 or retirant of the fund who: (A) Is under the age of eighteen; or (B) After reaching eighteen years  
23 of age, continues as a full-time student in an accredited high school, college, university or  
24 business or trade school until the child or children reaches the age of twenty-three years; or (C)  
25 Is financially dependent on the member or retirant by virtue of a permanent mental or physical  
26 disability upon evidence satisfactory to the board.

27 “Dependent parent” means the member's or retirant's parent or stepparent claimed as a  
28 dependent by the member or retirant for federal income tax purposes at the time of the member's  
29 or retirant's death.

30 “Director” means Director of the Division of Natural Resources.

31 “Employee” means any person regularly employed in the service of the agency as a law-  
32 enforcement officer on or after the effective date of this article, and who is eligible to participate  
33 in the fund. The term shall not include Emergency Natural Resources Police Officers as defined  
34 in §20-7-1 (c), Special Natural Resources Police Officers defined in §20-7-1 (d), Forestry Special  
35 Natural Resources Police Officers defined in §20-7-1 (e), or Federal Law-Enforcement Officer  
36 defined in §20-7-1 b.

37 “Final average salary” means the average of the highest annual compensation received  
38 for employment with the agency, including compensation paid for overtime service, received by  
39 the employee during any five calendar years within the employee's last ten years of service:

40 Provided, That annual compensation for determining benefits during any determination period  
41 may not exceed the maximum compensation allowed as adjusted for cost-of-living in accordance  
42 with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

43 “Fund”, “plan”, “system” or “retirement system” means the West Virginia Natural  
44 Resources Police Officer Retirement System created and established by this article.

45 “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.

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

52 “Member” means any person who has contributions standing to his or her credit in the  
53 fund and who has not yet entered into retirement status.

54 “Month of service” means each month for which an employee is paid or entitled to payment  
55 for at least one hour of service for which contributions were remitted to the fund. These months  
56 shall be credited to the member for the calendar year in which the duties are performed.

57 “Partially disabled” means an employee's inability, on a probable permanent basis, to  
58 perform the essential duties of a law-enforcement officer by reason of any medically determinable  
59 physical or mental impairment which has lasted or can be expected to last for a continuous period  
60 of not less than twelve months, but which impairment does not preclude the employee from  
61 engaging in other types of nonlaw-enforcement employment.

62 “Physical or mental impairment” means an impairment that results from an anatomical,  
63 physiological or psychological abnormality that is demonstrated by medically accepted clinical  
64 and laboratory diagnostic techniques.

65 “Plan year” means the twelve-month period commencing on July 1 of any designated year



66 and ending the following June 30.

67 “Qualified public safety employee” means any employee of a participating state or political  
68 subdivision who provides police protection, fire fighting services or emergency medical services  
69 for any area within the jurisdiction of the state or political subdivision, or such other meaning given  
70 to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation  
71 §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

72 “Required beginning date” means April 1 of the calendar year following the later of: (a)  
73 The calendar year in which the member attains age seventy and one-half years; or (b) the  
74 calendar year in which he or she retires or otherwise separates from service with the agency after  
75 having attained the age of seventy and one-half years.

76 “Retirant” or “retiree” means any member who commences an annuity payable by the  
77 retirement system.

78 “Salary” means the compensation of an employee, excluding any overtime payments.

79 “Surviving spouse” means the person to whom the member or retirant was legally married  
80 at the time of the member's or retirant's death and who survived the member or retirant.

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

91 “Years of service” means the months of service acquired by a member while in active

92 employment with the agency divided by twelve. Years of service shall be calculated in years and  
93 fraction of a year from the date of active employment of the member with the agency through the  
94 date of termination of employment or retirement from the agency. If a member returns to active  
95 employment with the agency following a previous termination of employment with the agency and  
96 the member has not received a refund of contributions plus interest for the previous employment  
97 under §20-17-8 of this code, service shall be calculated separately for each period of continuous  
98 employment and years of service shall be the total service for all periods of employment. Years  
99 of service shall exclude any periods of employment with the agency for which a refund of  
100 contributions plus interest has been paid to the member unless the employee repays the previous  
101 withdrawal, as provided in §20-17-8 of this code, to reinstate the years of service.

**§20-17-3. Administration of West Virginia Division of Natural Resources Police Officer Retirement System; leased employees; federal qualification requirements.**

1 (a) It is contemplated that substantially all members of the West Virginia Division of Natural  
2 Resources Police Officer Retirement System shall be qualified public safety employees as defined  
3 in §20-17-2 of this code. Any West Virginia Division of Natural Resources police officer employed  
4 by the agency on or after the effective date of this article shall be a member of this retirement  
5 system and may not qualify for membership in any other retirement system administered by the  
6 board so long as he or she remains employed by the Division of Natural Resources: *Provided,*  
7 That any police officer who has concurrent employment in an additional job or jobs which would  
8 require the police officer to be a member of the West Virginia State Police Retirement System,  
9 West Virginia Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and  
10 Firefighters Retirement System or the West Virginia Emergency Medical Services Retirement  
11 System shall abide by the statutory provisions of said retirement system related to concurrent  
12 employment and participate in only one retirement system administered by the board.

13 (b) Any individual who is a leased employee, emergency natural resources police officer  
14 as defined in §20-7-1(c) of this code, special natural resources police officer defined in §20-7-1(d)

15 of this code, forestry special natural resources police officer defined in §20-7-1(e) of this code, or  
16 federal law enforcement officer defined in §20-7-1b of this code shall not be eligible to participate  
17 in the system. For purposes of this system, a “leased employee” means any individual who  
18 performs services as an independent contractor or pursuant to an agreement with an employee  
19 leasing organization or other similar organization. If a question arises regarding the status of an  
20 individual as a leased employee, the board has final power to decide the question.

21 (c) The board created pursuant to §5-10D-1 et seq. of this code shall administer the  
22 retirement system. The board may sue and be sued, contract and be contracted with and conduct  
23 all the business of the system in the name of the West Virginia Division of Natural Resources  
24 Police Officer Retirement System.

25 (d) This fund is intended to meet the federal qualification requirements of Section 401(a)  
26 and related sections of the Internal Revenue Code as applicable to governmental plans.  
27 Notwithstanding any other provision of state law, the board shall administer the retirement system  
28 to fulfill this intent for the exclusive benefit of the employees, members, retirants and their  
29 beneficiaries. Any provision of this article referencing or relating to these federal qualification  
30 requirements shall be effective as of the date required by federal law. The board may promulgate  
31 rules and amend or repeal conflicting rules in accordance with the authority granted to the board  
32 pursuant to §5-10D-1 of this code to assure compliance with this section.

#### **§20-17-4. Participation in system.**

1 The West Virginia Natural Resources Police Officer Retirement Fund is established for the  
2 benefit of the members and retirants of the system created pursuant to this article and the  
3 dependents of any deceased or retired member of the system. All moneys paid into and  
4 accumulated in the fund, except any amounts designated or set aside by the board for payments  
5 of benefits as provided in this article, shall be invested by the West Virginia Investment  
6 Management Board as provided by law.

#### **§20-17-4a. Specification of actuarial assumptions.**

1       The board shall specify and adopt all actuarial assumptions for the fund at its first meeting  
2 in each calendar year or as soon thereafter as may be practicable, which assumptions shall  
3 become part of the terms of the system.

**§20-17-5. Employee contributions; employer contributions; forfeitures.**

1       (a) There shall be deducted from the monthly payroll of each employee and paid into the  
2 fund created pursuant to §20-17-4 of this code twelve percent of the amount of his or her salary:  
3 Provided, That after July 1, 2021, if the funding percentage of the fund determined by the board  
4 falls below the ninety percent threshold, then the employee rate of contribution shall be increased  
5 to thirteen percent of the amount of the employee's salary until the ninety percent or better funding  
6 level is again achieved. Once that funding level is achieved the employee contribution rate will be  
7 reduced to twelve percent.

