

1 **H. B. 2939**

2
3 (By Delegates Pethtel, Givens, Ennis, Guthrie,
4 D. Poling, Duke and Canterbury)

5
6 (By Request of the Consolidated Public Retirement Board)

7 [Introduced January 28,2011; referred to the
8 Committee on Pensions and Retirement then Finance.]

**FISCAL
NOTE**

9
10 A BILL to amend and reenact §5-10-2, §5-10-18, §5-10-21, §5-10-24,
11 §5-10-25, §5-10-44 and §5-10-48 of the Code of West Virginia,
12 1931, as amended, all relating to the Public Employees
13 Retirement System and clarifying the definition of
14 compensation for purposes of calculating required
15 contributions to the system; clarifying when membership in the
16 system terminates and how membership may be reinstated;
17 providing that individuals first hired after July 1, 2011 must
18 have at least five years of contributory service to retire
19 under the "rule of eighty"; making technical corrections to
20 the provision governing annuity options; requiring retirants
21 changing annuity options to certify that no final divorce
22 decree or other court order prohibits the same; making
23 technical corrections to the provision governing disability
24 retirement; clarifying that correction of errors provision
25 applies to both employer errors and errors of the system's
26 administrative body; providing that the correction of an error

1 with respect to a retirant may be prospective only; providing
2 for system of reimbursement of mistaken contributions that
3 ensures the plan's continued qualified status; and making
4 technical correction to the definition of regular full-time
5 employment in provision governing reemployment of retirees.

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

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

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

11 **§5-10-2. Definitions.**

12 Unless a different meaning is clearly indicated by the
13 context, the following words and phrases as used in this article,
14 have the following meanings:

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

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

21 (3) "Actuarial equivalent" means a benefit of equal value
22 computed upon the basis of a mortality table and regular interest
23 adopted by the board of trustees from time to time: *Provided*, That
24 when used in the context of compliance with the federal maximum

1 benefit requirements of Section 415 of the Internal Revenue Code,
2 "actuarial equivalent" shall be computed using the mortality tables
3 and interest rates required to comply with those requirements;

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

8 (5) "Annuity reserve" means the present value of all payments
9 to be made to a retirant or beneficiary of a retirant on account of
10 any annuity, computed upon the basis of mortality and other tables
11 of experience, and regular interest, adopted by the board of
12 trustees from time to time;

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

16 (7) "Board of Trustees" or "board" means the Board of Trustees
17 of the West Virginia Consolidated Public Retirement System;

18 (8) "Compensation" means the remuneration paid a member by a
19 participating public employer for personal services rendered by the
20 member to the participating public employer. In the event a
21 member's remuneration is not all paid in money, his or her
22 participating public employer shall fix the value of the portion of
23 the remuneration which is not paid in money. Any lump sum or other
24 payments paid to members that do not constitute regular salary or

1 wage payments are not considered compensation for the purpose of
2 withholding contributions for the system or for the purpose of
3 calculating a member's final average salary. These payments
4 include, but are not limited to, attendance or performance bonuses,
5 one-time flat fee or lump sum payments, payments paid as a result
6 of excess budget, or employee recognition payments. The board
7 shall have final power to decide whether the payments shall be
8 considered compensation for purposes of this article;

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

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

17 (11) "Employee" means any person who serves regularly as an
18 officer or employee, full time, on a salary basis, whose tenure is
19 not restricted as to temporary or provisional appointment, in the
20 service of, and whose compensation is payable, in whole or in part,
21 by any political subdivision, or an officer or employee whose
22 compensation is calculated on a daily basis and paid monthly or on
23 completion of assignment, including technicians and other personnel
24 employed by the West Virginia National Guard whose compensation, in

