

1 **Senate Bill No. 422**

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

3 _____
4 [Introduced January 25, 2012; referred to the Committee on
5 Pensions; and then to the Committee on Finance.]

6 _____
7 **FISCAL**
8 **NOTE**

9
10 A BILL to amend and reenact §5-10-2, §5-10-14, §5-10-15a, §5-10-20,
11 §5-10-21 and §5-10-29 of the Code of West Virginia, 1931, as
12 amended; to amend said code by adding thereto a new section,
13 designated §5-10-21a; to amend and reenact §5-16-13 of said
14 code; to amend and reenact §15-2A-21 of said code; to amend
15 and reenact §18-7A-23 and §18-7A-25 of said code; and to amend
16 said code by adding thereto a new section, designated §18-7A-
17 25b, all relating generally to benefits and costs for future
18 members of the West Virginia Public Employees Retirement
19 System, State Police Retirement System and Teachers Retirement
20 System.

21 Be it enacted by the Legislature of West Virginia:

22 That §5-10-2, §5-10-14, §5-10-15a, §5-10-20, §5-10-21 and §5-
23 10-29 of the Code of West Virginia, 1931, as amended, be amended
24 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

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: *Provided, however*, That
11 the provisions of section twenty-two-h of this article are not
12 applicable to the amendments made to this subdivision during the
13 2011 Regular Session of the Legislature.

14 (A) The average of the highest annual compensation received by
15 a member (including a member of the Legislature who participates in
16 the retirement system in the year 1971 or thereafter), during any
17 period of three consecutive years of credited service contained
18 within the member's fifteen years of credited service immediately
19 preceding the date his or her employment with a participating
20 public employer last terminated: *Provided, That for persons who*
21 *first become members of the retirement system on or after July 1,*
22 *2012, any period of five consecutive years of contributing service*
23 *contained within the member's fifteen years of credited service*
24 *immediately preceding the date his or her employment with a*

1 participating public employer last terminated ; or

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

1 compensation the former member or member received in any one of the
2 three years from any other participating public employer including
3 the State of West Virginia; or (ii) "final average salary"
4 determined in accordance with paragraph (A) or (B) of this
5 subdivision, whichever computation produces the higher final
6 average salary (and in determining the annual compensation under
7 subparagraph (ii) of this proviso, the legislative compensation of
8 the former member shall be computed on the basis of \$1,500
9 multiplied by eight, and the legislative compensation of the member
10 shall be computed on the basis set forth in the provisions of this
11 subdivision immediately preceding this proviso or on the basis of
12 \$1,500 multiplied by eight, whichever computation as to the member
13 produces the higher annual compensation);

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

17 (15) "Limited credited service" means service by employees of
18 the West Virginia Educational Broadcasting Authority, in the
19 employment of West Virginia University, during a period when the
20 employee made contributions to another retirement system, as
21 required by West Virginia University, and did not make
22 contributions to the Public Employees Retirement System: *Provided,*
23 That while limited credited service can be used for the formula set
24 forth in subsection (e), section twenty-one of this article, it may

1 not be used to increase benefits calculated under section twenty-
2 two of this article;

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

6 (17) "Participating public employer" means the State of West
7 Virginia, any board, commission, department, institution or
8 spending unit, and includes any agency created by rule of the
9 Supreme Court of Appeals having full-time employees, which for the
10 purposes of this article is considered a department of state
11 government; and any political subdivision in the state which has
12 elected to cover its employees, as defined in this article, under
13 the West Virginia Public Employees Retirement System;

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

16 (19) "Political subdivision" means the State of West Virginia,
17 a county, city or town in the state; a school corporation or
18 corporate unit; any separate corporation or instrumentality
19 established by one or more counties, cities or towns, as permitted
20 by law; any corporation or instrumentality supported in most part
21 by counties, cities or towns; and any public corporation charged by
22 law with the performance of a governmental function and whose
23 jurisdiction is coextensive with one or more counties, cities or
24 towns: *Provided*, That any mental health agency participating in