8       (b) The State of West Virginia's contributions to the retirement system, as determined by  
9 the board, shall be a percent of the employees' total annual base salary related to benefits under  
10 this retirement system. In determining the amount, the board shall consider setting the amount at  
11 a sum equal to an amount which, if paid annually by the state, will be sufficient to provide for the  
12 total normal cost of the benefits expected to become payable to all members and retirants and to  
13 amortize any unfunded liability found by application of the actuarial funding method chosen for  
14 that purpose by the board over a period of years determined actuarially appropriate. The state's  
15 contributions shall be paid monthly into the fund created pursuant to §20-17-4 of this code out of  
16 the annual appropriation for the agency.

17       (c) Notwithstanding any other provisions of this article, forfeitures under the system shall  
18 not be applied to increase the benefits any member or retirant would otherwise receive under the  
19 system.

**§20-17-6. Retirement; commencement of benefits.**

1       (a) Effective July 1, 2020, a member may retire with full benefits upon attaining the age of  
2 fifty and completing twenty-five or more years of service or attaining the age of fifty-two and

3 completing twenty years or more of service by filing with the board his or her voluntary application  
4 in writing for retirement: *Provided*, That a person must be a member for two years before being  
5 eligible to retire. A member who is less than age fifty-two may retire upon completing twenty years  
6 or more of service: *Provided, however*, That he or she will receive a reduced benefit that is of  
7 equal actuarial value to the benefit the member would have received if the member deferred  
8 commencement of his or her accrued retirement benefit to the age of fifty-two.

9 (b) When the board retires a member with full benefits under the provisions of this section,  
10 the board, by order in writing, shall make a determination that the member is entitled to receive  
11 an annuity equal to two and three-fourths percent of his or her final average salary multiplied by  
12 the number of years, and fraction of a year, of his or her service at the time of retirement, subject  
13 to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the  
14 Internal Revenue Code and §20-17-6a of this code. The retirant's annuity shall begin the first day  
15 of the calendar month following the month in which the member's application for the annuity is  
16 filed with the board on or after his or her attaining age and service requirements and termination  
17 of employment.

18 (c) In no event may the provisions of §5-16-13 of this code be applied in determining  
19 eligibility to retire with either a deferred or immediate commencement of benefit.

**§20-17-6a. Federal law maximum benefit limitations.**

1 Notwithstanding any other provision of this article or state law, the board shall administer  
2 the retirement system in compliance with the limitations of Section 415 of the Internal Revenue  
3 Code and Treasury Regulations under that section to the extent applicable to governmental plans  
4 (hereafter sometimes referred to as the "415 limitation(s)" or "415 dollar limitation(s)"), so that the  
5 annual benefit payable under this system to a member shall not exceed those limitations. Any  
6 annual benefit payable under this system shall be reduced or limited if necessary to an amount  
7 which does not exceed those limitations. The extent to which any annuity or other annual benefit  
8 payable under this retirement system shall be reduced, as compared with the extent to which an

9 annuity, contributions or other benefits under any other defined benefit plans or defined  
10 contribution plans required to be taken into consideration under Section 415 of the Internal  
11 Revenue Code shall be reduced, shall be proportional on a percentage basis to the reductions  
12 made in such other plans administered by the board and required to be so taken into consideration  
13 under Section 415, unless a disproportionate reduction is determined by the board to maximize  
14 the aggregate benefits payable to the member. If the reduction is under this retirement system,  
15 the board shall advise affected members or retirants of any additional limitation on the annuities  
16 or other annual benefit required by this section. For purposes of the 415 limitations, the "limitation  
17 year" shall be the calendar year. The 415 limitations are incorporated herein by reference, except  
18 to the extent the following provisions may modify the default provisions thereunder:

19 (a) The annual adjustment to the 415 dollar limitations made by Section 415(d) of the  
20 Internal Revenue Code and the regulations thereunder shall apply for each limitation year. The  
21 annual adjustments to the dollar limitations under Section 415(d) of the Internal Revenue Code  
22 which become effective: (1) After a retirant's severance from employment with the employer; or  
23 (2) after the annuity starting date in the case of a retirant who has already commenced receiving  
24 benefits, will apply with respect to a retirant's annual benefit in any limitation year. A retirant's  
25 annual benefit payable in any limitation year from this retirement system shall in no event be  
26 greater than the limit applicable at the annuity starting date, as increased in subsequent years  
27 pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

28 (b) For purposes of this section, the "annual benefit" means a benefit that is payable  
29 annually in the form of a straight life annuity. Except as provided below, where a benefit is payable  
30 in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent  
31 straight life annuity that begins at the same time as such other form of benefit, using factors  
32 prescribed in the 415 limitation regulations, before applying the 415 limitations. No actuarial  
33 adjustment to the benefit shall be made for: (1) Survivor benefits payable to a surviving spouse  
34 under a qualified joint and survivor annuity to the extent such benefits would not be payable if the

35 member's benefits were paid in another form; (2) benefits that are not directly related to retirement  
36 benefits (such as a qualified disability benefit, preretirement incidental death benefits, and post-  
37 retirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit  
38 increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal  
39 Revenue Code and would otherwise satisfy the limitations of this article, and the plan provides  
40 that the amount payable under the form of benefit in any limitation year shall not exceed the limits  
41 of this article applicable at the annuity starting date, as increased in subsequent years pursuant  
42 to Section 415(d) of the Internal Revenue Code. For this purpose an automatic benefit increase  
43 feature is included in a form of benefit if the form of benefit provides for automatic, periodic  
44 increases to the benefits paid in that form.

45 (c) *Adjustment for benefit forms not subject to Section 417(e)(3).* -- The straight life annuity  
46 that is actuarially equivalent to the member's form of benefit shall be determined under this  
47 subsection if the form of the member's benefit is either: (1) A nondecreasing annuity (other than  
48 a straight life annuity) payable for a period of not less than the life of the member (or, in the case  
49 of a qualified preretirement survivor annuity, the life of the surviving spouse); or (2) an annuity  
50 that decreases during the life of the member merely because of: (i) The death of the survivor  
51 annuitant (but only if the reduction is not below fifty percent of the benefit payable before the death  
52 of the survivor annuitant); or (ii) the cessation or reduction of Social Security supplements or  
53 qualified disability payments (as defined in Section 411(a)(9) of the Internal Revenue Code). The  
54 actuarially equivalent straight life annuity is equal to the greater of: (I) The annual amount of the  
55 straight life annuity (if any) payable to the member under the plan commencing at the same  
56 annuity starting date as the member's form of benefit; and (II) the annual amount of the straight  
57 life annuity commencing at the same annuity starting date that has the same actuarial present  
58 value as the member's form of benefit, computed using a five percent interest rate assumption  
59 and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue  
60 Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of

61 Revenue Ruling 2001-62) for that annuity starting date.

62 (d) Adjustment for benefit forms subject to Section 417(e)(3). -- The straight life annuity  
63 that is actuarially equivalent to the member's form of benefit shall be determined under this  
64 subsection if the form of the member's benefit is other than a benefit form described in subdivision  
65 (c) of this section. In this case, the actuarially equivalent straight life annuity shall be determined  
66 as follows: The actuarially equivalent straight life annuity is equal to the greatest of: (1) The annual  
67 amount of the straight life annuity commencing at the same annuity starting date that has the  
68 same actuarial present value as the member's form of benefit, computed using the interest rate  
69 specified in this retirement system and the mortality table (or other tabular factor) specified in this  
70 retirement system for adjusting benefits in the same form; (2) the annual amount of the straight  
71 life annuity commencing at the same annuity starting date that has the same actuarial present  
72 value as the member's form of benefit, computed using a five and a half percent interest rate  
73 assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2)  
74 (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions  
75 of Revenue Ruling 2001-62) for that annuity starting date; and (3) the annual amount of the  
76 straight life annuity commencing at the same annuity starting date that has the same actuarial  
77 present value as the member's form of benefit, computed using the applicable interest rate defined  
78 in Treasury Regulation §1.417(e)-1(d)(3) and the applicable mortality table defined in Treasury  
79 Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any  
80 subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62),  
81 divided by 1.05.