1 whole or in part, is paid by the federal government: *Provided, That*
2 an employee of the Legislature whose term of employment is
3 otherwise classified as temporary and who is employed to perform
4 services required by the Legislature for its regular sessions or
5 during the interim between regular sessions and who has been or is
6 employed during regular sessions or during the interim between
7 regular sessions in seven or more consecutive calendar years, as
8 certified by the clerk of the house in which the employee served,
9 is an employee, any provision to the contrary in this article
10 notwithstanding, and is entitled to credited service in accordance
11 with provisions of section fourteen, article ten, chapter five of
12 this code and: *Provided, however, That* members of the legislative
13 body of any political subdivision and judges of the State Court of
14 Claims are employees receiving one year of service credit for each
15 one-year term served and pro rated service credit for any partial
16 term served, anything contained in this article to the contrary
17 notwithstanding. In any case of doubt as to who is an employee
18 within the meaning of this article, the Board of Trustees shall
19 decide the question;

20 (12) "Employer error" means an omission, misrepresentation, or
21 violation of relevant provisions of the West Virginia Code or of
22 the West Virginia Code of State Regulations or the relevant
23 provisions of both the West Virginia Code and of the West Virginia
24 Code of State Regulations by the participating public employer that

1 has resulted in an underpayment or overpayment of contributions
2 required. A deliberate act contrary to the provisions of this
3 section by a participating public employer does not constitute
4 employer error.

5 (13) "Final average salary" means either of the following:
6 *Provided*, That salaries for determining benefits during any
7 determination period may not exceed the maximum compensation
8 allowed as adjusted for cost-of-living in accordance with section
9 seven, article ten-d, chapter five of this code and Section
10 401(a)(17) of the Internal Revenue Code:

11 (A) The average of the highest annual compensation received by
12 a member (including a member of the Legislature who participates in
13 the retirement system in the year 1971 or thereafter), during any
14 period of three consecutive years of credited service contained
15 within the member's ten years of credited service immediately
16 preceding the date his or her employment with a participating
17 public employer last terminated; or

18 (B) If the member has less than five years of credited
19 service, the average of the annual rate of compensation received by
20 the member during his or her total years of credited service; and
21 in determining the annual compensation, under either paragraph (A)
22 or (B) of this subdivision, of a member of the Legislature who
23 participates in the retirement system as a member of the
24 Legislature in the year 1971, or in any year thereafter, his or her

1 actual legislative compensation (the total of all compensation paid
2 under sections two, three, four and five, article two-a, chapter
3 four of this code), in the year 1971, or in any year thereafter,
4 plus any other compensation he or she receives in any year from any
5 other participating public employer including the State of West
6 Virginia, without any multiple in excess of one times his or her
7 actual legislative compensation and other compensation, shall be
8 used: *Provided*, That "final average salary" for any former member
9 of the Legislature or for any member of the Legislature in the year
10 1971, who, in either event, was a member of the Legislature on
11 November 30, 1968, or November 30, 1969, or November 30, 1970, or
12 on November 30 in any one or more of those three years and who
13 participated in the retirement system as a member of the
14 Legislature in any one or more of those years means: (i) Either
15 (notwithstanding the provisions of this subdivision preceding this
16 proviso) \$1,500 multiplied by eight, plus the highest other
17 compensation the former member or member received in any one of the
18 three years from any other participating public employer including
19 the State of West Virginia; or (ii) "final average salary"
20 determined in accordance with paragraph (A) or (B) of this
21 subdivision, whichever computation produces the higher final
22 average salary (and in determining the annual compensation under
23 subparagraph (ii) of this proviso, the legislative compensation of
24 the former member shall be computed on the basis of \$1,500

1 multiplied by eight, and the legislative compensation of the member
2 shall be computed on the basis set forth in the provisions of this
3 subdivision immediately preceding this proviso or on the basis of
4 \$1,500 multiplied by eight, whichever computation as to the member
5 produces the higher annual compensation);

6 (14) "Internal Revenue Code" means the Internal Revenue Code
7 of 1986, as amended, codified at Title 26 of the United States
8 Code;

9 (15) "Limited credited service" means service by employees of
10 the West Virginia Educational Broadcasting Authority, in the
11 employment of West Virginia University, during a period when the
12 employee made contributions to another retirement system, as
13 required by West Virginia University, and did not make
14 contributions to the Public Employees Retirement System: *Provided,*
15 That while limited credited service can be used for the formula set
16 forth in subsection (e), section twenty-one of this article, it may
17 not be used to increase benefits calculated under section twenty-
18 two of this article;