1 the Public Employees Retirement System before July 1, 1997, is
2 considered a political subdivision solely for the purpose of
3 permitting those employees who are members of the Public Employees
4 Retirement System to remain members and continue to participate in
5 the retirement system at their option after July 1, 1997:
6 *Provided, however,* That the Regional Community Policing Institute
7 which participated in the Public Employees Retirement System before
8 July 1, 2000, is considered a political subdivision solely for the
9 purpose of permitting those employees who are members of the Public
10 Employees Retirement System to remain members and continue to
11 participate in the Public Employees Retirement System after July 1,
12 2000;

13 (20) "Prior service" means service rendered prior to July 1,
14 1961, to the extent credited a member as provided in this article;

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

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

24 (23) "Retirant" means any member who commences an annuity

1 payable by the retirement system;

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

5 (25) "Retirement system" or "system" means the West Virginia
6 Public Employees Retirement System created and established by this
7 article;

8 (26) "Retroactive service" means: (1) Service between July 1,
9 1961, and the date an employer decides to become a participating
10 member of the Public Employees Retirement System; (2) service prior
11 to July 1, 1961, for which the employee is not entitled to prior
12 service at no cost in accordance with 162 CSR 5.13; and (3) service
13 of any member of a legislative body or employees of the State
14 Legislature whose term of employment is otherwise classified as
15 temporary for which the employee is eligible, but for which the
16 employee did not elect to participate at that time;

17 (27) "Service" means personal service rendered to a
18 participating public employer by an employee of a participating
19 public employer; and

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

21 **§5-10-14. Service credit; retroactive provisions.**

22 (a) The board of trustees shall credit each member with the
23 prior service and contributing service to which he or she is
24 entitled based upon rules adopted by the board of trustees and

1 based upon the following:

2 (1) In no event may less than ten days of service rendered by
3 a member in any calendar month be credited as a month of service:
4 *Provided*, That for employees of the State Legislature whose term of
5 employment is otherwise classified as temporary and who are
6 employed to perform services required by the Legislature for its
7 regular sessions or during the interim between regular sessions and
8 who have been or are so employed during regular sessions or during
9 the interim between regular sessions in seven consecutive calendar
10 years, service credit of one month shall be awarded for each ten
11 days employed in the interim between regular sessions, which
12 interim days shall be cumulatively calculated so that any ten days,
13 regardless of calendar month or year, shall be calculated toward
14 any award of one month of service credit;

15 (2) Except for hourly employees, and those persons who first
16 become members of the retirement system on or after July 1, 2012,
17 ten or more months of service credit earned in any calendar year
18 shall be credited as a year of service: *Provided*, That no more
19 than one year of service may be credited to any member for all
20 service rendered by him or her in any calendar year and no days may
21 be carried over by a member from one calendar year to another
22 calendar year where the member has received a full-year credit for
23 that year; and

24 (3) Service may be credited to a member who was employed by a

1 political subdivision if his or her employment occurred within a
2 period of thirty years immediately preceding the date the political
3 subdivision became a participating public employer.

4 (b) The board of trustees shall grant service credit to
5 employees of boards of health, the clerk of the House of Delegates
6 and the clerk of the state Senate or to any former and present
7 member of the state Teachers Retirement System who have been
8 contributing members for more than three years, for service
9 previously credited by the state Teachers Retirement System and
10 shall require the transfer of the member's contributions to the
11 system and shall also require a deposit, with interest, of any
12 withdrawals of contributions any time prior to the member's
13 retirement. Repayment of withdrawals shall be as directed by the
14 board of trustees.

15 (c) Court reporters who are acting in an official capacity,
16 although paid by funds other than the county commission or State
17 Auditor, may receive prior service credit for time served in that
18 capacity.