82 (e) Benefits payable prior to age sixty-two. --

83 (1) Except as provided in paragraphs (2) and (3) of this subdivision, if the member's  
84 retirement benefits become payable before age sixty-two, the 415 dollar limitation prescribed by  
85 this section shall be reduced in accordance with regulations issued by the Secretary of the  
86 Treasury pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that the



87 limitation (as so reduced) equals an annual straight life benefit (when the retirement income  
88 benefit begins) which is equivalent to an annual benefit in the amount of the applicable dollar  
89 limitation of Section 415(b)(1)(A) of the Internal Revenue Code (as adjusted pursuant to Section  
90 415(d) of the Internal Revenue Code) beginning at age sixty-two.

91 (2) The limitation reduction provided in paragraph (1) of this subdivision shall not apply if  
92 the member commencing retirement benefits before age sixty-two is a qualified participant. A  
93 qualified participant for this purpose is a participant in a defined benefit plan maintained by a state,  
94 or any political subdivision of a state, with respect to whom the service taken into account in  
95 determining the amount of the benefit under the defined benefit plan includes at least fifteen years  
96 of service: (i) As a full-time employee of any police or fire department organized and operated by  
97 the state or political subdivision maintaining the defined benefit plan to provide police protection,  
98 fire fighting services or emergency medical services for any area within the jurisdiction of such  
99 state or political subdivision; or (ii) as a member of the Armed Forces of the United States.

100 (3) The limitation reduction provided in paragraph (1) of this subdivision shall not be  
101 applicable to preretirement disability benefits or preretirement death benefits.

102 (4) For purposes of adjusting the Section 415 dollar limitation for benefit commencement  
103 before age sixty-two or after age sixty-five (if the plan provides for such adjustment), no  
104 adjustment is made to reflect the probability of a member's death: (i) After the annuity starting  
105 date and before age sixty-two; or (ii) after age sixty-five and before the annuity starting date.

106 (f) Adjustment shall not be applicable to preretirement disability benefits or preretirement  
107 death benefits.

**§20-17-6b. Federal law minimum required distributions.**

1 The requirements of this section apply to any distribution of a member's interest and take  
2 precedence over any inconsistent provisions of this retirement system. Notwithstanding anything  
3 in the retirement system to the contrary, the payment of benefits under this article shall be  
4 determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and

5 the federal regulations promulgated thereunder as applicable to governmental plans. Any term  
6 used in this article has the same meaning as when used in a comparable context in Section  
7 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder  
8 unless a different meaning is clearly required by the context or definition in this article. The  
9 following provisions apply to payments of benefits required under this article:

10 (a) The payment of benefits under the retirement system to any member shall be  
11 distributed to him or her not later than the required beginning date, or be distributed to him or her  
12 commencing not later than the required beginning date, in accordance with regulations prescribed  
13 under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the  
14 lives of the member and his or her beneficiary or over a period not extending beyond the life  
15 expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this  
16 section may not be construed to grant a right to a form of benefit which is not otherwise available  
17 to a particular member under this retirement system. Benefit payments under this section shall  
18 not be delayed, pending, or contingent upon, receipt of an application for retirement from the  
19 member.

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

24 (c) If a member dies before distribution to him or her has commenced, then his or her  
25 entire interest in the retirement system is to be distributed by December 31 of the calendar year  
26 containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of  
27 this section apply.

28 (d) If a member dies before distribution to him or her has commenced, and the member's  
29 interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary,  
30 distributions are to be made over the life of that beneficiary or over a period certain not greater

31 than the life expectancy of that beneficiary, commencing on or before the following:

32 (1) December 31 of the calendar year immediately following the calendar year in which  
33 the member died; or

34 (2) If the member's sole designated beneficiary is either the surviving spouse or a former  
35 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving one  
36 hundred percent of the survivor benefit, distributions are to commence on or before the later of:

37 (A) December 31 of the calendar year in which the member would have attained age  
38 seventy and one-half; or

39 (B) December 31 of the calendar year immediately following the calendar year in which  
40 the member died.

41 (e) If a member dies before distribution to him or her has commenced and the survivor  
42 annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary  
43 who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section  
44 may elect to have life expectancy treatment apply to the distribution for purposes of determining  
45 whether any portion of the distribution is an eligible rollover distribution: *Provided*, That the  
46 election shall not delay the required distribution of the deceased member's entire interest in the  
47 retirement system beyond December 31 of the calendar year containing the fifth anniversary of  
48 the member's death as required by subsection (c) of this section: *Provided, however*, That the  
49 election is timely made in a form acceptable to the board on or before the following:

50 (1) December 31 of the calendar year immediately following the calendar year in which  
51 the member died; or

52 (2) If the member's sole designated beneficiary is either the surviving spouse or a former  
53 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving one  
54 hundred percent of the survivor benefit, election of life expectancy treatment must be made on or  
55 before the earlier of (A) or (B) below:

56 (A) The later of: (i) December 31 of the calendar year immediately following the calendar

57 year in which the member died; or (ii) December 31 of the calendar year in which the member  
58 would have attained age seventy and one-half; or

59 (B) October 31 of the calendar year containing the fifth anniversary of the member's death.

**§20-17-6c. Direct rollovers.**

1 (a) Notwithstanding any provision of this article to the contrary that would otherwise limit  
2 a distributee's election under this system, a distributee may elect, at the time and in the manner  
3 prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an  
4 eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section,  
5 the following definitions apply:

6 (1) "Eligible rollover distribution" means any distribution of all or any portion of the balance  
7 to the credit of the distributee, except that an eligible rollover distribution does not include any of  
8 the following: (i) Any distribution that is one of a series of substantially equal periodic payments  
9 not less frequently than annually made for the life or life expectancy of the distributee or the joint  
10 lives or the joint life expectancies of the distributee and the distributee's designated beneficiary or  
11 for a specified period of ten years or more; (ii) any distribution to the extent the distribution is  
12 required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution  
13 that is not includable in gross income determined without regard to the exclusion for net unrealized  
14 appreciation with respect to employer securities; and (iv) any hardship distribution described in  
15 Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. For distributions after December 31,  
16 2020, a portion of a distribution shall not fail to be an eligible rollover distribution merely because  
17 the portion consists of after-tax employee contributions which are not includable in gross income.  
18 However, this portion may be paid only to an individual retirement account or annuity described  
19 in Section 408(a) or (b) of the Internal Revenue Code or to a qualified trust which is part of a  
20 defined contribution plan described in Section 401(a) or to a qualified trust or to an annuity  
21 contract described in Section 403(a) or (b) of the Internal Revenue Code that agrees to separately  
22 account for amounts transferred (including interest or earnings thereon), including separately

23 accounting for the portion of the distribution which is includable in gross income and the portion  
24 of the distribution which is not so includable, or to a Roth IRA described in Section 408A of the  
25 Internal Revenue Code.

26 (2) "Eligible retirement plan" means an individual retirement account described in Section  
27 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b)  
28 of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue  
29 Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts  
30 the distributee's eligible rollover distribution. An eligible retirement plan also means an annuity  
31 contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under  
32 Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision  
33 of a state or any agency or instrumentality of a state or political subdivision of a state and which  
34 agrees to separately account for amounts transferred into the plan from this system. An eligible  
35 retirement plan also means a Roth IRA described in Section 408A of the Internal Revenue Code:  
36 Provided, That in the case of an eligible rollover distribution to a designated beneficiary (other  
37 than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue  
38 Code, an eligible retirement plan is limited to an individual retirement account or individual  
39 retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue  
40 Code.

41 (3) "Distributee" means an employee or former employee. In addition, the employee's or  
42 former employee's surviving spouse and the employee's or former employee's spouse or former  
43 spouse who is the alternate payee under a qualified domestic relations order, as defined in  
44 Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees  
45 with regard to the interest of the spouse or former spouse. "Distributee" also includes a designated  
46 beneficiary (other than a surviving spouse) as the term is defined in Section 402(c)(11) of the  
47 Internal Revenue Code.

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

49 (b) Nothing in this section may be construed as permitting rollovers into this system or any  
50 other retirement system administered by the board.

