

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 422**

4 (By Senators Foster, McCabe, Hall and Plymale)

5 _____
6 [Originating in the Committee on Pensions;
7 reported February 14, 2012.]
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12 A BILL to amend and reenact §5-10-2, §5-10-14, §5-10-15a, §5-10-20,
13 §5-10-21 and §5-10-29 of the Code of West Virginia, 1931, as
14 amended; to amend said code by adding thereto a new section,
15 designated §5-10-21a; to amend and reenact §5-16-13 of said
16 code; to amend and reenact §15-2A-21 of said code; to amend
17 and reenact §18-7A-23 and §18-7A-25 of said code; and to amend
18 said code by adding thereto a new section, designated §18-7A-
19 25b, all relating generally to benefits and costs for future
20 members of the West Virginia Public Employees Retirement
21 System, State Police Retirement System and Teachers Retirement
22 System.

23 Be it enacted by the Legislature of West Virginia:

24 That §5-10-2, §5-10-14, §5-10-15a, §5-10-20, §5-10-21 and §5-
25 10-29 of the Code of West Virginia, 1931, as amended, be amended
26 and reenacted; that said code be amended by adding thereto a new

1 section, designated §5-10-21a; that §5-16-13 of said code be
2 amended and reenacted; that §15-2A-21 of said code be amended and
3 reenacted; that §18-7A-23 and §18-7A-25 of said code be amended and
4 reenacted; and that said code be amended by adding thereto a new
5 section, designated §18-7a-25b, all to read as follows:

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

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
25 benefit requirements of Section 415 of the Internal Revenue Code,

1 "actuarial equivalent" shall be computed using the mortality tables
2 and interest rates required to comply with those requirements;

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

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

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

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

17 (8) "Compensation" means the remuneration paid a member by a
18 participating public employer for personal services rendered by the
19 member to the participating public employer. In the event a
20 member's remuneration is not all paid in money, his or her
21 participating public employer shall fix the value of the portion of
22 the remuneration which is not paid in money. Any lump sum or other
23 payments paid to members that do not constitute regular salary or
24 wage payments are not considered compensation for the purpose of
25 withholding contributions for the system or for the purpose of
26 calculating a member's final average salary. These payments

1 include, but are not limited to, attendance or performance bonuses,
2 one-time flat fee or lump sum payments, payments paid as a result
3 of excess budget, or employee recognition payments. The board
4 shall have final power to decide whether the payments shall be
5 considered compensation for purposes of this article;

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

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

14 (11) "Employee" means any person who serves regularly as an
15 officer or employee, full time, on a salary basis, whose tenure is
16 not restricted as to temporary or provisional appointment, in the
17 service of, and whose compensation is payable, in whole or in part,
18 by any political subdivision, or an officer or employee whose
19 compensation is calculated on a daily basis and paid monthly or on
20 completion of assignment, including technicians and other personnel
21 employed by the West Virginia National Guard whose compensation, in
22 whole or in part, is paid by the federal government: *Provided*, That
23 an employee of the Legislature whose term of employment is
24 otherwise classified as temporary and who is employed to perform
25 services required by the Legislature for its regular sessions or
26 during the interim between regular sessions and who has been or is

1 employed during regular sessions or during the interim between
2 regular sessions in seven or more consecutive calendar years, as
3 certified by the clerk of the house in which the employee served,
4 is an employee, any provision to the contrary in this article
5 notwithstanding, and is entitled to credited service in accordance
6 with provisions of section fourteen, article ten, chapter five of
7 this code and: *Provided, however,* That members of the legislative
8 body of any political subdivision and judges of the state Court of
9 Claims are employees receiving one year of service credit for each
10 one-year term served and pro rated service credit for any partial
11 term served, anything contained in this article to the contrary
12 notwithstanding. In any case of doubt as to who is an employee
13 within the meaning of this article, the board of trustees shall
14 decide the question;

15 (12) "Employer error" means an omission, misrepresentation, or
16 violation of relevant provisions of the West Virginia Code or of
17 the West Virginia Code of State Regulations or the relevant
18 provisions of both the West Virginia Code and of the West Virginia
19 Code of State Regulations by the participating public employer that
20 has resulted in an underpayment or overpayment of contributions
21 required. A deliberate act contrary to the provisions of this
22 section by a participating public employer does not constitute
23 employer error.

24 (13) "Final average salary" means either of the following:
25 *Provided,* That salaries for determining benefits during any
26 determination period may not exceed the maximum compensation

1 allowed as adjusted for cost of living in accordance with section
2 seven, article ten-d, chapter five of this code and Section
3 401(a)(17) of the Internal Revenue Code: *Provided, however, That*
4 the provisions of section twenty-two-h of this article are not
5 applicable to the amendments made to this subdivision during the
6 2011 Regular Session of the Legislature.

7 (A) The average of the highest annual compensation received by
8 a member (including a member of the Legislature who participates in
9 the retirement system in the year 1971 or thereafter), during any
10 period of three consecutive years of credited service contained
11 within the member's fifteen years of credited service immediately
12 preceding the date his or her employment with a participating
13 public employer last terminated: *Provided, That for persons who*
14 *first become members of the retirement system on or after July 1,*
15 *2012, any period of five consecutive years of contributing service*
16 *contained within the member's fifteen years of credited service*
17 *immediately preceding the date his or her employment with a*
18 *participating public employer last terminated ;* or

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

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

1 \$1,500 multiplied by eight, whichever computation as to the member
2 produces the higher annual compensation);

3 (14) "Internal Revenue Code" means the Internal Revenue Code
4 of 1986, as amended, codified at Title 26 of the United States
5 Code;

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

16 (16) "Member" means any person who has accumulated
17 contributions standing to his or her credit in the members' deposit
18 fund; Provided, That any person who left the employ of a
19 participating public employer prior to July 1, 2012, withdrew his
20 or her accumulated contributions, and then subsequently returns to
21 the employ of a participating public employer and, within twenty-
22 four months of re-employment, redeposits his or her accumulated
23 contributions to the members' deposit fund may be considered a
24 member from his or her original date of hire;

25 (17) "Participating public employer" means the State of West
26 Virginia, any board, commission, department, institution or

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

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

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

1 Employees Retirement System to remain members and continue to
2 participate in the Public Employees Retirement System after July 1,
3 2000;

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

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

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

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

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

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

23 (26) "Retroactive service" means: (1) Service between July 1,
24 1961, and the date an employer decides to become a participating
25 member of the Public Employees Retirement System; (2) service prior
26 to July 1, 1961, for which the employee is not entitled to prior

1 service at no cost in accordance with 162 CSR 5.13; and (3) service
2 of any member of a legislative body or employees of the State
3 Legislature whose term of employment is otherwise classified as
4 temporary for which the employee is eligible, but for which the
5 employee did not elect to participate at that time;