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

22 (17) "Participating public employer" means the State of West
23 Virginia, any board, commission, department, institution or
24 spending unit, and includes any agency created by rule of the

1 Supreme Court of Appeals having full-time employees, which for the
2 purposes of this article is considered a department of state
3 government; and any political subdivision in the state which has
4 elected to cover its employees, as defined in this article, under
5 the West Virginia Public Employees Retirement System;

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

8 (19) "Political subdivision" means the State of West Virginia,
9 a county, city or town in the state; a school corporation or
10 corporate unit; any separate corporation or instrumentality
11 established by one or more counties, cities or towns, as permitted
12 by law; any corporation or instrumentality supported in most part
13 by counties, cities or towns; and any public corporation charged by
14 law with the performance of a governmental function and whose
15 jurisdiction is coextensive with one or more counties, cities or
16 towns: *Provided*, That any mental health agency participating in
17 the Public Employees Retirement System before July 1, 1997, is
18 considered a political subdivision solely for the purpose of
19 permitting those employees who are members of the Public Employees
20 Retirement System to remain members and continue to participate in
21 the retirement system at their option after July 1, 1997:
22 *Provided, however*, That the Regional Community Policing Institute
23 which participated in the Public Employees Retirement System before
24 July 1, 2000, is considered a political subdivision solely for the

1 purpose of permitting those employees who are members of the Public
2 Employees Retirement System to remain members and continue to
3 participate in the Public Employees Retirement System after July 1,
4 2000;

5 (20) "Prior service" means service rendered prior to July 1,
6 1961, to the extent credited a member as provided in this article;

7 (21) "Regular interest" means the rate or rates of interest
8 per annum, compounded annually, as the Board of Trustees adopts
9 from time to time;

10 (22) "Required beginning date" means April 1 of the calendar
11 year following the later of: (A) The calendar year in which the
12 member attains age seventy and one-half years of age; or (B) the
13 calendar year in which a member who has attained the age seventy
14 and one-half years of age and who ceases providing service covered
15 under this system to a participating employer;

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

18 (24) "Retirement" means a member's withdrawal from the employ
19 of a participating public employer and the commencement of an
20 annuity by the retirement system;

21 (25) "Retirement system" or "system" means the West Virginia
22 Public Employees Retirement System created and established by this
23 article;

24 (26) "Retroactive service" means: (1) Service between July 1,

1 1961, and the date an employer decides to become a participating
2 member of the Public Employees Retirement System; (2) service prior
3 to July 1, 1961, for which the employee is not entitled to prior
4 service at no cost in accordance with 162 CSR 5.13; and (3) service
5 of any member of a legislative body or employees of the State
6 Legislature whose term of employment is otherwise classified as
7 temporary for which the employee is eligible, but for which the
8 employee did not elect to participate at that time;

9 (27) "Service" means personal service rendered to a
10 participating public employer by an employee of a participating
11 public employer; and

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

13 **§5-10-18. Termination of membership; reentry.**

14 (a) When a member of the retirement system retires, withdraws
15 his or her accumulated contributions, or dies, he or she ceases to
16 be a member. When a member leaves the employ of a participating
17 public employer for any ~~other~~ reason other than retirement or
18 death, and withdraws his or her accumulated contributions from the
19 system, he or she ceases to be a member and forfeits service
20 credited to him or her at that time. If he or she becomes
21 reemployed by a participating public employer he or she shall be
22 reinstated as a member of the retirement system and his or her
23 credited service last forfeited by him or her shall be restored to
24 his or her credit: *Provided,* That he or she must be reemployed for

1 a period of one year or longer to have the service restored:
2 *Provided, however,* That he or she returns to the members' deposit
3 fund the amount, if any, he or she withdrew from the fund, together
4 with regular interest on the withdrawn amount from the date of
5 withdrawal to the date of repayment, and that the repayment begins
6 within two years of the return to employment and that the full
7 amount is repaid within five years of the return to employment.
8 Any failure to repay the full amount in accordance with this
9 section shall be treated as an overpayment or excess contribution
10 subject to section forty-four of this article.