19 (d) Active members who previously worked in CETA
20 (Comprehensive Employment and Training Act) may receive service
21 credit for time served in that capacity: *Provided*, That in order
22 to receive service credit under the provisions of this subsection
23 the following conditions must be met: (1) The member must have
24 moved from temporary employment with the participating employer to

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

16 (e) (1) Employees of the State Legislature whose terms of
17 employment are otherwise classified as temporary and who are
18 employed to perform services required by the Legislature for its
19 regular sessions or during the interim time between regular
20 sessions shall receive service credit for the time served in that
21 capacity in accordance with the following. For purposes of this
22 section, the term "regular session" means day one through day sixty
23 of a sixty-day legislative session or day one through day thirty of
24 a thirty-day legislative session. Employees of the State

1 Legislature whose term of employment is otherwise classified as
2 temporary and who are employed to perform services required by the
3 Legislature for its regular sessions or during the interim time
4 between regular sessions and who have been or are employed during
5 regular sessions or during the interim time between regular
6 sessions in seven consecutive calendar years, as certified by the
7 clerk of the house in which the employee served, shall receive
8 service credit of six months for all regular sessions served, as
9 certified by the clerk of the house in which the employee served,
10 or shall receive service credit of three months for each regular
11 thirty-day session served prior to 1971: *Provided*, That employees
12 of the state Legislature whose term of employment is otherwise
13 classified as temporary and who are employed to perform services
14 required by the Legislature for its regular sessions and who have
15 been or are employed during the regular sessions in thirteen
16 consecutive calendar years as either temporary employees or full-
17 time employees or a combination thereof, as certified by the clerk
18 of the house in which the employee served, shall receive a service
19 credit of twelve months for each regular session served, as
20 certified by the clerk of the house in which the employee served:
21 *Provided, however*, That the amendments made to this subsection
22 during the 2002 regular session of the Legislature only apply to
23 employees of the Legislature who are employed by the Legislature as
24 either temporary employees or full-time employees as of January 1,

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

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

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

24 (f) Any employee may purchase retroactive service credit for

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

1 later than December 31, 2008, whichever occurs last: *Provided*
2 *further*, That once a legislative employee becomes a member of the
3 retirement system, he or she may purchase retroactive service
4 credit for any time he or she was employed by the Legislature and
5 did not receive service credit. Any service credit purchased shall
6 be credited as six months for each sixty-day session worked, three
7 months for each thirty-day session worked or twelve months for each
8 sixty-day session for legislative employees who have been employed
9 during regular sessions in thirteen consecutive calendar years, as
10 certified by the clerk of the house in which the employee served,
11 and credit for interim employment as provided in this subsection:
12 *And provided further*, That this legislative service credit shall
13 also be used for months of service in order to meet the sixty-month
14 requirement for the payments of a temporary legislative employee
15 member's retirement annuity: *And provided further*, That no
16 legislative employee may be required to pay for any service credit
17 beyond the actual time he or she worked regardless of the service
18 credit which is credited to him or her pursuant to this section:
19 *And provided further*, That any legislative employee may request a
20 recalculation of his or her credited service to comply with the
21 provisions of this section at any time.

22 (g) (1) Notwithstanding any provision to the contrary, the
23 seven consecutive calendar years requirement and the thirteen
24 consecutive calendar years requirement and the service credit

1 requirements set forth in this section shall be applied
2 retroactively to all periods of legislative employment prior to the
3 passage of this section, including any periods of legislative
4 employment occurring before the seven consecutive and thirteen
5 consecutive calendar years referenced in this section: *Provided,*
6 That the employee has not retired prior to the effective date of
7 the amendments made to this section in the 2002 regular session of
8 the Legislature.

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

13 (h) The board of trustees shall grant service credit to any
14 former or present member of the State Police Death, Disability and
15 Retirement Fund who has been a contributing member of this system
16 for more than three years for service previously credited by the
17 State Police Death, Disability and Retirement Fund if the member
18 transfers all of his or her contributions to the State Police
19 Death, Disability and Retirement Fund to the system created in this
20 article, including repayment of any amounts withdrawn any time from
21 the State Police Death, Disability and Retirement Fund by the
22 member seeking the transfer allowed in this subsection: *Provided,*
23 That there shall be added by the member to the amounts transferred
24 or repaid under this subsection an amount which shall be sufficient

1 to equal the contributions he or she would have made had the member
2 been under the Public Employees Retirement System during the period
3 of his or her membership in the State Police Death, Disability and
4 Retirement Fund, excluding contributions on lump sum payment for
5 annual leave, plus interest at a rate determined by the board.