**§20-17-6d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.**

1 (a) Notwithstanding any provision of this article to the contrary that would otherwise  
2 prohibit or limit rollovers and plan transfers to this system, the retirement system shall accept the  
3 following rollovers and plan transfers on behalf of an employee solely for the purpose of  
4 purchasing permissive service credit, in whole and in part, as otherwise provided in this article or  
5 for the repayment of withdrawn or refunded contributions, in whole and in part, with respect to a  
6 previous forfeiture of service credit as otherwise provided in this article: (i) One or more rollovers  
7 within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual  
8 retirement account described in Section 408(a) of the Internal Revenue Code or from an individual  
9 retirement annuity described in Section 408(b) of the Internal Revenue Code; (ii) one or more  
10 rollovers described in Section 402 (c) of the Internal Revenue Code from a retirement plan that is  
11 qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section  
12 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16)  
13 of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal  
14 Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified  
15 under Section 401(a) of the Internal Revenue Code from a plan described in Section 403(b) of  
16 the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal  
17 Revenue Code: *Provided*, That any rollovers or transfers pursuant to this section shall be  
18 accepted by the system only if made in cash or other asset permitted by the board and only in  
19 accordance with the policies, practices and procedures established by the board from time to  
20 time. For purposes of this article, the following definitions and limitations apply:

21 (1) "Permissive service credit" means service credit which is permitted to be purchased  
22 under the terms of the retirement system by voluntary contributions in an amount which does not

23 exceed the amount necessary to fund the benefit attributable to the period of service for which  
24 the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal  
25 Revenue Code: *Provided*, That no more than five years of “nonqualified service credit”, as defined  
26 in Section 415(n)(3)(C) of the Internal Revenue Code, may be included in the permissive service  
27 credit allowed to be purchased (other than by means of a rollover or plan transfer), and no  
28 nonqualified service credit may be included in any such purchase (other than by means of a  
29 rollover or plan transfer) before the member has at least five years of participation in the retirement  
30 system.

31 (2) “Repayment of withdrawn or refunded contributions” means the payment into the  
32 retirement system of the funds required pursuant to this article for the reinstatement of service  
33 credit previously forfeited on account of any refund or withdrawal of contributions permitted in this  
34 article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

35 (3) Any contribution (other than by means of a rollover or plan transfer) to purchase  
36 permissive service credit under any provision of this article must satisfy the special limitation rules  
37 described in Section 415(n) of the Internal Revenue Code, and shall be automatically reduced,  
38 limited or required to be paid over multiple years if necessary to ensure such compliance. To the  
39 extent any such purchased permissive service credit is qualified military service within the  
40 meaning of Section 414(u) of the Internal Revenue Code, the limitations of Section 415 of the  
41 Internal Revenue Code shall be applied to the purchase as described in Section 414(u)(1)(B) of  
42 the Internal Revenue Code.

43 (4) For purposes of Section 415(b) of the Internal Revenue Code, the annual benefit  
44 attributable to any rollover contribution accepted pursuant to this section shall be determined in  
45 accordance with Treasury Regulation §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity  
46 payments attributable to any rollover contribution provided under the retirement system over the  
47 annual benefit so determined shall be taken into account when applying the accrued benefit  
48 limitations of Section 415(b) of the Internal Revenue Code and §20-17-6a of this code.

49 (b) Nothing in this section shall be construed as permitting rollovers or transfers into this  
50 system or any other system administered by the board other than as specified in this section and  
51 no rollover or transfer shall be accepted into the system in an amount greater than the amount  
52 required for the purchase of permissive service credit or repayment of withdrawn or refunded  
53 contributions.

54 (c) Nothing in this section shall be construed as permitting the purchase of service credit  
55 or repayment of withdrawn or refunded contributions except as otherwise permitted in this  
56 chapter.

**§20-17-6e. Transfer from Public Employees Retirement system.**

1 (a) The Consolidated Public Retirement Board shall, within 90 days of the effective date  
2 of the transfer of a natural resources police officer from the Public Employees Retirement System  
3 to the plan, transfer assets from the Public Employees Retirement System trust fund into the West  
4 Virginia Natural Resources Police Officers Retirement System.

5 (b) The amount of assets to be transferred for each transferring natural resources police  
6 officer shall be computed as of July 1, 2018, using the actuarial valuation assumptions in effect  
7 for July 1, 2018, actuarial valuation of Public Employees Retirement System. The market value  
8 of the assets of the transferring natural resources police officer in the Public Employees  
9 Retirement System shall be determined as of the end of the month preceding the actual transfer.  
10 To determine the computation of the asset share to be transferred the board shall:

11 (1) Compute the market value of the Public Employees Retirement System assets;

12 (2) Compute the accrued liability for all Public Employees Retirement System retirees,  
13 beneficiaries, disabled retirees and terminated inactive members;

14 (3) Reduce the market value of Public Employees Retirement System assets by the  
15 accrued liability determined in subdivision (2) of this subsection;

16 (4) Compute the entry age method accrued liability for all active Public Employees  
17 Retirement System members;



18 (5) Compute the share of accrued liability as determined pursuant to subdivision (4) of this  
19 subsection, that is attributable to those natural resources police officers in Public Employees  
20 Retirement System who have elected to transfer to the plan;

21 (6) Compute the percentage of active's accrued liability computed to the natural resources  
22 police officers by dividing subdivision (5) by subdivision (4) of this subsection;

23 (7) Determine the asset share to be transferred from Public Employees Retirement  
24 System to the plan by multiplying subdivision (3) times subdivision (6) of this subsection.

25 (c) Any natural resources police officer who elected, on or before January 30, 2019, to  
26 transfer to the plan created by this article, has until January 1, 2020, to pay any amounts required  
27 by §20-17-5 of this code as a result of the natural resources police officer's transfer to the West  
28 Virginia Natural Resources Police Officers retirement system.

**§20-17-7. Annual annuity adjustment.**

1 (a) Every retirant of the fund who is sixty-three years of age or older and who is retired by  
2 the board under the provisions of §20-17-6 of this code; every retirant who is retired under the  
3 provisions of §20-17-9 or §20-17-10 of this code; and every surviving spouse receiving a benefit  
4 pursuant to §20-17-12, §20-17-13 or §20-17-14 of this code is eligible to receive an annual  
5 retirement annuity adjustment equal to one percent of his or her retirement award or surviving  
6 spouse award. The adjustments may not be retroactive. Yearly adjustments shall begin upon July  
7 1, of each year. The annuity adjustments shall be paid to the retirant or surviving spouse from the  
8 fund in equal monthly installments while the retirant or surviving spouse are receiving annuity  
9 payments. The annuity adjustments shall supplement the retirement awards and benefits  
10 provided in this article.

11 (b) Any retirant or surviving spouse who receives a benefit pursuant to the provisions of  
12 §20-17-9, §20-17-10, §20-17-12, §20-17-13 or §20-17-14 of this code shall begin to receive the  
13 annual annuity adjustment one year after the commencement of the benefit on the next July 1:  
14 Provided, That if the retirant has been retired for less than one year or if the surviving spouse has

15 been in receipt of surviving spouse payments for less than one year when the first annuity  
16 adjustment is given on that July 1, that first annuity adjustment will be a pro rata share of the full  
17 year's annuity adjustment.

**§20-17-8. Refunds to certain members upon discharge of resignation; deferred retirement.**

1 (a) Any employee who is discharged by order of the director or otherwise terminates  
2 employment with the agency is, at the written request of the member to the board, entitled to  
3 receive from the fund a sum equal to the aggregate of the principal amount of moneys deducted  
4 from his or her base salary and paid into the fund plus four percent interest compounded thereon  
5 calculated annually as provided and required by this article.

6 (b) Any member withdrawing contributions who may thereafter be reemployed by the  
7 agency shall not receive any prior service credit in the fund on account of former service. The  
8 employee may redeposit in the fund established by this article the amount of the refund, together  
9 with interest thereon at the rate of seven and one-half percent per annum from the date of  
10 withdrawal to the date of redeposit, in which case he or she shall receive the same credit on  
11 account of his or her former service as if no refund had been made.