6 (27) "Service" means personal service rendered to a
7 participating public employer by an employee of a participating
8 public employer; and

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

10 **§5-10-14. Service credit; retroactive provisions.**

11 (a) The board of trustees shall credit each member with the
12 prior service and contributing service to which he or she is
13 entitled based upon rules adopted by the board of trustees and
14 based upon the following:

15 (1) In no event may less than ten days of service rendered by
16 a member in any calendar month be credited as a month of service:
17 *Provided*, That for employees of the State Legislature whose term of
18 employment is otherwise classified as temporary and who are
19 employed to perform services required by the Legislature for its
20 regular sessions or during the interim between regular sessions and
21 who have been or are so employed during regular sessions or during
22 the interim between regular sessions in seven consecutive calendar
23 years, service credit of one month shall be awarded for each ten
24 days employed in the interim between regular sessions, which
25 interim days shall be cumulatively calculated so that any ten days,
26 regardless of calendar month or year, shall be calculated toward

1 any award of one month of service credit;

2 (2) Except for hourly employees, and those persons who first
3 become members of the retirement system on or after July 1, 2012,
4 ten or more months of service credit earned in any calendar year
5 shall be credited as a year of service: *Provided,* That no more
6 than one year of service may be credited to any member for all
7 service rendered by him or her in any calendar year and no days may
8 be carried over by a member from one calendar year to another
9 calendar year where the member has received a full-year credit for
10 that year; and

11 (3) Service may be credited to a member who was employed by a
12 political subdivision if his or her employment occurred within a
13 period of thirty years immediately preceding the date the political
14 subdivision became a participating public employer.

15 (b) The board of trustees shall grant service credit to
16 employees of boards of health, the clerk of the House of Delegates
17 and the clerk of the state Senate or to any former and present
18 member of the state Teachers Retirement System who have been
19 contributing members for more than three years, for service
20 previously credited by the state Teachers Retirement System and
21 shall require the transfer of the member's contributions to the
22 system and shall also require a deposit, with interest, of any
23 withdrawals of contributions any time prior to the member's
24 retirement. Repayment of withdrawals shall be as directed by the
25 board of trustees.

26 (c) Court reporters who are acting in an official capacity,

1 although paid by funds other than the county commission or State
2 Auditor, may receive prior service credit for time served in that
3 capacity.

4 (d) Active members who previously worked in CETA
5 (Comprehensive Employment and Training Act) may receive service
6 credit for time served in that capacity: *Provided*, That in order
7 to receive service credit under the provisions of this subsection
8 the following conditions must be met: (1) The member must have
9 moved from temporary employment with the participating employer to
10 permanent full-time employment with the participating employer
11 within one hundred twenty days following the termination of the
12 member's CETA employment; (2) the board must receive evidence that
13 establishes to a reasonable degree of certainty as determined by
14 the board that the member previously worked in CETA; and (3) the
15 member shall pay to the board an amount equal to the employer and
16 employee contribution plus interest at the amount set by the board
17 for the amount of service credit sought pursuant to this
18 subsection: *Provided, however*, That the maximum service credit
19 that may be obtained under the provisions of this subsection is two
20 years: *Provided further*, That a member must apply and pay for the
21 service credit allowed under this subsection and provide all
22 necessary documentation by March 31, 2003: *And provided further*,
23 That the board shall exercise due diligence to notify affected
24 employees of the provisions of this subsection.

25 (e) (1) Employees of the State Legislature whose terms of
26 employment are otherwise classified as temporary and who are

1 employed to perform services required by the Legislature for its
2 regular sessions or during the interim time between regular
3 sessions shall receive service credit for the time served in that
4 capacity in accordance with the following. For purposes of this
5 section, the term "regular session" means day one through day sixty
6 of a sixty-day legislative session or day one through day thirty of
7 a thirty-day legislative session. Employees of the State
8 Legislature whose term of employment is otherwise classified as
9 temporary and who are employed to perform services required by the
10 Legislature for its regular sessions or during the interim time
11 between regular sessions and who have been or are employed during
12 regular sessions or during the interim time between regular
13 sessions in seven consecutive calendar years, as certified by the
14 clerk of the house in which the employee served, shall receive
15 service credit of six months for all regular sessions served, as
16 certified by the clerk of the house in which the employee served,
17 or shall receive service credit of three months for each regular
18 thirty-day session served prior to 1971: *Provided*, That employees
19 of the state Legislature whose term of employment is otherwise
20 classified as temporary and who are employed to perform services
21 required by the Legislature for its regular sessions and who have
22 been or are employed during the regular sessions in thirteen
23 consecutive calendar years as either temporary employees or full-
24 time employees or a combination thereof, as certified by the clerk
25 of the house in which the employee served, shall receive a service
26 credit of twelve months for each regular session served, as

1 certified by the clerk of the house in which the employee served:
2 *Provided, however,* That the amendments made to this subsection
3 during the 2002 regular session of the Legislature only apply to
4 employees of the Legislature who are employed by the Legislature as
5 either temporary employees or full-time employees as of January 1,
6 2002, or who become employed by the Legislature as temporary or
7 full-time employees for the first time after January 1, 2002.
8 Employees of the State Legislature whose terms of employment are
9 otherwise classified as temporary and who are employed to perform
10 services required by the Legislature during the interim time
11 between regular sessions shall receive service credit of one month
12 for each ten days served during the interim between regular
13 sessions, which interim days shall be cumulatively calculated so
14 that any ten days, regardless of calendar month or year, shall be
15 calculated toward any award of one month of service credit:
16 *Provided further,* That no more than one year of service may be
17 credited to any temporary legislative employee for all service
18 rendered by that employee in any calendar year and no days may be
19 carried over by a temporary legislative employee from one calendar
20 year to another calendar year where the member has received a full
21 year credit for that year. Service credit awarded for legislative
22 employment pursuant to this section shall be used for the purpose
23 of calculating that member's retirement annuity, pursuant to
24 section twenty-two of this article, and determining eligibility as
25 it relates to credited service, notwithstanding any other provision
26 of this section. Certification of employment for a complete

1 legislative session and for interim days shall be determined by the
2 clerk of the house in which the employee served, based upon
3 employment records. Service of fifty-five days of a regular
4 session constitutes an absolute presumption of service for a
5 complete legislative session and service of twenty-seven days of a
6 thirty-day regular session occurring prior to 1971 constitutes an
7 absolute presumption of service for a complete legislative session.
8 Once a legislative employee has been employed during regular
9 sessions for seven consecutive years or has become a full-time
10 employee of the Legislature, that employee shall receive the
11 service credit provided in this section for all regular and interim
12 sessions and interim days worked by that employee, as certified by
13 the clerk of the house in which the employee served, regardless of
14 when the session or interim legislative employment occurred: *And*
15 *provided further*, That regular session legislative employment for
16 seven consecutive years may be served in either or both houses of
17 the Legislature.