6 (i) The provisions of section twenty-two-h of this article are
7 not applicable to the amendments made to this section during the
8 2006 regular session.

9 **§5-10-15a. Retirement credited service through member's use, as**
10 **option, of accrued annual or sick leave days.**

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

1 service in any year's period.

2 (b) For those persons who first become members of the
3 retirement system on or after July 1, 2012, accrued annual or sick
4 days may be applied to acquire additional credited service on the
5 basis of one workday credit granted for each one day of accrued
6 annual or sick leave, with each month of retirement service credit
7 to equal twenty workdays and with any remainder of ten workdays or
8 more to constitute a full month of additional credit and any
9 remainder of less than ten workdays to be dropped and not used.

10 **§5-10-20. Voluntary retirement.**

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

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

6 **§5-10-21. Deferred retirement and early retirement.**

7 (a) Except as provided in section twenty-one-a of this
8 article, any member who has five or more years of credited service
9 in force, of which at least three years are contributing service,
10 and who leaves the employ of a participating public employer prior
11 to his or her attaining age sixty years for any reason except his
12 or her disability retirement or death, is entitled to an annuity
13 computed according to section twenty-two of this article, as that
14 section was in force as of the date of his or her separation from
15 the employ of a participating public employer: *Provided,* That he or
16 she does not withdraw his or her accumulated contributions from the
17 members' deposit fund: *Provided, however,* That on and after July
18 1, 2002, any person who becomes a new member of this retirement
19 system shall, in qualifying for retirement under this section, have
20 five or more years of service, all of which years shall be actual,
21 contributory ones. His or her annuity shall begin the first day of
22 the calendar month next following the month in which his or her
23 application for same is filed with the board of trustees on or
24 after his or her attaining age sixty-two years.

1 (b) Any member who qualifies for deferred retirement benefits
2 in accordance with subsection (a) of this section and has ten or
3 more years of credited service in force and who has attained age
4 fifty-five as of the date of his or her separation, may, prior to
5 the effective date of his or her retirement, but not thereafter,
6 elect to receive the actuarial equivalent of his or her deferred
7 retirement annuity as a reduced annuity commencing on the first day
8 of any calendar month between his or her date of separation and his
9 or her attainment of age sixty-two years and payable throughout his
10 or her life.

11 (c) Any member who qualifies for deferred retirement benefits
12 in accordance with subsection (a) of this section and has twenty or
13 more years of credited service in force may elect to receive the
14 actuarial equivalent of his or her deferred retirement annuity as
15 a reduced annuity commencing on the first day of any calendar month
16 between his or her fifty-fifth birthday and his or her attainment
17 of age sixty-two years and payable throughout his or her life.

18 (d) 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, and pursuant to rules promulgated
21 by the board, and except for a person who first becomes a member of
22 the retirement system on or after July 1, 2012, any member who has
23 thirty or more years of credited service in force, at least three
24 of which are contributing service, and who elects to take early

1 retirement, which for the purposes of this subsection means
2 retirement prior to age sixty, whether an active employee or a
3 separated employee at the time of application, is entitled to the
4 full computation of annuity according to section twenty-two of this
5 article, as that section was in force as of the date of retirement
6 application, but with the reduced actuarial equivalent of the
7 annuity the member would have received if his or her benefit had
8 commenced at age sixty when he or she would have been entitled to
9 full computation of benefit without any reduction.

