

1 **ENROLLED**

2 **Senate Bill No. 222**

3 (BY SENATOR FOSTER)

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5 [Passed March 10, 2011; in effect ninety days from passage.]  
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10 AN ACT to amend and reenact §8-22A-12 of the Code of West Virginia,  
11 1931, as amended, relating to the West Virginia Municipal  
12 Police Officers and Firefighters Retirement System; and  
13 ensuring the continued qualification of the system under  
14 federal tax laws by adopting an amendment to the system  
15 required by Section 824 of the Pension Protection Act of 2006  
16 (P.L. 109-280) permitting direct rollovers to Roth IRAs.

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

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

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

22 **§8-22A-12. Direct rollovers.**

23 Notwithstanding any provision of this article to the contrary

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

7       (1) "Eligible rollover distribution" means any distribution of  
8 all or any portion of the balance to the credit of the distributee,  
9 except that an eligible rollover distribution does not include any  
10 of the following: (A) Any distribution that is one of a series of  
11 substantially equal periodic payments not less frequently than  
12 annually made for the life or life expectancy of the distributee or  
13 the joint lives or the joint life expectancies of the distributee  
14 and the distributee's designated beneficiary, or for a specified  
15 period of ten years or more; (B) any distribution to the extent the  
16 distribution is required under Section 401(a)(9) of the Internal  
17 Revenue Code; and (C) any hardship distribution described in  
18 Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. A portion  
19 of a distribution shall not fail to be an eligible rollover  
20 distribution merely because the portion consists of after-tax  
21 employee contributions which are not includable in gross income.  
22 However, this portion may be paid only to an individual retirement  
23 account or annuity described in Section 408(a) or (b) of the  
24 Internal Revenue Code, or to a qualified trust described in Section

1 401(a) or to an annuity contract described in Section 403(a) or  
2 403(b) of the Internal Revenue Code that agrees to separately  
3 account for amounts transferred (including interest or earnings  
4 thereon), including separately accounting for the portion of the  
5 distribution which is includable in gross income and the portion of  
6 the distribution which is not includable, or to a Roth IRA  
7 described in Section 408A of the Internal Revenue Code.

8 (2) "Eligible retirement plan" means an eligible plan under  
9 Section 457(b) of the Internal Revenue Code which is maintained by  
10 a state, political subdivision of a state, or any agency or  
11 instrumentality of a state or political subdivision of a state and  
12 which agrees to separately account for amounts transferred into the  
13 plan from this plan, an individual retirement account described in  
14 Section 408(a) of the Internal Revenue Code, an individual  
15 retirement annuity described in Section 408(b) of the Internal  
16 Revenue Code, an annuity plan described in Section 403(a) of the  
17 Internal Revenue Code, an annuity contract described in Section  
18 403(b) of the Internal Revenue Code, a qualified plan described in  
19 Section 401(a) of the Internal Revenue Code that accepts the  
20 distributee's eligible rollover distribution, or a Roth IRA  
21 described in Section 408A of the Internal Revenue Code: Provided,  
22 That in the case of an eligible rollover distribution to a  
23 designated beneficiary (other than a surviving spouse) as the term  
24 is defined in Section 402(c)(11) of the Internal Revenue Code, an

1 eligible retirement plan is limited to an individual retirement  
2 account or individual retirement annuity which meets the conditions  
3 of Section 402(c)(11) of the Internal Revenue Code.

4 (3) "Distributee" means an employee or former employee. In  
5 addition, the employee's or former employee's surviving spouse and  
6 the employee's or former employee's spouse or former spouse who is  
7 the alternate payee under a qualified domestic relations order, as  
8 defined in Section 414(p) of the Internal Revenue Code with respect  
9 to governmental plans, are distributees with regard to the interest  
10 of the spouse or former spouse. The term "distributee" also  
11 includes a designated beneficiary (other than a surviving spouse)  
12 as the term is defined in Section 402(c)(11) of the Internal  
13 Revenue Code.

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