18 (2) For purposes of this section, employees of the Joint
19 Committee on Government and Finance are entitled to the same
20 benefits as employees of the House of Delegates or the Senate:
21 *Provided*, That for joint committee employees whose terms of
22 employment are otherwise classified as temporary, employment in
23 preparation for regular sessions, certified by the legislative
24 manager as required by the Legislature for its regular sessions,
25 shall be considered the same as employment during regular sessions
26 to meet service credit requirements for sessions served.

1 (f) Any employee may purchase retroactive service credit for
2 periods of employment in which contributions were not deducted from
3 the employee's pay. In the purchase of service credit for
4 employment prior to 1989 in any department, including the
5 Legislature, which operated from the General Revenue Fund and which
6 was not expressly excluded from budget appropriations in which
7 blanket appropriations were made for the state's share of public
8 employees' retirement coverage in the years prior to 1989, the
9 employee shall pay the employee's share. Other employees shall pay
10 the state's share and the employee's share to purchase retroactive
11 service credit. Where an employee purchases service credit for
12 employment which occurred after 1988, that employee shall pay for
13 the employee's share and the employer shall pay its share for the
14 purchase of retroactive service credit: *Provided*, That no
15 legislative employee and no current or former member of the
16 Legislature may be required to pay any interest or penalty upon the
17 purchase of retroactive service credit in accordance with the
18 provisions of this section where the employee was not eligible to
19 become a member during the years for which he or she is purchasing
20 retroactive credit or had the employee attempted to contribute to
21 the system during the years for which he or she is purchasing
22 retroactive service credit and such contributions would have been
23 refused by the board: *Provided, however*, That a legislative
24 employee purchasing retroactive credit under this section does so
25 within twenty-four months of becoming a member of the system or no
26 later than December 31, 2008, whichever occurs last: *Provided*

1 *further*, That once a legislative employee becomes a member of the
2 retirement system, he or she may purchase retroactive service
3 credit for any time he or she was employed by the Legislature and
4 did not receive service credit. Any service credit purchased shall
5 be credited as six months for each sixty-day session worked, three
6 months for each thirty-day session worked or twelve months for each
7 sixty-day session for legislative employees who have been employed
8 during regular sessions in thirteen consecutive calendar years, as
9 certified by the clerk of the house in which the employee served,
10 and credit for interim employment as provided in this subsection:
11 *And provided further*, That this legislative service credit shall
12 also be used for months of service in order to meet the sixty-month
13 requirement for the payments of a temporary legislative employee
14 member's retirement annuity: *And provided further*, That no
15 legislative employee may be required to pay for any service credit
16 beyond the actual time he or she worked regardless of the service
17 credit which is credited to him or her pursuant to this section:
18 *And provided further*, That any legislative employee may request a
19 recalculation of his or her credited service to comply with the
20 provisions of this section at any time.

21 (g) (1) Notwithstanding any provision to the contrary, the
22 seven consecutive calendar years requirement and the thirteen
23 consecutive calendar years requirement and the service credit
24 requirements set forth in this section shall be applied
25 retroactively to all periods of legislative employment prior to the
26 passage of this section, including any periods of legislative

1 employment occurring before the seven consecutive and thirteen
2 consecutive calendar years referenced in this section: *Provided,*
3 That the employee has not retired prior to the effective date of
4 the amendments made to this section in the 2002 regular session of
5 the Legislature.

6 (2) The requirement of seven consecutive years and the
7 requirement of thirteen consecutive years apply retroactively to
8 all legislative employment prior to the effective date of the 2006
9 amendments to this section.

10 (h) The board of trustees shall grant service credit to any
11 former or present member of the State Police Death, Disability and
12 Retirement Fund who has been a contributing member of this system
13 for more than three years for service previously credited by the
14 State Police Death, Disability and Retirement Fund if the member
15 transfers all of his or her contributions to the State Police
16 Death, Disability and Retirement Fund to the system created in this
17 article, including repayment of any amounts withdrawn any time from
18 the State Police Death, Disability and Retirement Fund by the
19 member seeking the transfer allowed in this subsection: *Provided,*
20 That there shall be added by the member to the amounts transferred
21 or repaid under this subsection an amount which shall be sufficient
22 to equal the contributions he or she would have made had the member
23 been under the Public Employees Retirement System during the period
24 of his or her membership in the State Police Death, Disability and
25 Retirement Fund, excluding contributions on lump sum payment for
26 annual leave, plus interest at a rate determined by the board.

1 (i) The provisions of section twenty-two-h of this article are
2 not applicable to the amendments made to this section during the
3 2006 regular session.

4 **§5-10-15a. Retirement credited service through member's use, as**
5 **option, of accrued annual or sick leave days.**

6 (a) Any member accruing annual leave or sick leave days may,
7 after ~~the effective date of this section~~ June 27, 1988, elect to
8 use ~~such~~ the days at the time of retirement to acquire additional
9 credited service in this retirement system. Except as provided in
10 subsection (b) of this section, ~~such~~ the accrued days shall be
11 applied on the basis of two workdays credit granted for each one
12 day of such accrued annual or sick leave days, with each month of
13 retirement service credit to equal twenty workdays and with any
14 remainder of ten workdays or more to constitute a full month of
15 additional credit and any remainder of less than ten workdays to be
16 dropped and not used, notwithstanding any provisions of the code to
17 the contrary, including section twelve, article sixteen of this
18 chapter. Such credited service shall be allowed and not deemed to
19 controvert the requirement of no more than twelve months credited
20 service in any year's period.

21 (b) For those persons who first become members of the
22 retirement system on or after July 1, 2012, accrued annual or sick
23 days may be applied to acquire additional credited service on the
24 basis of one workday credit granted for each one day of accrued
25 annual or sick leave, with each month of retirement service credit
26 to equal twenty workdays and with any remainder of ten workdays or

1 more to constitute a full month of additional credit and any
2 remainder of less than ten workdays to be dropped and not used.

3 **§5-10-20. Voluntary retirement.**

4 (a) Except as provided in subsection (b) of this section, any
5 member who has attained or attains age sixty years and has five or
6 more years of credited service in force, at least one year of which
7 he or she was a contributing member of the retirement system, may
8 retire upon his or her written application filed with the board of
9 trustees setting forth at what time, not less than thirty days nor
10 more than ninety days subsequent to the execution and filing
11 thereof ~~he~~ the member desires to be retired: *Provided*, That on and
12 after June 1, 1986, any person who becomes a new member of this
13 retirement system shall, in qualifying for retirement hereunder,
14 have five or more years of service, all of which years shall be
15 actual, contributory ones. Upon retirement, the member shall
16 receive an annuity provided for in section twenty-two of this
17 article.