10 (e) Notwithstanding any of the other provisions of this
11 section or of this article, except sections twenty-seven-a and
12 twenty-seven-b of this article, and except for a person who first
13 becomes a member of the retirement system on or after July 1, 2012,
14 any member of the retirement system may retire with full pension
15 rights, without reduction of benefits, if he or she is at least
16 fifty-five years of age and the sum of his or her age plus years of
17 contributing service and limited credited service, as defined in
18 section two of this article, equals or exceeds eighty: *Provided,*
19 That on and after July 1, 2011, any person who becomes a new member
20 of this retirement system shall, in qualifying for retirement under
21 this subsection, have five or more years of service, all of which
22 years shall be actual, contributory ones. The member's annuity
23 shall begin the first day of the calendar month immediately
24 following the calendar month in which his or her application for

1 the annuity is filed with the board.

2 **§5-10-21a. Deferred retirement and early retirement for new**
3 **members as of July 1, 2012.**

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

18 (b) Any member who qualifies for deferred retirement benefits
19 in accordance with subsection (a) of this subsection and has twenty
20 or more years of contributing service in force is entitled to an
21 annuity computed as in subsection (a) of this section, Provided,
22 That his or her annuity shall begin the first day of the calendar
23 month next following the month in which his or her application for
24 same is filed with the board of trustees on or after his or

1 attaining age sixty-three.

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

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

1 with the reduced actuarial equivalent of the annuity the member
2 would have received if his or her benefit had commenced at age
3 sixty-two when he or she would have been entitled to full
4 computation of benefit without any reduction.

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

17 **§5-10-29. Members' deposit fund; members' contributions;**
18 **forfeitures.**

19 (a) The members' deposit fund is hereby created. It shall be
20 the fund in which shall be accumulated, at regular interest, the
21 contributions deducted from the compensation of members, and from
22 which refunds of accumulated contributions shall be paid and
23 transfers made as provided in this section.

24 (b) The contributions of a member to the retirement system

1 (including any member of the Legislature, except as otherwise
2 provided in subsection (g) of this section) shall be a sum of not
3 less than three and five-tenths percent of his or her annual
4 compensations but not more than four and five-tenths percent of his
5 or her annual compensations, as determined by the board of
6 trustees: Provided, That for persons who first become members of
7 the retirement system on or after July 1, 2012, the contributions
8 to the system shall be a sum which is a percentage of annual
9 compensation one and five-tenths percent more than the percentage
10 of compensation as determined by the board of trustees pursuant to
11 this subsection. The said contributions shall be made
12 notwithstanding that the minimum salary or wages provided by law
13 for any member shall be thereby changed. Each member shall be
14 deemed to consent and agree to the deductions made and provided for
15 herein. Payment of a member's compensation less said deductions
16 shall be a full and complete discharge and acquittance of all
17 claims and demands whatsoever for services rendered by him or her
18 to a participating public employer, except as to benefits provided
19 by this article.

20 (c) The officer or officers responsible for making up the
21 payrolls for payroll units of the state government and for each of
22 the other participating public employers shall cause the
23 contributions, provided in subsection (b) of this section, to be
24 deducted from the compensations of each member in the employ of the

1 participating public employer, on each and every payroll, for each
2 and every payroll period, from the date the member enters the
3 retirement system to the date his or her membership terminates.
4 When deducted, each of said amounts shall be paid by the
5 participating public employer to the retirement system; said
6 payments to be made in such manner and form, and in such frequency,
7 and shall be accompanied by such supporting data, as the board of
8 trustees shall from time to time prescribe. When paid to the
9 retirement system, each of said amounts shall be credited to the
10 members' deposit fund account of the member from whose
11 compensations said contributions were deducted.

12 (d) In addition to the contributions deducted from the
13 compensations of a member, as heretofore provided, a member shall
14 deposit in the members' deposit fund, by a single contribution or
15 by an increased rate of contribution as approved by the board of
16 trustees, the amounts he or she may have withdrawn therefrom and
17 not repaid thereto, together with regular interest from the date of
18 withdrawal to the date of repayment. In no case shall a member be
19 given credit for service rendered prior to the date he or she
20 withdrew his or her contributions or accumulated contributions, as
21 the case may be, until he or she returns to the members' deposit
22 fund all amounts due the said fund by him or her.