11 (b) The Prestera Center for Mental Health Services, Valley
12 Comprehensive Mental Health Center, Westbrook Health Services and
13 Eastern Panhandle Mental Health Center, and their successors in
14 interest, shall provide for their employees a pension plan in lieu
15 of the Public Employees Retirement System during the existence of
16 the named mental health centers and their successors in interest.

17 (c) The administrative bodies of the Prestera Center for
18 Mental Health Services, Valley Comprehensive Mental Health Center,
19 Westbrook Health Services and Eastern Panhandle Mental Health
20 Center shall, on or before May 1, 1997, give written notice to each
21 employee who is a member of the Public Employees Retirement System
22 of the option to withdraw from or remain in the system. The notice
23 shall include a copy of this section and a statement explaining the
24 member's options regarding membership. The notice shall include a

1 statement in plain language giving a full explanation and actuarial
2 projection figures in support of the explanation regarding the
3 individual member's current account balance, vested and nonvested,
4 and his or her projected return upon remaining in the Public
5 Employees Retirement System until retirement, disability or death,
6 in comparison with the projected return upon withdrawing from the
7 Public Employees Retirement System and joining a private pension
8 plan provided by the Community Mental Health Center and remaining
9 therein until retirement, disability or death. The administrative
10 bodies shall keep in their respective records a permanent record of
11 each employee's signature confirming receipt of the notice.

12 (d) Effective the March 1, 2003, and ending December 31, 2004,
13 any member may purchase credited service previously forfeited by
14 him or her and the credited service shall be restored to his or her
15 credit: *Provided*, That he or she returns to the members' deposit
16 fund the amount, if any, he or she withdrew from the fund, together
17 with interest on the withdrawn amount from the date of withdrawal
18 to the date of repayment at a rate to be determined by the board.
19 The repayment under this section may be made by lump sum or repaid
20 over a period of time not to exceed sixty months. Where the member
21 elects to repay the required amount other than by lump sum, the
22 member is required to pay interest at the rate determined by the
23 board until all sums are fully repaid.

24 (e) Effective July 1, 2005, and ending December 31, 2006, any

1 emergency services personnel may purchase service credit for the
2 time period beginning January 1, 1990, and ending December 31,
3 1995: *Provided*, That person was employed as an emergency service
4 person in this state for that time period: *Provided, however*, That
5 any person obtaining service credit under this subsection is
6 required to pay the employee's share and the employer's share upon
7 his or her actual salary for the years in question plus interest at
8 the assumed actuarial rate of return for the plan year being
9 repurchased.

10 (f) Jobs for West Virginia's graduates and their successors
11 in interest shall provide a pension plan in lieu of the Public
12 Employees Retirement System for employees hired on or after July 1,
13 2005.

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

17 **§5-10-21. Deferred retirement and early retirement.**

18 (a) Any member who has five or more years of credited service
19 in force, of which at least three years are contributing service,
20 and who leaves the employ of a participating public employer prior
21 to his or her attaining age sixty years for any reason except his
22 or her disability retirement or death, is entitled to an annuity
23 computed according to section twenty-two of this article, as that
24 section was in force as of the date of his or her separation from

1 the employ of a participating public employer: *Provided*, That he or
2 she does not withdraw his or her accumulated contributions from the
3 members' deposit fund: *Provided, however*, That on and after July
4 1, 2002, any person who becomes a new member of this retirement
5 system shall, in qualifying for retirement under this section, have
6 five or more years of service, all of which years shall be actual,
7 contributory ones. His or her annuity shall begin the first day of
8 the calendar month next following the month in which his or her
9 application for same is filed with the Board of Trustees on or
10 after his or her attaining age sixty-two years.

11 (b) Any member who qualifies for deferred retirement benefits
12 in accordance with subsection (a) of this section and has ten or
13 more years of credited service in force and who has attained age
14 fifty-five as of the date of his or her separation, may, prior to
15 the effective date of his or her retirement, but not thereafter,
16 elect to receive the actuarial equivalent of his or her deferred
17 retirement annuity as a reduced annuity commencing on the first day
18 of any calendar month between his or her date of separation and his
19 or her attainment of age sixty-two years and payable throughout his
20 or her life.