12 (c) Every employee who completes ten years of service with the agency is eligible, upon  
13 separation of employment, to either withdraw his or her contributions in accordance with  
14 subsection (a) of this section or to choose not to withdraw his or her accumulated contributions.  
15 Upon attainment of age sixty-two, a member who chooses not to withdraw his or her contributions  
16 is eligible to receive a retirement annuity. The annuity shall be payable during the lifetime of the  
17 retirant and shall be in the amount of his or her accrued retirement benefit as determined under  
18 §20-17-6 of this code, subject to reduction if necessary to comply with the maximum benefit  
19 provisions of Section 415 of the Internal Revenue Code and §20-17-6a of this code. The retirant  
20 may choose, in lieu of a life annuity, an annuity in a reduced amount payable during the retirant's  
21 lifetime, with one half of the reduced monthly amount paid to his or her surviving spouse for the  
22 spouse's remaining lifetime after the death of the retirant. Reduction of the monthly benefit amount

23 shall be calculated to be of equal actuarial value to the life annuity the retirant could otherwise  
24 have chosen. Any retirant choosing to receive the deferred annuity under this subsection is not  
25 eligible to receive the annual annuity adjustment provided in §20-17-7 of this code. A retiring  
26 member under the provisions of this section may receive retirement annuity payments on the first  
27 day of the month following his or her attaining age sixty-two and upon receipt of the application  
28 for retirement. The board shall promptly provide the member with an explanation of his or her  
29 optional forms of retirement benefits and, upon receipt of properly executed forms from the  
30 agency and member, the board shall process the member's request for and commence payments  
31 as soon as administratively feasible.

**§20-17-9. Awards and benefits for disability -- Incurred in performance of duty.**

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

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

16 (2) The sum of \$6,000. The first day of the month following the date in which the retirant

17 attains age fifty-five, the retirant shall receive the benefit provided in §20-17-6 of this code as it  
18 would apply to his or her final average salary based on earnings from the agency through the day  
19 immediately preceding his or her disability. The recalculation of benefit upon a retirant attaining  
20 age fifty-five shall be considered to be a retirement under the provisions of §20-17-6 of this code  
21 for purposes of determining the amount of annual annuity adjustment and for all other purposes  
22 of this article: *Provided*, That a retirant who is partially disabled under this article may not, while  
23 in receipt of benefits for partial disability, be employed as a law-enforcement officer: *Provided*,  
24 *however*, That a retirant on a partial disability under this article may serve as an elected sheriff or  
25 appointed chief of police in the state without a loss of disability retirement benefits as long as the  
26 elected or appointed position is shown, to the satisfaction of the board, to require the performance  
27 of administrative duties and functions only, as opposed to the full range of duties of a law-  
28 enforcement officer.

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

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

43 (d) The director may expend moneys from funds appropriated for the agency in payment  
44 of medical, surgical, laboratory, x-ray, hospital, ambulance and dental expenses and fees and  
45 reasonable costs and expenses incurred in the purchase of artificial limbs and other approved  
46 appliances which may be reasonably necessary for any retirant who is temporarily, permanently  
47 or totally disabled by injury, illness or disease resulting from any occupational risk or hazard  
48 inherent in or peculiar to the service required of employees of the agency or incurred pursuant to  
49 or while the employee was or shall be engaged in the performance of duties as an employee of  
50 the agency. Whenever the director determines that any disabled retirant is ineligible to receive  
51 any of the benefits in this section at public expense, the director shall, at the request of the  
52 disabled retirant, refer the matter to the board for hearing and final decision. In no case will the  
53 compensation rendered to health care providers for medical and hospital services exceed the  
54 then current rate schedule approved by the West Virginia Insurance Commission. Upon  
55 termination of employment and receipt of properly executed forms from the agency and the  
56 member, the board shall process the member's disability retirement benefit and commence  
57 annuity payments as soon as administratively feasible.

**§20-17-10. Same -- Due to other causes.**

1 (a) If any employee while in active service of the agency becomes partially or totally  
2 disabled on a probable permanent basis to the extent that the employee cannot adequately  
3 perform the duties required of an employee of the agency from any cause other than those set  
4 forth in the preceding section and not due to vicious habits, intemperance or willful misconduct on  
5 his or her part, the employee shall be retired by the board. There shall be paid annually to the  
6 retirant from the fund in equal monthly installments, commencing on the date the retirant is retired  
7 and continuing during the lifetime of the retirant or until the retirant attains the age of fifty-five;  
8 while in status of retirement an amount equal to one-half the base salary received by the retirant  
9 in the preceding full twelve-month period: *Provided*, That if the retirant had not been employed  
10 with the agency for twelve full months prior to the disability, the amount of monthly base salary

11 shall be annualized for the purpose of determining the benefit.

12 (b) The first day of the month following the date in which the retirant attains age fifty-five,  
13 the retirant shall receive the benefit provided in §20-17-6 of this code as it would apply to his or  
14 her final average salary based on earnings from the agency through the day immediately  
15 preceding his or her disability. The recalculation of benefit upon a retirant attaining age fifty-five  
16 shall be considered to be a retirement under the provisions of §20-17-6 of this code for purposes  
17 of determining the amount of annual annuity adjustment and for all other purposes of this article.

18 (c) Disability benefit payments made pursuant to this section will begin the first day of the  
19 month following board approval and termination of employment or as ordered by a court of  
20 competent jurisdiction: *Provided*, That in no circumstance may the disability payments begin prior  
21 to termination of employment in order to avoid an in-service distribution.

**§20-17-11. Same -- Physical examinations; termination.**

1 (a) The board may require any disabled retirant to submit to a physical or mental  
2 examination or both a physical and mental examination by a physician or physicians selected or  
3 approved by the board and the physician or physicians shall submit a report of the findings of the  
4 physician or physicians in writing to the board for its consideration. All medical costs associated  
5 with the examination shall be paid by the fund. If from the report, or from the report and hearing  
6 on the report, the board is of the opinion and finds that the disabled retirant has recovered from  
7 the disability to the extent that he or she is able to perform adequately the duties of a law-  
8 enforcement officer, the board shall within five working days provide written notice of the finding  
9 to the Director of the Division of Natural Resources, who shall reinstate the retirant to active duty  
10 as a member of the department at his or her rank or classification prior to the disability retirement  
11 within forty-five days of the finding, unless the retirant declines to be reinstated, is found by a  
12 background check to be ineligible for reinstatement, or is found by the Director to be unacceptable  
13 due to the retirant's performance history and evaluations during prior work with the department.  
14 The Director shall promptly notify the board when the retirant is reinstated, is found ineligible for

15 reinstatement due to a background check or unacceptable prior performance history or  
16 evaluations, or refuses reinstatement. The board shall order disability payments from the fund to  
17 be terminated at the earlier of the date of the retirant's reinstatement, regular retirement, failure  
18 of a background check, finding of unacceptable prior performance history or evaluation with the  
19 department, failure to accept reinstatement or 45 days from the board's finding. If from the report,  
20 or the report and hearing on the report, the board is of the opinion and finds that the disabled  
21 retirant has recovered from his or her previously determined probable permanent disability to the  
22 extent that he or she is able to engage in any gainful employment, but unable to adequately  
23 perform the duties of a law-enforcement officer, the board shall order, in the case of a disabled  
24 retirant receiving benefits under the provisions of §20-17-9 of this code, that the disabled retirant  
25 be paid annually from the fund an amount equal to six tenths of the base salary paid to the retirant  
26 in the last full 12-month employment period. The board shall order, in the case of a disabled  
27 retirant receiving benefits under the provisions of §20-17-10 of this code, that the disabled retirant  
28 be paid from the fund an amount equal to one fourth of the base salary paid to the retirant in the  
29 last full 12-month employment period: *Provided*, That if the retirant had not been employed with  
30 the agency for twelve full months prior to the disability, the amount of monthly salary shall be  
31 annualized for the purpose of determining the benefit.