23 (e) Upon the retirement of a member, or if a survivor annuity
24 becomes payable on account of his or her death, in either event his

1 or her accumulated contributions standing to his or her credit in
2 the members' deposit fund shall be transferred to the retirement
3 reserve fund.

4 (f) In the event an employee's membership in the retirement
5 system terminates and no annuity becomes or will become payable on
6 his or her account, any accumulated contributions standing to his
7 or her credit in the members' deposit fund, unclaimed by the said
8 employee, or his or her legal representative, within three years
9 from and after the date his or her membership terminated, shall be
10 transferred to the income fund.

11 (g) Any member of the Legislature who is a member of the
12 retirement system and with respect to whom the term "final average
13 salary" includes a multiple of eight, pursuant to the provisions of
14 subdivision ~~(15)~~ (13), section two of this article, shall
15 contribute to the retirement system on the basis of his or her
16 legislative compensation the sum of \$540 each year he or she
17 participates in the retirement system as a member of the
18 Legislature.

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

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

23 **§5-16-13. Payment of costs by employer and employee; spouse and**
24 **dependent coverage; involuntary employee termination**

1 **coverage; conversion of annual leave and sick leave**
2 **authorized for health or retirement benefits;**
3 **authorization for retiree participation; continuation**
4 **of health insurance for surviving dependents of**
5 **deceased employees; requirement of new health plan,**
6 **limiting employer contribution.**

7 (a) *Cost-sharing.* -- The director shall provide under any
8 contract or contracts entered into under the provisions of this
9 article that the costs of any group hospital and surgical
10 insurance, group major medical insurance, group prescription drug
11 insurance, group life and accidental death insurance benefit plan
12 or plans shall be paid by the employer and employee.

13 (b) *Spouse and dependent coverage.* -- Each employee is
14 entitled to have his or her spouse and dependents included in any
15 group hospital and surgical insurance, group major medical
16 insurance or group prescription drug insurance coverage to which
17 the employee is entitled to participate: *Provided,* That the spouse
18 and dependent coverage is limited to excess or secondary coverage
19 for each spouse and dependent who has primary coverage from any
20 other source. For purposes of this section, the term "primary
21 coverage" means individual or group hospital and surgical insurance
22 coverage or individual or group major medical insurance coverage or
23 group prescription drug coverage in which the spouse or dependent

1 is the named insured or certificate holder. For the purposes of
2 this section, "dependent" includes an eligible employee's unmarried
3 child or stepchild under the age of twenty-five if that child or
4 stepchild meets the definition of a "qualifying child" or a
5 "qualifying relative" in Section 152 of the Internal Revenue Code.
6 The director may require proof regarding spouse and dependent
7 primary coverage and shall adopt rules governing the nature,
8 discontinuance and resumption of any employee's coverage for his or
9 her spouse and dependents.

10 (c) *Continuation after termination.* -- If an employee
11 participating in the plan is terminated from employment
12 involuntarily or in reduction of work force, the employee's
13 insurance coverage provided under this article shall continue for
14 a period of three months at no additional cost to the employee and
15 the employer shall continue to contribute the employer's share of
16 plan premiums for the coverage. An employee discharged for
17 misconduct shall not be eligible for extended benefits under this
18 section. Coverage may be extended up to the maximum period of
19 three months, while administrative remedies contesting the charge
20 of misconduct are pursued. If the discharge for misconduct be
21 upheld, the full cost of the extended coverage shall be reimbursed
22 by the employee. If the employee is again employed or recalled to
23 active employment within twelve months of his or her prior
24 termination, he or she shall not be considered a new enrollee and

1 may not be required to again contribute his or her share of the
2 premium cost, if he or she had already fully contributed such share
3 during the prior period of employment.