21 (c) Any member who qualifies for deferred retirement benefits
22 in accordance with subsection (a) of this section and has twenty or
23 more years of credited service in force may elect to receive the
24 actuarial equivalent of his or her deferred retirement annuity as

1 a reduced annuity commencing on the first day of any calendar month
2 between his or her fifty-fifth birthday and his or her attainment
3 of age sixty-two years and payable throughout his or her life.

4 (d) Notwithstanding any of the other provisions of this
5 section or of this article, except sections twenty-seven-a and
6 twenty-seven-b of this article, and pursuant to rules promulgated
7 by the board, any member who has thirty or more years of credited
8 service in force, at least three of which are contributing service,
9 and who elects to take early retirement, which for the purposes of
10 this subsection means retirement prior to age sixty, whether an
11 active employee or a separated employee at the time of application,
12 is entitled to the full computation of annuity according to section
13 twenty-two of this article, as that section was in force as of the
14 date of retirement application, but with the reduced actuarial
15 equivalent of the annuity the member would have received if his or
16 her benefit had commenced at age sixty when he or she would have
17 been entitled to full computation of benefit without any reduction.

18 (e) Notwithstanding any of the other provisions of this
19 section or of this article, except sections twenty-seven-a and
20 twenty-seven-b of this article, any member of the retirement system
21 may retire with full pension rights, without reduction of benefits,
22 if he or she is at least fifty-five years of age and the sum of his
23 or her age plus years of contributing service and limited credited
24 service, as defined in section two of this article, equals or

1 exceeds eighty; Provided, That on and after July 1, 2011, any
2 person who becomes a new member of this retirement system shall, in
3 qualifying for retirement under this subsection, have five or more
4 years of service, all of which years shall be actual, contributory
5 ones. The member's annuity shall begin the first day of the
6 calendar month immediately following the calendar month in which
7 his or her application for the annuity is filed with the board.

8 **§5-10-24. Annuity options.**

9 (a) Prior to the effective date of his or her retirement, but
10 not thereafter except upon the death of a spouse, a member may
11 elect to receive his or her annuity as a straight life annuity
12 payable throughout his or her life, or he or she may elect to
13 receive the actuarial equivalent, at the time, of his or her
14 straight life annuity in a reduced annuity payable throughout his
15 or her life, and nominate a beneficiary, in accordance with option
16 A or B set forth below:

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

24 *Option B -- Modified joint and survivor annuity.* -- Upon the

1 death of a retirant who elected option B, one half of his or her
2 reduced annuity shall be continued throughout the life of and paid
3 to the beneficiary, having an insurable interest in the retirant's
4 life, whom the retirant nominated by written designation duly
5 executed and filed with the Board of Trustees prior to the
6 effective date of his or her retirement.

7 **(b)** Upon the death of a spouse, a retirant may elect any of
8 the retirement options offered by the provisions of this section in
9 an amount adjusted on a fair basis to be of equal actuarial value
10 as the annuity prospectively in effect relative to the ~~surviving~~
11 ~~member~~ retirant at the time the new option is elected.

12 **(c)** Upon divorce, a ~~member~~ retirant may elect to change any of
13 the retirement benefit options offered by the provisions of this
14 section to a life annuity in an amount adjusted on a fair basis to
15 be of equal actuarial value of the annuity prospectively in effect
16 relative to the retirant at the time the option is elected:
17 *Provided*, That the retirant furnishes to the board satisfactory
18 proof of entry of a final decree of divorce or annulment:
19 *Provided, however*, That the retirant certifies under penalty of
20 perjury that no qualified domestic relations order, final decree of
21 divorce, or other court order that would restrict ~~such an~~ the
22 election is in effect: *Provided further*, That no cause of action
23 against the board may then arise or be maintained on the basis of
24 having permitted the retirant to name a new spouse as annuitant for

1 any of the survivorship retirement benefit options.