18 (b) Any person who first becomes a member of the retirement
19 system on or after July 1, 2012, may retire upon written
20 application as provided in subsection (a) of this section upon
21 attaining the age of sixty-two with five or more years of service,
22 all of which must be actual, contributing years.

23 **§5-10-21. Deferred retirement and early retirement.**

24 (a) Except as provided in section twenty-one-a of this
25 article, any member who has five or more years of credited service
26 in force, of which at least three years are contributing service,

1 and who leaves the employ of a participating public employer prior
2 to his or her attaining age sixty years for any reason except his
3 or her disability retirement or death, is entitled to an annuity
4 computed according to section twenty-two of this article, as that
5 section was in force as of the date of his or her separation from
6 the employ of a participating public employer: *Provided*, That he or
7 she does not withdraw his or her accumulated contributions from the
8 members' deposit fund: *Provided, however*, That on and after July
9 1, 2002, any person who becomes a new member of this retirement
10 system shall, in qualifying for retirement under this section, have
11 five or more years of service, all of which years shall be actual,
12 contributory ones. His or her annuity shall begin the first day of
13 the calendar month next following the month in which his or her
14 application for same is filed with the board of trustees on or
15 after his or her attaining age sixty-two years.

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

26 (c) Any member who qualifies for deferred retirement benefits

1 in accordance with subsection (a) of this section and has twenty or
2 more years of credited service in force may elect to receive the
3 actuarial equivalent of his or her deferred retirement annuity as
4 a reduced annuity commencing on the first day of any calendar month
5 between his or her fifty-fifth birthday and his or her attainment
6 of age sixty-two years and payable throughout his or her life.

7 (d) Notwithstanding any of the other provisions of this
8 section or of this article, except sections twenty-seven-a and
9 twenty-seven-b of this article, and pursuant to rules promulgated
10 by the board, and except for a person who first becomes a member of
11 the retirement system on or after July 1, 2012, any member who has
12 thirty or more years of credited service in force, at least three
13 of which are contributing service, and who elects to take early
14 retirement, which for the purposes of this subsection means
15 retirement prior to age sixty, whether an active employee or a
16 separated employee at the time of application, is entitled to the
17 full computation of annuity according to section twenty-two of this
18 article, as that section was in force as of the date of retirement
19 application, but with the reduced actuarial equivalent of the
20 annuity the member would have received if his or her benefit had
21 commenced at age sixty when he or she would have been entitled to
22 full computation of benefit without any reduction.

23 (e) Notwithstanding any of the other provisions of this
24 section or of this article, except sections twenty-seven-a and
25 twenty-seven-b of this article, and except for a person who first
26 becomes a member of the retirement system on or after July 1, 2012,

1 any member of the retirement system may retire with full pension
2 rights, without reduction of benefits, if he or she is at least
3 fifty-five years of age and the sum of his or her age plus years of
4 contributing service and limited credited service, as defined in
5 section two of this article, equals or exceeds eighty: *Provided,*
6 That on and after July 1, 2011, any person who becomes a new member
7 of this retirement system shall, in qualifying for retirement under
8 this subsection, have five or more years of service, all of which
9 years shall be actual, contributory ones. The member's annuity
10 shall begin the first day of the calendar month immediately
11 following the calendar month in which his or her application for
12 the annuity is filed with the board.

13 **§5-10-21a. Deferred retirement and early retirement for new**
14 **members as of July 1, 2012.**

15 (a) Any person who first becomes a member of the retirement
16 system on or after July 1, 2012, who has five or more years of
17 contributing service and who leaves the employ of a participating
18 public employer prior to attaining age sixty-two years for any
19 reason except his or her disability or death, is entitled to an
20 annuity computed according to section twenty-two of this article,
21 as that section was in force as of the date of his or her
22 separation from the employ of a participating public employer:
23 *Provided,* That he or she does not withdraw his or her accumulated
24 contributions from the members' deposit fund. *Provided, however,*
25 That his or her annuity shall begin the first day of the calendar

1 month next following the month in which his or her application for
2 same is filed with the board of trustees on or after his or her
3 attaining age sixty-four years.

4 (b) Any member who qualifies for deferred retirement benefits
5 in accordance with subsection (a) of this subsection and has twenty
6 or more years of contributing service in force is entitled to an
7 annuity computed as in subsection (a) of this section: *Provided,*
8 That his or her annuity shall begin the first day of the calendar
9 month next following the month in which his or her application for
10 same is filed with the board of trustees on or after his or
11 attaining age sixty-three.

12 (c) Notwithstanding any of the other provisions of this
13 section or of this article, except sections twenty-seven-a and
14 twenty-seven-b of this article, and pursuant to rules promulgated
15 by the board, any member who first becomes a member of the
16 retirement system on or after July 1, 2012, and has ten or more
17 years of contributing service in force, and who elects to take
18 early retirement, which for the purposes of this subsection means
19 retirement following attainment of age sixty but prior to attaining
20 age sixty-two, is entitled to the full computation of annuity
21 according to section twenty-two of this article, as that section
22 was in force as of the date of retirement application, but with the
23 reduced actuarial equivalent of the annuity the member would have
24 received if his or her benefit had commenced at age sixty-two when
25 he or she would have been entitled to full computation of benefit
26 without any reduction: *Provided,* That his or her annuity shall

1 begin the first day of the calendar month next following the month
2 in which his or her application for same is filed with the board of
3 trustees on or after his or attaining age sixty.

4 (d) Any member who first becomes a member of the retirement
5 system on or after July 1, 2012, and has twenty or more years of
6 contributing service in force, and who elects to take early
7 retirement, which for the purposes of this subsection means
8 retirement following attainment of age fifty-seven but prior to
9 attaining age sixty-two, is entitled to the full computation of
10 annuity according to section twenty-two of this article, as that
11 section was in force as of the date of retirement application, but
12 with the reduced actuarial equivalent of the annuity the member
13 would have received if his or her benefit had commenced at age
14 sixty-two when he or she would have been entitled to full
15 computation of benefit without any reduction: *Provided*, That his
16 or her annuity shall begin the first day of the calendar month next
17 following the month in which his or her application for same is
18 filed with the board of trustees on or after his or attaining age
19 fifty-seven.