32 (b) A disability retirant who is returned to active duty as a police officer for the West Virginia  
33 Division of Natural Resources shall again become a member of the retirement system in which  
34 he or she was originally enrolled and the retirant's credited service in force at the time of retirement  
35 shall be restored.

**§20-17-11a. Physical examinations of prospective members; application for disability benefit; determinations.**

1 (a) Application for a disability benefit may be made by an employee or, if the employee is  
2 under an incapacity, by a person acting with legal authority on the employee's behalf. After  
3 receiving an application for a disability benefit, the board shall notify the director of the agency

4 that an application has been filed: *Provided*, That when, in the judgment of the director, an  
5 employee is no longer physically or mentally fit for continued duty as an employee of the agency  
6 and the employee has failed or refused to make application for disability benefits under this article,  
7 the director may petition the board to retire the employee on the basis of disability pursuant to  
8 legislative rules proposed in accordance with §29A-3-1 *et seq.* of this code. Within thirty days of  
9 the director's receipt of the notice from the board or the filing of the director's petition with the  
10 board, the director shall forward to the board a statement certifying the duties of the employee's  
11 job description, information relating to the director's position on the work relatedness of the  
12 employee's alleged disability, complete copies of the employee's medical file and any other  
13 information requested by the board in its processing of the application.

14 (b) The board shall propose legislative rules in accordance with §29A-3-1 *et seq.* of this  
15 code relating to the processing of applications and petitions for disability retirement under this  
16 article.

17 (c) The board shall notify an employee and the director of its final action on the disability  
18 application or petition within ten days of the board's final action. The notice shall be sent by  
19 certified mail, return receipt requested. If either the employee or the director is aggrieved by the  
20 decision of the board and intends to pursue judicial review of the board's decision as provided in  
21 §29A-5-4 of this code, the party aggrieved shall notify the board within twenty days of the  
22 employee's or director's receipt of the board's notice that they intend to pursue judicial review of  
23 the board's decision.

24 (d) The board may require a disabled retirant to file an annual statement of earnings and  
25 any other information required in rules which may be adopted by the board. The board may waive  
26 the requirement that a disabled retirant file the annual statement of earnings if the board's  
27 physician certifies that the recipient's disability is ongoing. The board shall annually examine the  
28 information submitted by the disabled retirant. If a disabled retirant refuses to file the statement



29 or information, the disability benefit shall be suspended until the statement and information are  
30 filed.

31 (e) If after review of a disability retiree's annual statement of earnings, tax records or other  
32 financial information, as required or otherwise obtained by the board, the board determines that  
33 earnings of the recipient of total disability benefits in the preceding year are sufficient to show that  
34 the recipient engaged in substantial gainful activity, the disability retiree's disability annuity shall  
35 be terminated by the board, upon recommendation of the board's disability review committee, on  
36 the first day of the month following the board's action.

37 (f) If the board obtains information that a partially disabled disability retiree is employed  
38 as a law-enforcement officer, the disability retiree's disability annuity shall be terminated by the  
39 board, upon recommendation of the board's disability review committee, the first day of the month  
40 following the board's action.

41 (g) Any person who wishes to reapply for disability retirement and whose disability  
42 retirement has been terminated by the board pursuant to this section may do so within 90 days of  
43 the effective date of termination: *Provided*, That any person reapplying for disability benefits shall  
44 undergo an examination at the applicant's expense by an appropriate medical professional  
45 selected by the board as part of the reapplication process.

46 (h) Notwithstanding other provisions in this section, any person whose disability retirement  
47 has been terminated by the board pursuant to this section may apply for regular retirement  
48 benefits upon meeting eligibility requirements of age and years of service.

**§20-17-11b. Annual report on each employer's disability retirement experience.**

1 Not later than January 1, 2022, and each January 1 thereafter, the board shall prepare a  
2 report for the preceding fiscal year of the disability retirement experience of the West Virginia  
3 Natural Resources Police Officer Retirement Fund. The report shall specify the total number of  
4 disability applications submitted, the status of each application as of the last day of the fiscal year,

5 total applications granted or denied, and the percentage of disability benefit recipients to the total  
6 number agency employees who are members of the fund. The report shall be submitted to the  
7 Governor and the chairpersons of the standing committees of the Senate and House of Delegates  
8 with primary responsibility for retirement legislation.

**§20-17-12. Awards and benefits to dependents of employees or retirants - When employee dies in performance of duty, etc.; dependent child scholarship and amount.**

1 (a) The surviving spouse, the dependent child or children or dependent parent or parents  
2 of any employee who has lost or shall lose his or her life by reason of injury, illness or disease  
3 resulting from an occupational risk or hazard inherent in or peculiar to the service required of  
4 employees while the employee was engaged in the performance of his or her duties as an  
5 employee of the agency, or the survivor of a retirant who dies from any cause after having been  
6 retired pursuant to the provisions of §20-17-9 of this code, is entitled to receive and shall be paid  
7 from the fund benefits as follows: To the surviving spouse annually, in equal monthly installments  
8 during his or her lifetime, one or the other of two amounts, which shall become payable the first  
9 day of the month following the employee's or retirant's death and which shall be the greater of:

10 (1) An amount equal to nine tenths of the base salary received in the preceding full twelve  
11 month employment period by the deceased employee: *Provided*, That if the employee had not  
12 been employed with the agency for twelve full months prior to his or her death, the amount of  
13 monthly salary shall be annualized for the purpose of determining the benefit; or

14 (2) The sum of \$10,000.

15 (b) In addition, the surviving spouse is entitled to receive and shall be paid \$150 monthly  
16 for each dependent child. If the surviving spouse dies or if there is no surviving spouse, there  
17 shall be paid monthly to each dependent child or children from the fund a sum equal to one third  
18 of the surviving spouse's entitlement. If there is no surviving spouse and no dependent child or  
19 children, there shall be paid annually in equal monthly installments from the fund to the dependent

20 parents of the deceased member during their joint lifetimes a sum equal to the amount which a  
21 surviving spouse, without children, would have received: *Provided*, That when there is one  
22 dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the  
23 amount which both parents, if living, would have been entitled to receive: *Provided, however*, That  
24 if there is no surviving spouse, dependent child or dependent parent of the deceased member,  
25 the accumulated contributions shall be paid to a named beneficiary or beneficiaries: *Provided*  
26 *further*, That if there is no surviving spouse, dependent child, dependent parent of the deceased  
27 member or any named beneficiary or beneficiaries, then the accumulated contributions shall be  
28 paid to the estate of the deceased member.

29 (c) Any person qualifying as a surviving dependent child under this section, in addition to  
30 any other benefits due under this or other sections of this article, is entitled to receive a scholarship  
31 to be applied to the career development education of that person. This sum, up to but not  
32 exceeding \$7,500 per year, shall be paid from the fund to any higher education institution in this  
33 state, career-technical education provider in this state or other entity in this state approved by the  
34 board to offset the expenses of tuition, room and board, books, fees or other costs incurred in a  
35 course of study at any of these institutions as long as the recipient makes application to the board  
36 on an approved form and under rules provided by the board and maintains scholastic eligibility as  
37 defined by the institution or the board. The board may by appropriate rules define age  
38 requirements, physical and mental requirements, scholastic eligibility, disbursement methods,  
39 institutional qualifications and other requirements as necessary and not inconsistent with this  
40 section. Scholarship benefits awarded pursuant to this subsection are not subject to division or  
41 payable to an alternate payee by any Qualified Domestic Relations Order.

42 (d) A surviving spouse or dependent of an employee meeting the requirements of this  
43 section is entitled to receive beneficiary payments on the first day of the month following the date  
44 the deceased member is removed from payroll by the agency. A surviving spouse or dependent  
45 of a member who is not currently an employee meeting the requirements of this section is entitled

46 to receive beneficiary payments on the first day of the month following the date of the deceased  
47 member's death. A surviving spouse or dependent of a retirant meeting the requirements of this  
48 section is entitled to receive beneficiary payments on the first day of the month following the date  
49 of the deceased retirant's death. Upon receipt of properly executed forms from the agency and  
50 surviving spouse or dependent, the board shall process the surviving spouse or dependent benefit  
51 as soon as administratively feasible.