2 (d) Upon remarriage, a retirant may name the new spouse as an
3 annuitant for any of the retirement benefit options offered by the
4 provisions of this section: *Provided*, That the ~~beneficiary~~
5 retirant shall furnish to the board proof of marriage: *Provided*,
6 *however*, That the retirant certifies under penalty of perjury that
7 no qualified domestic relations order, final decree of divorce or
8 other court order that would restrict ~~such a~~ the designation is in
9 effect: *Provided further*, That no cause of action against the board
10 may then arise or be maintained on the basis of having permitted
11 the retirant to name a new spouse as annuitant for any of the
12 survivorship retirement benefit options. The value of the new
13 survivorship annuity shall be the actuarial equivalent of the
14 retirant's benefit prospectively in effect at the time the new
15 annuity is elected.

16 **§5-10-25. Disability retirement.**

17 (a) Upon the application of a member ~~or former member~~ of the
18 retirement system, or his or her present or past employing
19 authority, any member ~~or former member~~ who is in the employ of a
20 participating public employer or was in the employ of a
21 participating public employer on a date which is twelve months or
22 less from the date upon which the ~~former~~ member became
23 incapacitated, who has ten or more years of credited service of
24 which three years is contributing service, and who becomes totally

1 and permanently incapacitated for employment, by reason of a
2 personal injury or disease, may be retired by the board if after a
3 medical examination of the ~~said member or former member~~ made by or
4 under the direction of a medical committee consisting of two
5 physicians, one of whom shall be named by the board, and one by the
6 ~~said member or former member~~, the ~~said~~ medical committee reports,
7 in writing, to the board that the ~~said member or former member~~ is
8 physically or mentally totally incapacitated for employment, that
9 such the incapacity will probably be permanent, and that the ~~said~~
10 ~~member or former member~~ should be retired. In the event the two
11 above-mentioned examining physicians do not agree in their
12 findings, then the board may, at its discretion, appoint a third
13 physician to examine ~~said the~~ member or former member and, based
14 upon the third physician's report in writing, the board may retire
15 ~~said the~~ member or former member. A ~~former~~ member who ~~has~~ was not
16 in the employ of ~~been employed by~~ a participating public employer
17 on a date which is twelve months or less from the date upon which
18 the member became incapacitated may receive disability retirement
19 under the provisions of this subsection if, in the opinion of the
20 medical committee, the incapacity occurred during the time that the
21 ~~former~~ member was employed by a participating public employer and
22 the incapacity otherwise qualifies the ~~former~~ member for retirement
23 under this subsection.

24 (b) A member with less than ten years of credited service

1 shall have the service requirement provided ~~for~~ in subsection (a)
2 above (including the requirement of three years contributing
3 service) waived in the event: (1) The board finds his or her total
4 and permanent disability to be the natural and proximate result of
5 a personal injury or disease arising out of and in the course of
6 his or her actual performance of duty in the employ of a
7 participating public employer; and (2) he or she is receiving or
8 has received workers' compensation benefits on account of ~~such~~ the
9 physical or mental disability.

10 (c) For any member ~~or former member~~ retiring and any member
11 retired, as of March 1, 1997, he or she shall receive a straight
12 life annuity computed according to section twenty-two hereof and he
13 or she shall have the right to elect an option provided in section
14 twenty-four hereof: *Provided*, That his or her straight life annuity
15 payable to his or her attainment of age sixty-five years may not be
16 less than fifty percent of his or her final average salary; and his
17 or her ~~said~~ straight life annuity payable from and after his or her
18 attainment of age sixty-five years may not be less than twenty
19 percent of his or her final average salary: *Provided, however*,
20 That his or her ~~said~~ annuity shall be subject to section twenty-six
21 hereof.

22 **§5-10-44. Correction of errors; underpayments; overpayments.**

23 (a) General rule: If any change or employer error in the
24 records of any participating public employer or the retirement

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

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

1 including increases to payments already made, any adjustments shall
2 be made only after the board receives full payment of all required
3 employee and employer contributions, including interest.