20 (e) Any member who first becomes a member of the retirement
21 system on or after July 1, 2012, and has thirty or more years of
22 contributing service in force, and who elects to take early
23 retirement, which for the purposes of this subsection means
24 retirement following attainment of age fifty-five but prior to
25 attaining age sixty-two, is entitled to the full computation of
26 annuity according to section twenty-two of this article, as that

1 section was in force as of the date of retirement application, but
2 with the reduced actuarial equivalent of the annuity the member
3 would have received if his or her benefit had commenced at age
4 sixty-two when he or she would have been entitled to full
5 computation of benefit without any reduction: *Provided*, That his
6 or her annuity shall begin the first day of the calendar month next
7 following the month in which his or her application for same is
8 filed with the board of trustees on or after his or attaining age
9 fifty-five.

10 **§5-10-29. Members' deposit fund; members' contributions;**
11 **forfeitures.**

12 (a) The members' deposit fund is hereby created. It shall be
13 the fund in which shall be accumulated, at regular interest, the
14 contributions deducted from the compensation of members, and from
15 which refunds of accumulated contributions shall be paid and
16 transfers made as provided in this section.

17 (b) The contributions of a member to the retirement system
18 (including any member of the Legislature, except as otherwise
19 provided in subsection (g) of this section) shall be a sum of not
20 less than three and five-tenths percent of his or her annual
21 compensations but not more than four and five-tenths percent of his
22 or her annual compensations, as determined by the board of
23 trustees: *Provided*, That for persons who first become members of
24 the retirement system on or after July 1, 2012, the contributions
25 to the system shall be a sum which is a percentage of annual

1 compensation one and five-tenths percent more than the percentage
2 of compensation as determined by the board of trustees pursuant to
3 this subsection. The said contributions shall be made
4 notwithstanding that the minimum salary or wages provided by law
5 for any member shall be thereby changed. Each member shall be
6 deemed to consent and agree to the deductions made and provided for
7 herein. Payment of a member's compensation less said deductions
8 shall be a full and complete discharge and acquittance of all
9 claims and demands whatsoever for services rendered by him or her
10 to a participating public employer, except as to benefits provided
11 by this article.

12 (c) The officer or officers responsible for making up the
13 payrolls for payroll units of the state government and for each of
14 the other participating public employers shall cause the
15 contributions, provided in subsection (b) of this section, to be
16 deducted from the compensations of each member in the employ of the
17 participating public employer, on each and every payroll, for each
18 and every payroll period, from the date the member enters the
19 retirement system to the date his or her membership terminates.
20 When deducted, each of said amounts shall be paid by the
21 participating public employer to the retirement system; said
22 payments to be made in such manner and form, and in such frequency,
23 and shall be accompanied by such supporting data, as the board of
24 trustees shall from time to time prescribe. When paid to the
25 retirement system, each of said amounts shall be credited to the
26 members' deposit fund account of the member from whose

1 compensations said contributions were deducted.

2 (d) In addition to the contributions deducted from the
3 compensations of a member, as heretofore provided, a member shall
4 deposit in the members' deposit fund, by a single contribution or
5 by an increased rate of contribution as approved by the board of
6 trustees, the amounts he or she may have withdrawn therefrom and
7 not repaid thereto, together with regular interest from the date of
8 withdrawal to the date of repayment. In no case shall a member be
9 given credit for service rendered prior to the date he or she
10 withdrew his or her contributions or accumulated contributions, as
11 the case may be, until he or she returns to the members' deposit
12 fund all amounts due the said fund by him or her.

13 (e) Upon the retirement of a member, or if a survivor annuity
14 becomes payable on account of his or her death, in either event his
15 or her accumulated contributions standing to his or her credit in
16 the members' deposit fund shall be transferred to the retirement
17 reserve fund.

18 (f) In the event an employee's membership in the retirement
19 system terminates and no annuity becomes or will become payable on
20 his or her account, any accumulated contributions standing to his
21 or her credit in the members' deposit fund, unclaimed by the said
22 employee, or his or her legal representative, within three years
23 from and after the date his or her membership terminated, shall be
24 transferred to the income fund.

25 (g) Any member of the Legislature who is a member of the
26 retirement system and with respect to whom the term "final average

1 salary" includes a multiple of eight, pursuant to the provisions of
2 subdivision ~~(15)~~ (13), section two of this article, shall
3 contribute to the retirement system on the basis of his or her
4 legislative compensation the sum of \$540 each year he or she
5 participates in the retirement system as a member of the
6 Legislature.

7 (h) Notwithstanding any other provisions of this article,
8 forfeitures under the system shall not be applied to increase the
9 benefits any member would otherwise receive under the system.

10 **ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

11 **§5-16-13. Payment of costs by employer and employee; spouse and**
12 **dependent coverage; involuntary employee termination**
13 **coverage; conversion of annual leave and sick leave**
14 **authorized for health or retirement benefits;**
15 **authorization for retiree participation; continuation**
16 **of health insurance for surviving dependents of**
17 **deceased employees; requirement of new health plan,**
18 **limiting employer contribution.**

19 (a) *Cost-sharing.* -- The director shall provide under any
20 contract or contracts entered into under the provisions of this
21 article that the costs of any group hospital and surgical
22 insurance, group major medical insurance, group prescription drug
23 insurance, group life and accidental death insurance benefit plan
24 or plans shall be paid by the employer and employee.

25 (b) *Spouse and dependent coverage.* -- Each employee is

1 entitled to have his or her spouse and dependents included in any
2 group hospital and surgical insurance, group major medical
3 insurance or group prescription drug insurance coverage to which
4 the employee is entitled to participate: *Provided*, That the spouse
5 and dependent coverage is limited to excess or secondary coverage
6 for each spouse and dependent who has primary coverage from any
7 other source. For purposes of this section, the term "primary
8 coverage" means individual or group hospital and surgical insurance
9 coverage or individual or group major medical insurance coverage or
10 group prescription drug coverage in which the spouse or dependent
11 is the named insured or certificate holder. For the purposes of
12 this section, "dependent" includes an eligible employee's unmarried
13 child or stepchild under the age of twenty-five if that child or
14 stepchild meets the definition of a "qualifying child" or a
15 "qualifying relative" in Section 152 of the Internal Revenue Code.
16 The director may require proof regarding spouse and dependent
17 primary coverage and shall adopt rules governing the nature,
18 discontinuance and resumption of any employee's coverage for his or
19 her spouse and dependents.

20 (c) *Continuation after termination.* -- If an employee
21 participating in the plan is terminated from employment
22 involuntarily or in reduction of work force, the employee's
23 insurance coverage provided under this article shall continue for
24 a period of three months at no additional cost to the employee and
25 the employer shall continue to contribute the employer's share of
26 plan premiums for the coverage. An employee discharged for

1 misconduct shall not be eligible for extended benefits under this
2 section. Coverage may be extended up to the maximum period of
3 three months, while administrative remedies contesting the charge
4 of misconduct are pursued. If the discharge for misconduct be
5 upheld, the full cost of the extended coverage shall be reimbursed
6 by the employee. If the employee is again employed or recalled to
7 active employment within twelve months of his or her prior
8 termination, he or she shall not be considered a new enrollee and
9 may not be required to again contribute his or her share of the
10 premium cost, if he or she had already fully contributed such share
11 during the prior period of employment.