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

23 (e) *Conversion of accrued annual and sick leave for extended*
24 *insurance coverage upon retirement for employees who elected to*

1 *participate in the plan after June, 1988.* -- Notwithstanding
2 subsection (d) of this section, and except as otherwise provided in
3 subsections (g) and (l) of this section when an employee
4 participating in the plan who elected to participate in the plan on
5 and after July 1, 1988, is compelled or required by law to retire
6 before reaching the age of sixty-five, or when the participating
7 employee voluntarily retires as provided by law, that employee's
8 annual leave or sick leave, if any, shall be credited toward one
9 half of the premium cost of the insurance provided by this article,
10 for periods and scope of coverage determined according to the
11 following formulae: (1) One additional month of single retiree
12 coverage for every two days of annual leave or sick leave, or both,
13 which the employee had accrued as of the effective date of his or
14 her retirement; or (2) one additional month of coverage for a
15 retiree, his or her spouse and dependents for every three days of
16 annual leave or sick leave, or both, which the employee had accrued
17 as of the effective date of his or her retirement. The remaining
18 premium cost shall be borne by the retired employee if he or she
19 elects the coverage. For purposes of this subsection, an employee
20 who has been a participant under spouse or dependent coverage and
21 who reenters the plan within twelve months after termination of his
22 or her prior coverage shall be considered to have elected to
23 participate in the plan as of the date of commencement of the prior
24 coverage. For purposes of this subsection, an employee shall not

1 be considered a new employee after returning from extended
2 authorized leave on or after July 1, 1988.

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

20 (g) *Conversion of accrued annual and sick leave for extended*
21 *insurance coverage upon retirement for certain higher education*
22 *employees.* -- Except as otherwise provided in subsection (l) of
23 this section, when an employee, who is a higher education full-time
24 faculty member employed on an annual contract basis other than for

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

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

21 (i) *Retiree participation.* -- All retirees under the
22 provisions of this article, including those defined in section two
23 of this article; those retiring prior to April 21, 1972; and those
24 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

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

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

24 (n) *Prohibition on conversion of accrued years of teaching*

1 *service for extended coverage upon retirement for new employees who*
2 *elect to participate in the plan July, 2009. -- Any employee hired*
3 *on or after July 1, 2009, who elects to participate in the plan may*
4 *not apply accrued years of teaching service toward the cost of*
5 *premiums for extended insurance coverage upon his or her*
6 *retirement.*

7

CHAPTER 15. PUBLIC SAFETY.

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

9 **§15-2A-21. Retirement credited service through member's use, as**
10 **option, of accrued annual or sick leave days.**

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

1 service on the basis of one work day credit granted for each one
 2 day of accrued annual or sick leave, with each month of retirement
 3 service credit to equal twenty workdays and with any remainder of
 4 ten workdays or more to constitute a full month of additional
 5 credit and any remainder of less than ten workdays to be dropped
 6 and not used. The credited service shall be allowed and not
 7 considered to controvert the requirement of no more than twelve
 8 months' credited service in any year's period.

9

CHAPTER 18. EDUCATION.

10 ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

11 §18-7A-23. Withdrawal and death benefits.

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

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

24 (2) Except as provided in section twenty-five-b of this

1 article, if the contributor has completed twenty years of total
2 service, he or she may elect to receive at retirement age an
3 annuity which shall be computed as provided in this article:
4 *Provided*, That if the contributor has completed at least five, but
5 fewer than twenty, years of total service in this state, he or she
6 may elect to receive at age sixty-two an annuity which shall be
7 computed as provided in this article. The contributor must notify
8 the retirement board in writing concerning the election. If the
9 contributor has completed fewer than five years of service in this
10 state, he or she shall be subject to the provisions as outlined in
11 subdivision (1) of this subsection.

12 (b) Benefits upon the death of a contributor prior to
13 retirement under the provisions of this article shall be paid as
14 follows:

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

23 (2) If the facts do not permit payment under subdivision (1)
24 of this subsection, then the following sum shall be paid to the

1 refund beneficiary of the contributor: The contributor's
2 accumulated contributions up to the year of his or her death plus
3 an amount equal to his or her employee contributions. The latter
4 sum shall emanate from the Employer's Accumulation Fund.