4 (c) Overpayments: (1) When mistaken or excess employer
5 contributions, including any overpayments, have been made to the
6 retirement system by a participating public employer, due to error
7 or other reason, the board shall credit the participating public
8 employer with an amount equal to the erroneous contributions, to be
9 offset against the participating public employer's future liability
10 for employer contributions to the system. Earnings or interest
11 shall not be credited to the employer.

12 (2) When mistaken or excess employee contributions, including
13 any overpayments, have been made to the retirement system, due to
14 error or other reason, the board shall have sole authority for
15 determining the means of return, offset or credit to or for the
16 benefit of the employee of the amounts, and may use any means
17 authorized or permitted under the provisions of Section 401(a), et
18 seq. of the Internal Revenue Code and guidance issued thereunder
19 applicable to governmental plans. Alternatively, in its full and
20 complete discretion, the board may require the participating public
21 employer to pay the employee the amounts as wages, with the board
22 crediting the participating public employer with a corresponding
23 amount to offset against its future contributions to the plan:
24 Provided, That the wages paid to the employee shall not be

1 considered compensation for any purposes under this article.
2 Earnings or interest shall not be returned, offset, or credited
3 under any of the means utilized by the board for returning mistaken
4 or excess employee contributions, including any overpayments, to an
5 employee.

6 **§5-10-48. Reemployment after retirement; options for holder of**
7 **elected public office.**

8 (a) The Legislature finds that a compelling state interest
9 exists in maintaining an actuarially sound retirement system and
10 that this interest necessitates that certain limitations be placed
11 upon an individual's ability to retire from the system and to then
12 later return to state employment as an employee with a
13 participating public employer while contemporaneously drawing an
14 annuity from the system. The Legislature hereby further finds and
15 declares that the interests of the public are served when persons
16 having retired from public employment are permitted, within certain
17 limitations, to render post-retirement employment in positions of
18 public service, either in elected or appointed capacities. The
19 Legislature further finds and declares that it has the need for
20 qualified employees and that in many cases an employee of the
21 Legislature will retire and be available to return to work for the
22 Legislature as a per diem employee. The Legislature further finds
23 and declares that in many instances these employees have
24 particularly valuable expertise which the Legislature cannot find

1 elsewhere. The Legislature further finds and declares that
2 reemploying these persons on a limited per diem basis after they
3 have retired is not only in the best interests of this state, but
4 has no adverse effect whatsoever upon the actuarial soundness of
5 this particular retirement system.

6 (b) For the purposes of this section: (1) "Regularly employed
7 on a full-time basis" means employment of an individual by a
8 participating public employer, in a position other than as an
9 elected or appointed public official, which normally requires
10 twelve months per year service and/or ~~requires~~ at least one
11 thousand forty hours of service per year in that position; (2)
12 "temporary full-time employment or temporary part-time employment"
13 means employment of an individual on a temporary or provisional
14 basis by a participating public employer, other than as an elected
15 or appointed public official, in a position which does not
16 otherwise render the individual as regularly employed; (3) "former
17 employee of the Legislature" means any person who has retired from
18 employment with the Legislature and who has at least ten years'
19 contributing service with the Legislature; and (4) "reemployed by
20 the Legislature" means a former employee of the Legislature who has
21 been reemployed on a per diem basis not to exceed one hundred
22 seventy-five days per calendar year.

23 (c) In the event a retirant becomes regularly employed on a
24 full-time basis by a participating public employer, payment of his

1 or her annuity shall be suspended during the period of his or her
2 reemployment and he or she shall become a contributing member to
3 the retirement system. If his or her reemployment is for a period
4 of one year or longer, his or her annuity shall be recalculated and
5 he or she shall be granted an increased annuity due to ~~such~~ the
6 additional employment, ~~said~~ the annuity to be computed according to
7 section twenty-two of this article. A retirant may accept
8 temporary full-time or temporary part-time employment from a
9 participating employer without suspending his or her retirement
10 annuity so long as he or she does not receive annual compensation
11 in excess of \$15,000: *Provided*, That a retirant may be employed by
12 the Legislature on a per diem basis without suspension of the
13 retirement annuity if the retirant's annual compensation from the
14 Legislature does not exceed \$20,000.