12 (d) *Conversion of accrued annual and sick leave for extended*
13 *insurance coverage upon retirement for employees who elected to*
14 *participate in the plan before July, 1988.* -- Except as otherwise
15 provided in subsection (g) of this section, when an employee
16 participating in the plan, who elected to participate in the plan
17 before July 1, 1988, is compelled or required by law to retire
18 before reaching the age of sixty-five, or when a participating
19 employee voluntarily retires as provided by law, that employee's
20 accrued annual leave and sick leave, if any, shall be credited
21 toward an extension of the insurance coverage provided by this
22 article, according to the following formulae: The insurance
23 coverage for a retired employee shall continue one additional month
24 for every two days of annual leave or sick leave, or both, which
25 the employee had accrued as of the effective date of his or her
26 retirement. For a retired employee, his or her spouse and

1 dependents, the insurance coverage shall continue one additional
2 month for every three days of annual leave or sick leave, or both,
3 which the employee had accrued as of the effective date of his or
4 her retirement.

5 (e) *Conversion of accrued annual and sick leave for extended*
6 *insurance coverage upon retirement for employees who elected to*
7 *participate in the plan after June, 1988.* -- Notwithstanding
8 subsection (d) of this section, and except as otherwise provided in
9 subsections (g) and (l) of this section when an employee
10 participating in the plan who elected to participate in the plan on
11 and after July 1, 1988, is compelled or required by law to retire
12 before reaching the age of sixty-five, or when the participating
13 employee voluntarily retires as provided by law, that employee's
14 annual leave or sick leave, if any, shall be credited toward one
15 half of the premium cost of the insurance provided by this article,
16 for periods and scope of coverage determined according to the
17 following formulae: (1) One additional month of single retiree
18 coverage for every two days of annual leave or sick leave, or both,
19 which the employee had accrued as of the effective date of his or
20 her retirement; or (2) one additional month of coverage for a
21 retiree, his or her spouse and dependents for every three days of
22 annual leave or sick leave, or both, which the employee had accrued
23 as of the effective date of his or her retirement. The remaining
24 premium cost shall be borne by the retired employee if he or she
25 elects the coverage. For purposes of this subsection, an employee
26 who has been a participant under spouse or dependent coverage and

1 who reenters the plan within twelve months after termination of his
2 or her prior coverage shall be considered to have elected to
3 participate in the plan as of the date of commencement of the prior
4 coverage. For purposes of this subsection, an employee shall not
5 be considered a new employee after returning from extended
6 authorized leave on or after July 1, 1988.

7 (f) *Increased retirement benefits for retired employees with*
8 *accrued annual and sick leave.* -- In the alternative to the
9 extension of insurance coverage through premium payment provided in
10 subsections (d) and (e) of this section, the accrued annual leave
11 and sick leave of an employee participating in the plan may be
12 applied, on the basis of two days' retirement service credit for
13 each one day of accrued annual and sick leave, toward an increase
14 in the employee's retirement benefits with those days constituting
15 additional credited service in computation of the benefits under
16 any state retirement system: Provided, That for a person who first
17 becomes a member of the Teachers Retirement System on or after July
18 1, 2012, accrued annual and sick leave of an employee participating
19 in the plan may be applied, on the basis of one day of retirement
20 service credit for each one day of accrued annual or sick leave.
21 However, the additional credited service shall not be used in
22 meeting initial eligibility for retirement criteria, but only as
23 additional service credited in excess thereof.

24 (g) *Conversion of accrued annual and sick leave for extended*
25 *insurance coverage upon retirement for certain higher education*
26 *employees.* -- Except as otherwise provided in subsection (l) of

1 this section, when an employee, who is a higher education full-time
2 faculty member employed on an annual contract basis other than for
3 twelve months, is compelled or required by law to retire before
4 reaching the age of sixty-five, or when such a participating
5 employee voluntarily retires as provided by law, that employee's
6 insurance coverage, as provided by this article, shall be extended
7 according to the following formulae: The insurance coverage for a
8 retired higher education full-time faculty member, formerly
9 employed on an annual contract basis other than for twelve months,
10 shall continue beyond the effective date of his or her retirement
11 one additional year for each three and one-third years of teaching
12 service, as determined by uniform guidelines established by the
13 University of West Virginia Board of Trustees and the board of
14 directors of the state college system, for individual coverage, or
15 one additional year for each five years of teaching service for
16 "family" coverage.

17 (h) Any employee who retired prior to April 21, 1972, and who
18 also otherwise meets the conditions of the "retired employee"
19 definition in section two of this article, shall be eligible for
20 insurance coverage under the same terms and provisions of this
21 article. The retired employee's premium contribution for any such
22 coverage shall be established by the finance board.

23 (i) *Retiree participation.* -- All retirees under the
24 provisions of this article, including those defined in section two
25 of this article; those retiring prior to April 21, 1972; and those
26 hereafter retiring are eligible to obtain health insurance

1 coverage. The retired employee's premium contribution for the
2 coverage shall be established by the finance board.

3 (j) *Surviving spouse and dependent participation.* -- A
4 surviving spouse and dependents of a deceased employee, who was
5 either an active or retired employee participating in the plan just
6 prior to his or her death, are entitled to be included in any
7 comprehensive group health insurance coverage provided under this
8 article to which the deceased employee was entitled, and the spouse
9 and dependents shall bear the premium cost of the insurance
10 coverage. The finance board shall establish the premium cost of
11 the coverage.

12 (k) *Elected officials.* -- In construing the provisions of this
13 section or any other provisions of this code, the Legislature
14 declares that it is not now nor has it ever been the Legislature's
15 intent that elected public officials be provided any sick leave,
16 annual leave or personal leave, and the enactment of this section
17 is based upon the fact and assumption that no statutory or inherent
18 authority exists extending sick leave, annual leave or personal
19 leave to elected public officials and the very nature of those
20 positions preclude the arising or accumulation of any leave, so as
21 to be thereafter usable as premium paying credits for which the
22 officials may claim extended insurance benefits.