**§20-17-13. Same -- When member dies from nonservice-connected causes before serving  
twenty years.**

1 (a) In any case where an employee while in active service of the agency, before having  
2 completed 20 years of service as an employee of the agency, dies from any cause other than  
3 those specified in this article and not due to vicious habits, intemperance or willful misconduct on  
4 his or her part, there shall be paid annually in equal monthly installments from the fund to the  
5 surviving spouse of the member during his or her lifetime, or until the surviving spouse remarries,  
6 a sum equal to one half of the base salary received in the preceding full 12-month employment  
7 period by the deceased member: *Provided*, That if the member had not been employed with the  
8 agency for 12 full months prior to the disability, the amount of monthly salary shall be annualized  
9 for the purpose of determining the benefit. If there is no surviving spouse or the surviving spouse  
10 dies or remarries, there shall be paid monthly to each dependent child or children from the fund  
11 a sum equal to one fourth of the surviving spouse's entitlement. If there is no surviving spouse  
12 and no dependent child or children, there shall be paid annually in equal monthly installments  
13 from the fund to the dependent parents of the deceased member during their joint lifetimes a sum  
14 equal to the amount that a surviving spouse would have been entitled to receive: *Provided*,  
15 *however*, That when there is one dependent parent surviving, then that parent is entitled to receive  
16 during his or her lifetime one half the amount which both parents, if living, would have been entitled  
17 to receive: *Provided further*, That if there is no surviving spouse, dependent child or dependent  
18 parent of the deceased member, the accumulated contributions shall be paid to a named

19 beneficiary or beneficiaries: *And provided further*, That if there is no surviving spouse, dependent  
20 child, dependent parent of the deceased member or any named beneficiary or beneficiaries, then  
21 the accumulated contributions shall be paid to the estate of the deceased member.

22 (b) A surviving spouse or dependent of an employee meeting the requirements of this  
23 section is entitled to receive beneficiary payments on the first day of the month following the date  
24 the deceased member is removed from payroll by the agency. A surviving spouse or dependent  
25 of a member who is not currently an employee meeting the requirements of this section is entitled  
26 to receive beneficiary payments on the first day of the month following the date of the deceased  
27 member's death. A surviving spouse or dependent of a retirant meeting the requirements of this  
28 section is entitled to receive beneficiary payments on the first day of the month following the date  
29 of the deceased retirant's death. Upon receipt of properly executed forms from the agency and  
30 surviving spouse or dependent, the board shall process the surviving spouse or dependent benefit  
31 as soon as administratively feasible.

**§20-17-14. Awards and benefits to dependents of member -- When member dies after retirement or after serving twenty years.**

1 (a) When any employee of the agency has completed twenty years of service or longer as  
2 an employee of the agency and dies from any cause or causes other than those specified in this  
3 article before having been retired by the board and when a retirant has died or dies after having  
4 been retired by the board under the provisions of this article, there shall be paid annually in equal  
5 monthly installments from the fund to the surviving spouse of the member or retirant, during the  
6 lifetime or until remarriage of the surviving spouse, an amount equal to two-thirds of the retirement  
7 benefit which the deceased retirant was receiving while in status of retirement or would have been  
8 entitled to receive to the same effect as if the member had been retired under the provisions of  
9 this article immediately prior to the time of his or her death. In no event shall the annual benefit  
10 payable be less than \$5,000. In addition, the surviving spouse is entitled to receive and there shall  
11 be paid to the surviving spouse from the fund the sum of \$100 monthly for each dependent child.

12 If the surviving spouse dies or remarries, or if there is no surviving spouse, there shall be paid  
13 monthly from the fund to each dependent child or children of the deceased member a sum equal  
14 to one-fourth of the surviving spouse's entitlement. If there is no surviving spouse or no surviving  
15 spouse eligible to receive benefits and no dependent child or children, there shall be paid annually  
16 in equal monthly installments from the fund to the dependent parents of the deceased member  
17 during their joint lifetimes a sum equal to the amount which a surviving spouse without children  
18 would have been entitled to receive: *Provided*, That when there is one dependent parent  
19 surviving, that parent is entitled to receive during his or her lifetime one-half the amount which  
20 both parents, if living, would have been entitled to receive: *Provided, however*, That if there is no  
21 surviving spouse, dependent child or dependent parent of the deceased member, the  
22 accumulated contributions shall be paid to a named beneficiary or beneficiaries: *Provided further*,  
23 That if there is no surviving spouse, dependent child, dependent parent of the deceased member  
24 or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the  
25 estate of the deceased member.

26 (b) The retirant may choose a higher percentage of surviving spouse benefits by taking an  
27 actuarially determined reduced initial benefit so that the chosen spouse benefit and initial benefit  
28 would be actuarially equivalent to the normal spouse benefit and initial benefit. The board shall  
29 design these benefit options and provide them as choices for the retirant to select. For the  
30 purposes of this subsection, "initial benefit" means the benefit received by the retirant upon  
31 retirement.

**§20-17-15. Exemption from taxation, garnishment and other process; exception for certain  
qualified domestic relations orders.**

1 The moneys in the fund and the right of a member or retirant to a retirement allowance, to  
2 the return of contributions or to any benefit under the provisions of this article are hereby exempt  
3 from any state or municipal tax; are not subject to execution, garnishment, attachment or any  
4 other process whatsoever except that the benefits or contributions under this system are subject

5 to Qualified Domestic Relations Orders as that term is defined in Section 414(p) of the Internal  
6 Revenue Code with respect to governmental plans; and are unassignable except as is provided  
7 in this article.

**§20-17-16. Fraud; penalties.**

1 Any person who knowingly makes any false statement or who falsifies or permits to be  
2 falsified any record or records of the retirement system in any attempt to defraud that system is  
3 guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$1,000,  
4 or confinement in the county jail not to exceed one year or both.

**§20-17-17. Awards and benefits to dependents of member -- Termination.**

1 When any surviving spouse of a member or retirant dies or remarries while receiving or  
2 being entitled to receive any benefits under any section except §20-17-12 of this code, the  
3 surviving spouse may not from the date of his or her remarriage, nor may the estate from the date  
4 of death of the deceased member's or retirant's surviving spouse, be entitled to receive any  
5 benefits under this article whatsoever: *Provided*, That in any case where under the terms of this  
6 article benefits are provided for a child or children surviving the death or remarriage of the  
7 surviving spouse, payment of benefits to that child or children shall be calculated for payment  
8 from the date the surviving spouse dies or remarries.

**§20-17-18. Authority to continue payments to certain dependents.**

1 The board may continue payments of a surviving spouse's entitlement in full to any  
2 dependent child who continues to be dependent by reason of mental or physical incapacity as  
3 determined by the board, notwithstanding the age of the dependent child or other provisions of  
4 this article.

**§20-17-19. Credit toward retirement for member's prior military service; credit toward**  
**retirement when member has joined armed forces in time of armed conflict;**  
**qualified military service.**

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

2 additional credited service to determine the amount of retirement award under the provisions of  
3 this article for a period equal to the active military duty not to exceed five years, subject to the  
4 following:

5 (1) That he or she has been honorably discharged from the armed forces;

6 (2) That he or she substantiates by appropriate documentation or evidence his or her  
7 period of active military duty;

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

10 (4) That, except with respect to disability retirement pay awarded under this article, he or  
11 she has actually served with the agency for twenty years exclusive of his or her active military  
12 duty.

13 (b) In addition, any person who, while an employee of the agency, was commissioned,  
14 enlisted or inducted into the armed forces of the United States or, being a member of the reserve  
15 officers' corps, was called to active duty in the armed forces between September 1, 1940, and the  
16 close of hostilities in World War II, or between June 27, 1950, and the close of the armed conflict  
17 in Korea on July 27, 1953, between August 1, 1964, and the close of the armed conflict in Vietnam,  
18 or during any other period of armed conflict by the United States whether sanctioned by a  
19 declaration of war by Congress or by executive or other order of the President, is entitled to and  
20 shall receive credit on the minimum period of service required by law for retirement pay from the  
21 service of the agency, or its predecessor agency, for a period equal to the full time that he or she  
22 has or, pursuant to that commission, enlistment, induction or call, shall have served with the  
23 armed forces subject to the following:

24 (1) That he or she has been honorably discharged from the armed forces;

25 (2) That, within ninety days after honorable discharge from the armed forces, he or she  
26 presented himself or herself to the director and offered to resume service as an active member of  
27 the agency; and



28 (3) That he or she has made no voluntary act, whether by reenlistment, waiver of  
29 discharge, acceptance of commission or otherwise, to extend or participate in extension of the  
30 period of service with the armed forces beyond the period of service for which he or she was  
31 originally commissioned, enlisted, inducted or called.