15 (d) In the event a member retires and is then subsequently
16 elected to a public office or is subsequently appointed to hold an
17 elected public office, or is a former employee of the Legislature
18 who has been reemployed by the Legislature, he or she has the
19 option, notwithstanding subsection (c) of this section, to either:

20 (1) Continue to receive payment of his or her annuity while
21 holding ~~such~~ public office or during any reemployment of a former
22 employee of the Legislature on a per diem basis, in addition to the
23 salary he or she may be entitled to as ~~such~~ an office holder or as
24 a per diem reemployed former employee of the Legislature; or

1 (2) Suspend the payment of his or her annuity and become a
2 contributing member of the retirement system as provided in
3 subsection (c) of this section. Notwithstanding the provisions of
4 this subsection, a member who is participating in the system as an
5 elected public official may not retire from his or her elected
6 position and commence to receive an annuity from the system and
7 then be elected or reappointed to the same position unless and
8 until a continuous twelve-month period has passed since his or her
9 retirement from the position: *Provided*, That a former employee of
10 the Legislature may not be reemployed by the Legislature on a per
11 diem basis until at least sixty days after the employee has
12 retired: *Provided, however*, That the limitation on compensation
13 provided by subsection (c) of this section does not apply to the
14 reemployed former employee: *Provided further*, That in no event may
15 reemployment by the Legislature of a per diem employee exceed one
16 hundred seventy-five days per calendar year.

17 (e) A member who is participating in the system simultaneously
18 as both a regular, full-time employee of a participating public
19 employer and as an elected or appointed member of the legislative
20 body of the state or any political subdivision may, upon meeting
21 the age and service requirements of this article, elect to retire
22 from his or her regular full-time state employment and may commence
23 to receive an annuity from the system without terminating his or
24 her position as a member of the legislative body of the state or

1 political subdivision: *Provided*, That the retired member shall
2 not, during the term of his or her retirement and continued service
3 as a member of the legislative body of a political subdivision, be
4 eligible to continue his or her participation as a contributing
5 member of the system and shall not continue to accrue any
6 additional service credit or benefits in the system related to the
7 continued service.

8 (f) Notwithstanding the provisions of section twenty-seven-b
9 of this article, any publicly elected member of the legislative
10 body of any political subdivision or of the State Legislature, the
11 Clerk of the House of Delegates and the Clerk of the Senate may
12 elect to commence receiving in-service retirement distributions
13 from this system upon attaining the age of seventy and one-half
14 years: *Provided*, That the member is eligible to retire under the
15 provisions of section twenty or twenty-one of this article:
16 *Provided*, however, That the member elects to stop actively
17 contributing to the system while receiving ~~such~~ the in-service
18 distributions.

19 (g) The provisions of section twenty-two-h of this article are
20 not applicable to the amendments made to this section during the
21 2006 regular session.

NOTE: The purpose of this bill is to clarify the definition of compensation for purposes of calculating required contributions to the system includes only regular salaries, not bonuses or other one-time payments; clarifying membership in the system does not

terminate upon cessation of employment with a participating public employer, but rather upon withdrawal of accumulated contributions; provide a new requirement that individuals first hired after July 1, 2011 must have at least five years of contributory service to retire under the "rule of eighty"; make technical corrections to the provision governing annuity options, which previously referred to members when accurate term is retirants; require retirants changing annuity options to certify that no final divorce decree or other court order prohibits the change, to protect alternate payees and other beneficiaries of the orders; make technical corrections to the provision governing disability retirement, which referred to former members, who would not be eligible for any retirement benefits having left the membership of the system; clarify that the correction of errors statute applies to both employer errors and errors of the system's administrative body; provide that the correction of an error with respect to a retirant already receiving an annuity may be prospective only; provide a system for the reimbursement of mistaken contributions that ensures the plan's continued qualified status; and make technical correction to the definition of regular full-time employment in the provision governing reemployment of retirees.

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