23 (l) *Participation of certain former employees.* -- An employee,
24 eligible for coverage under the provisions of this article who has
25 twenty years of service with any agency or entity participating in
26 the public employees insurance program or who has been covered by

1 the public employees insurance program for twenty years may, upon
2 leaving employment with a participating agency or entity, continue
3 to be covered by the program if the employee pays one hundred five
4 percent of the cost of retiree coverage: *Provided*, That the
5 employee shall elect to continue coverage under this subsection
6 within two years of the date the employment with a participating
7 agency or entity is terminated.

8 (m) *Prohibition on conversion of accrued annual and sick leave*
9 *for extended coverage upon retirement for new employees who elect*
10 *to participate in the plan after June, 2001.* -- Any employee hired
11 on or after July 1, 2001, who elects to participate in the plan may
12 not apply accrued annual or sick leave toward the cost of premiums
13 for extended insurance coverage upon his or her retirement. This
14 prohibition does not apply to the conversion of accrued annual or
15 sick leave for increased retirement benefits, as authorized by this
16 section: *Provided*, That any person who has participated in the
17 plan prior to July 1, 2001, is not a new employee for purposes of
18 this subsection if he or she becomes reemployed with an employer
19 participating in the plan within two years following his or her
20 separation from employment and he or she elects to participate in
21 the plan upon his or her reemployment.

22 (n) *Prohibition on conversion of accrued years of teaching*
23 *service for extended coverage upon retirement for new employees who*
24 *elect to participate in the plan July, 2009.* -- Any employee hired
25 on or after July 1, 2009, who elects to participate in the plan may

1 not apply accrued years of teaching service toward the cost of
2 premiums for extended insurance coverage upon his or her
3 retirement.

4 **CHAPTER 15. PUBLIC SAFETY.**

5 **ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.**

6 **§15-2A-21. Retirement credited service through member's use, as**
7 **option, of accrued annual or sick leave days.**

8 Any member accruing annual leave or sick leave days may, after
9 ~~the effective date of this section~~ April 9, 2005, elect to use the
10 days at the time of retirement to acquire additional credited
11 service in this retirement system. The days shall be applied on
12 the basis of two workdays' credit granted for each one day of
13 accrued annual or sick leave days, with each month of retirement
14 service credit to equal twenty workdays and with any remainder of
15 ten workdays or more to constitute a full month of additional
16 credit and any remainder of less than ten workdays to be dropped
17 and not used, notwithstanding any provisions of the code to the
18 contrary: Provided, That for a person who first becomes a member
19 of the retirement system on or after July 1, 2012, accrued annual
20 and sick leave days may be applied to acquire additional credited
21 service on the basis of one work day credit granted for each one
22 day of accrued annual or sick leave, with each month of retirement
23 service credit to equal twenty workdays and with any remainder of
24 ten workdays or more to constitute a full month of additional
25 credit and any remainder of less than ten workdays to be dropped

1 and not used. The credited service shall be allowed and not
2 considered to controvert the requirement of no more than twelve
3 months' credited service in any year's period.

4 **CHAPTER 18. EDUCATION.**

5 **ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

6 **§18-7A-23. Withdrawal and death benefits.**

7 (a) Benefits upon withdrawal from service prior to retirement
8 under the provisions of this article shall be as follows:

9 (1) A contributor who withdraws from service for any cause
10 other than death, disability or retirement shall, upon application,
11 be paid his or her accumulated contributions up to the end of the
12 fiscal year preceding the year in which application is made, after
13 offset of any outstanding loan balance, plus accrued interest,
14 pursuant to section thirty-four of this article, but in no event
15 shall interest be paid beyond the end of five years following the
16 year in which the last contribution was made: *Provided*, That the
17 contributor, at the time of application, is then no longer under
18 contract, verbal or otherwise, to serve as a teacher; or

19 (2) Except as provided in section twenty-five-b of this
20 article, if the contributor has completed twenty years of total
21 service, he or she may elect to receive at retirement age an
22 annuity which shall be computed as provided in this article:
23 *Provided*, That if the contributor has completed at least five, but
24 fewer than twenty, years of total service in this state, he or she
25 may elect to receive at age sixty-two an annuity which shall be

1 computed as provided in this article. The contributor must notify
2 the retirement board in writing concerning the election. If the
3 contributor has completed fewer than five years of service in this
4 state, he or she shall be subject to the provisions as outlined in
5 subdivision (1) of this subsection.

6 (b) Benefits upon the death of a contributor prior to
7 retirement under the provisions of this article shall be paid as
8 follows:

9 (1) If the contributor was at least fifty years old and if his
10 or her total service as a teacher was at least twenty-five years at
11 the time of his or her death, then the surviving spouse of the
12 deceased, provided the spouse is designated as the sole refund
13 beneficiary, is eligible for an annuity computed as though the
14 deceased were actually a retired teacher at the time of death and
15 had selected a survivorship option which pays the spouse the same
16 monthly amount which would have been received by the deceased; or

17 (2) If the facts do not permit payment under subdivision (1)
18 of this subsection, then the following sum shall be paid to the
19 refund beneficiary of the contributor: The contributor's
20 accumulated contributions up to the year of his or her death plus
21 an amount equal to his or her employee contributions. The latter
22 sum shall emanate from the Employer's Accumulation Fund.

23 **§18-7A-25. Eligibility for retirement allowance.**

24 (a) Except for a person who first becomes a member of the
25 retirement system on or after July 1, 2012, any member who has
26 attained the age of sixty years or who has had thirty-five years of

1 total service as a teacher in West Virginia, regardless of age, is
2 eligible for an annuity. No new entrant nor present member is
3 eligible for an annuity, however, if either has less than five
4 years of service to his or her credit.

5 (b) Except for a person who first becomes a member of the
6 retirement system on or after July 1, 2012, any member who has
7 attained the age of fifty-five years and who has served thirty
8 years as a teacher in West Virginia is eligible for an annuity.

9 (c) Except for a person who first becomes a member of the
10 retirement system on or after July 1, 2012, any member who has
11 served at least thirty but less than thirty-five years as a teacher
12 or nonteaching member in West Virginia and is less than fifty-five
13 years of age is eligible for an annuity, but the annuity shall be
14 the reduced actuarial equivalent of the annuity the member would
15 have received if the member were age fifty-five at the time such
16 annuity was applied for.

17 (d) The request for any annuity shall be made by the member in
18 writing to the retirement board, but in case of retirement for
19 disability, the written request may be made by either the member or
20 the employer.

21 (e) A member is eligible for annuity for disability if he or
22 she satisfies the conditions in either subdivision (1) or (2) of
23 this subsection and meets the conditions of subdivision (3) of this
24 subsection as follows:

25 (1) His or her service as a teacher or nonteaching member in
26 West Virginia must total at least ten years and service as a

1 teacher or nonteaching member must have been terminated because of
2 disability, which disability must have caused absence from service
3 for at least six months before his or her application for
4 disability annuity is approved.