32 (c) The total amount of military service credit allowable under this section may not exceed  
33 five years for any member of the agency.

34 (d) Notwithstanding the preceding provisions of this section, contributions, benefits and  
35 service credit with respect to qualified military service shall be provided in accordance with  
36 Section 414 (u) of the Internal Revenue Code. For purposes of this section, "qualified military  
37 service" has the same meaning as in Section 414 (u) of the Internal Revenue Code. The board  
38 shall determine all questions and make all decisions relating to this section and, pursuant to the  
39 authority granted to the board in §5-10D-1 of this code, may promulgate rules relating to  
40 contributions, benefits and service credit to comply with Section 414 (u) of the Internal Revenue  
41 Code.

**§20-17-20. Benefits not forfeited if system terminates.**

1 If the retirement system is terminated or contributions are completely discontinued, the  
2 rights of all members to benefits accrued or contributions made to the date of the termination or  
3 discontinuance, to the extent then funded, are not forfeited.

**§20-17-21. Accrued annual or sick leave days not applied to acquire additional credited**  
**service; conversion of annual and sick leave authorized for health or retirement**  
**benefits.**

1 Accrued annual and sick leave days may be applied to acquire additional credited service  
2 pursuant to §5-10-15a. Conversion of annual and sick leave for health and retirement benefits is  
3 authorized pursuant to §5-16-13.

**§20-17-22. Limitations on benefit increases.**

1 (a) The state will not increase any existing benefits or create any new benefits for any

2 retirees or beneficiaries currently receiving monthly benefit payments from the system, other than  
3 an increase in benefits or new benefits effected by operation of law in effect on the effective date  
4 of this article, in an amount that would exceed more than one percent of the accrued actuarial  
5 liability of the system as of the last day of the preceding fiscal year as determined in the annual  
6 actuarial valuation for the plan completed for the Consolidated Public Retirement Board as of the  
7 first day of the following fiscal year as of the date the improvement is adopted by the Legislature.

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

18 (c) The state will not increase any existing benefits or create any new benefits for active  
19 members due to retirement, death or disability of the system unless the actuarial accrued liability  
20 of the plan shall be at least 85 percent funded as of the last day of the prior fiscal year as  
21 determined in the actuarial valuation for the plan completed for the Consolidated Public  
22 Retirement Board as of the first day of the following fiscal year as of the date the improvement is  
23 adopted by the Legislature. Any additional unfunded actuarial accrued liability due to any  
24 improvement in active members benefits shall be fully amortized over not more than 10 years  
25 following the date the increase in benefits or new benefits become effective as certified by the  
26 Consolidated Public Retirement Board. The Consolidated Public Retirement Board shall include  
27 the 10-year amortization in the determination of the adequacy of the employer contribution

28 percentage for the system.

**§20-17-23. Correction of errors; underpayments; overpayments.**

1 (a) General rule: -- Upon learning of any errors, the board shall correct errors in the  
2 retirement system in a timely manner whether the individual, entity or board was at fault for the  
3 error with the intent of placing the affected individual, entity and retirement board in the position  
4 each would have been in had the error not occurred.

5 (b) Underpayments to the system:-- Any error resulting in an underpayment to the system,  
6 may be corrected by the member or retirant remitting the required employee contribution or  
7 underpayment and the employer remitting the required employer contribution or underpayment.  
8 Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement  
9 board refund, reinstatement, retroactive service, loan and correction of error interest factors and  
10 any accumulating interest owed on the employee and employer contributions or underpayments  
11 resulting from an employer error shall be the responsibility of the employer. The employer may  
12 remit total payment and the employee reimburse the employer through payroll deduction over a  
13 period equivalent to the time period during which the employer error occurred. If the correction of  
14 an error involving an underpayment to the system will result in the system correcting an erroneous  
15 underpayment from the system, the correction of the underpayment from the system shall be  
16 made only after the board receives full payment of all required employee and employer  
17 contributions or underpayments, including interest.

18 (c) Overpayments to the system by an employer:-- When mistaken or excess employer  
19 contributions or other overpayments have been made to the system by an employer, the board  
20 shall credit the employer with an amount equal to the overpayment, to be offset against the  
21 employer's future liability for employer contributions to the system. If the employer has no future  
22 liability for employer contributions to the retirement system, the board shall refund the erroneous  
23 contributions directly to the employer. Earnings or interest shall not be returned, offset or credited  
24 to the employer under any of the means used by the board for returning employer overpayments

25 to the retirement system.

26 (d) Overpayments to the system by an employee:-- When mistaken or excess employee  
27 contributions or overpayments have been made to the system, the board shall have sole authority  
28 for determining the means of return, offset or credit to or for the benefit of the individual making  
29 the mistaken or excess employee contribution of the amounts, and may use any means  
30 authorized or permitted under the provisions of section 401(a), et seq. of the Internal Revenue  
31 Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full  
32 and complete discretion, the board may require the employer employing the individual to pay the  
33 individual the amounts as wages, with the board crediting the employer with a corresponding  
34 amount to offset against its future contributions to the plan. If the employer has no future liability  
35 for employer contributions to the retirement system, the board shall refund said amount directly  
36 to the employer: Provided, That the wages paid to the individual shall not be considered  
37 compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or  
38 credited under any of the means used by the board for returning employee overpayments.

39 (e) Overpayments from the system: -- If any error results in any member, retirant,  
40 beneficiary, entity or other individual receiving from the system more than he or she would have  
41 been entitled to receive had the error not occurred, the board, upon learning of the error, shall  
42 correct the error in a timely manner. If correction of the error occurs after annuity payments to a  
43 retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the  
44 benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person  
45 who received the overpayment from the system shall repay the amount of any overpayment to  
46 the system in any manner permitted by the board. Interest shall not accumulate on any corrective  
47 payment made to the system pursuant to this subsection.

48 (f) Underpayments from the system: -- If any error results in any member, retirant,  
49 beneficiary, entity or other individual receiving from the system less than he or she would have  
50 been entitled to receive had the error not occurred, the board shall correct the error in a timely

51 manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have  
52 commenced, the board shall prospectively adjust the payment of the benefit to the correct amount.  
53 In addition, the board shall pay the amount of such underpayment to the member, retirant,  
54 beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment  
55 made by the system pursuant to this subsection.

56 (g) *Eligibility errors*:-- If the board finds that an individual, employer, or both individual and  
57 employer currently or formerly participating in the system is not eligible to participate, the board  
58 shall notify the individual and his or her employer of the determination, and terminate participation  
59 in the system. Any erroneous payments to the system shall be returned to the employer and  
60 individual in accordance with the methods described in subsections (c) and (d) of this section and  
61 any erroneous payments from the system to such individual shall be returned to the system in  
62 accordance with the methods described in subsection (e) of this section. Any erroneous service  
63 credited to the individual shall be removed. If the board determines that an individual or employer,  
64 or both, has not been participating in the system, but was eligible to and required to be  
65 participating in the system, the board shall as soon as practicable notify the individual and his or  
66 her employer of the determination, and the individual and his or her employer shall prospectively  
67 commence participation in the system as soon as practicable. Service credit for service prior to  
68 the date on which the individual prospectively commences participation in the system shall be  
69 granted only if the board receives the required employer and employee contributions for such  
70 service, in accordance with subsection (b) in this section, including interest.

NOTE: The purpose of this bill is to establish the West Virginia Division of Natural Resources Police Officer Retirement System.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.