5 (2) His or her service as a teacher or nonteaching member in
6 West Virginia must total at least five years and service as a
7 teacher or nonteaching member must have been terminated because of
8 disability, which disability must have caused absence from service
9 for at least six months before his or her application for
10 disability annuity is approved and the disability is a direct and
11 total result of an act of student violence directed toward the
12 member.

13 (3) An examination by a physician or physicians selected by
14 the retirement board must show that the member is at the time
15 mentally or physically incapacitated for service as a teacher, that
16 for that service the disability is total and likely to be permanent
17 and that he or she should be retired in consequence of the
18 disability.

19 (f) Continuance of the disability of the retired member shall
20 be established by medical examination, as prescribed in subdivision
21 (3), subsection (e) of this section, annually for five years after
22 retirement, and thereafter at such times required by the retirement
23 board. Effective January 1, 1998, a member who has retired because
24 of a disability may select an option of payment under the
25 provisions of section twenty-eight of this article: *Provided*, That
26 any option selected under the provisions of section twenty-eight of

1 this article shall be in all respects the actuarial equivalent of
2 the straight life annuity benefit the disability retiree receives
3 or would receive if the options under said section were not
4 available and that no beneficiary or beneficiaries of the
5 disability annuitant may receive a greater benefit, nor receive any
6 benefit for a greater length of time, than the beneficiary or
7 beneficiaries would have received had the disability retiree not
8 made any election of the options available under said section. In
9 determining the actuarial equivalence, the board shall take into
10 account the life expectancies of the member and the beneficiary:
11 *Provided, however,* That the life expectancies may at the discretion
12 of the board be established by an underwriting medical director of
13 a competent insurance company offering annuities. Payment of the
14 disability annuity provided in this article shall cease immediately
15 if the retirement board finds that the disability of the retired
16 teacher no longer exists, or if the retired teacher refuses to
17 submit to medical examination as required by this section.

18 **§18-7A-25b. Withdrawal and eligibility for retirement allowance**
19 **for a person who first becomes a member of the**
20 **retirement system on or after July 1, 2012**

21 (a) A person who first becomes a member of the retirement
22 system on or after July 1, 2012, who has five or more years of
23 contributing service, and attains or has attained the age of sixty-
24 two years, may retire upon his or her written application filed
25 with the board of trustees setting forth at what time, not less

1 than thirty days nor more than ninety days subsequent to the
2 execution and filing thereof the member desires to be retired. Upon
3 retirement, the member shall receive an annuity provided for in
4 section twenty-six of the article.

5 (b) Any person who first becomes a member of the retirement
6 system on or after July 1, 2012, who has five or more years of
7 contributing service and who leaves the employ of a participating
8 public employer prior to attaining age sixty-four years for any
9 reason except his or her disability or death, is entitled to an
10 annuity computed according to section twenty-two of this article,
11 as that section was in force as of the date of his or her
12 separation from the employ of a participating public employer:
13 *Provided*, That he or she does not withdraw his or her accumulated
14 contributions from the members' deposit fund. His or her annuity
15 shall begin the first day of the calendar month next following the
16 month in which his or her application for same is filed with the
17 board of trustees on or after his or her attaining age sixty-four
18 years.

19 (c) Any member who qualifies for deferred retirement benefits
20 in accordance with subsections (a) and (b) of this subsection and has
21 twenty or more years of contributing service in force is entitled
22 to an annuity computed as in subsection (a) of this section:
23 *Provided*, That he or she does not withdraw his or her accumulated
24 contributions from the members' deposit fund: *Provided, however*,
25 That his or her annuity shall begin the first day of the calendar
26 month next following the month in which his or her application for

1 same is filed with the board of trustees on or after his or
2 attaining age sixty-three.

3 (d) Notwithstanding any of the other provisions of this
4 section or of this article, except sections twenty-eight-a and
5 twenty-eight-b of this article, and pursuant to rules promulgated
6 by the board, any member who first becomes a member of the
7 retirement system on or after July 1, 2012, and has ten or more
8 years of contributing service in force, and who elects to take
9 early retirement, which for the purposes of this subsection means
10 retirement following attainment of age sixty but prior to age
11 attaining age sixty-two, is entitled to the full computation of
12 annuity according to section twenty-two of this article, as that
13 section was in force as of the date of retirement application, but
14 with the reduced actuarial equivalent of the annuity the member
15 would have received if his or her benefit had commenced at age
16 sixty-two when he or she would have been entitled to full
17 computation of benefit without any reduction: *Provided*, That his
18 or her annuity shall begin the first day of the calendar month next
19 following the month in which his or her application for same is
20 filed with the board of trustees on or after his or attaining age
21 sixty.

22 (e) Any member who first becomes a member of the retirement
23 system on or after July 1, 2012, and has twenty or more years of
24 contributing service in force, and who elects to take early
25 retirement, which for the purposes of this subsection means
26 retirement following attainment of age fifty-seven but prior to

1 attaining age sixty-two, is entitled to the full computation of
2 annuity according to section twenty-two of this article, as that
3 section was in force as of the date of retirement application, but
4 with the reduced actuarial equivalent of the annuity the member
5 would have received if his or her benefit had commenced at age
6 sixty-two when he or she would have been entitled to full
7 computation of benefit without any reduction: *Provided*, That his
8 or her annuity shall begin the first day of the calendar month next
9 following the month in which his or her application for same is
10 filed with the board of trustees on or after his or attaining age
11 fifty-seven.

12 (f) Any member who first becomes a member of the retirement
13 system on or after July 1, 2012, and has thirty or more years of
14 contributing service in force, and who elects to take early
15 retirement, which for the purposes of this subsection means
16 retirement following attainment of age fifty-five but prior to
17 attaining age sixty-two, is entitled to the full computation of
18 annuity according to section twenty-two of this article, as that
19 section was in force as of the date of retirement application, but
20 with the reduced actuarial equivalent of the annuity the member
21 would have received if his or her benefit had commenced at age
22 sixty-two when he or she would have been entitled to full
23 computation of benefit without any reduction: *Provided*, That his or
24 her annuity shall begin the first day of the calendar month next
25 following the month in which his or her application for same is
26 filed with the board of trustees on or after his or attaining age

1 fifty-five.

NOTE: The purpose of this bill is to modify calculation of final average salary, employee contribution rate and number of months to equal a year of service credit for new members of the Public Employees Retirement System; to modify the rate of annual and sick leave conversion for additional service credit for new members of the Public Employees Retirement System, State Police Retirement System and Teachers Retirement system, and to modify retirement age for new members of the Public Employees Retirement System and the Teachers Retirement System.

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

§5-10-21a and §18-7A-25b are new; therefore, strike-throughs and underscoring have been omitted.