5 **§18-7A-25. Eligibility for retirement allowance.**

6 (a) Except for a person who first becomes a member of the
7 retirement system on or after July 1, 2012, any member who has
8 attained the age of sixty years or who has had thirty-five years of
9 total service as a teacher in West Virginia, regardless of age, is
10 eligible for an annuity. No new entrant nor present member is
11 eligible for an annuity, however, if either has less than five
12 years of service to his or her credit.

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

17 (c) Except for a person who first becomes a member of the
18 retirement system on or after July 1, 2012, any member who has
19 served at least thirty but less than thirty-five years as a teacher
20 or nonteaching member in West Virginia and is less than fifty-five
21 years of age is eligible for an annuity, but the annuity shall be
22 the reduced actuarial equivalent of the annuity the member would
23 have received if the member were age fifty-five at the time such
24 annuity was applied for.

1 (d) The request for any annuity shall be made by the member in
2 writing to the retirement board, but in case of retirement for
3 disability, the written request may be made by either the member or
4 the employer.

5 (e) A member is eligible for annuity for disability if he or
6 she satisfies the conditions in either subdivision (1) or (2) of
7 this subsection and meets the conditions of subdivision (3) of this
8 subsection as follows:

9 (1) His or her service as a teacher or nonteaching member in
10 West Virginia must total at least ten years and service as a
11 teacher or nonteaching member must have been terminated because of
12 disability, which disability must have caused absence from service
13 for at least six months before his or her application for
14 disability annuity is approved.

15 (2) His or her service as a teacher or nonteaching member in
16 West Virginia must total at least five years and service as a
17 teacher or nonteaching member must have been terminated because of
18 disability, which disability must have caused absence from service
19 for at least six months before his or her application for
20 disability annuity is approved and the disability is a direct and
21 total result of an act of student violence directed toward the
22 member.

23 (3) An examination by a physician or physicians selected by
24 the retirement board must show that the member is at the time

1 mentally or physically incapacitated for service as a teacher, that
2 for that service the disability is total and likely to be permanent
3 and that he or she should be retired in consequence of the
4 disability.

5 (f) Continuance of the disability of the retired member
6 shall be established by medical examination, as prescribed in
7 subdivision (3), subsection (e) of this section, annually for five
8 years after retirement, and thereafter at such times required by
9 the retirement board. Effective January 1, 1998, a member who has
10 retired because of a disability may select an option of payment
11 under the provisions of section twenty-eight of this article:
12 *Provided*, That any option selected under the provisions of section
13 twenty-eight of this article shall be in all respects the actuarial
14 equivalent of the straight life annuity benefit the disability
15 retiree receives or would receive if the options under said section
16 were not available and that no beneficiary or beneficiaries of the
17 disability annuitant may receive a greater benefit, nor receive any
18 benefit for a greater length of time, than the beneficiary or
19 beneficiaries would have received had the disability retiree not
20 made any election of the options available under said section. In
21 determining the actuarial equivalence, the board shall take into
22 account the life expectancies of the member and the beneficiary:
23 *Provided, however*, That the life expectancies may at the discretion
24 of the board be established by an underwriting medical director of

1 a competent insurance company offering annuities. Payment of the
2 disability annuity provided in this article shall cease immediately
3 if the retirement board finds that the disability of the retired
4 teacher no longer exists, or if the retired teacher refuses to
5 submit to medical examination as required by this section.

6 **§18-7A-25b. Withdrawal and eligibility for retirement allowance**
7 **for a person who first becomes a member of the**
8 **retirement system on or after July 1, 2012**

9 (a) A person who first becomes a member of the retirement
10 system on or after July 1, 2012, who has five or more years of
11 contributing service, and attains or has attained the age of sixty-
12 two years, may retire upon his or her written application filed
13 with the board of trustees setting forth at what time, not less
14 than thirty days nor more than ninety days subsequent to the
15 execution and filing thereof the member desires to be retired. Upon
16 retirement, the member shall receive an annuity provided for in
17 section twenty-six of the article.

18 (b) Any person who first becomes a member of the retirement
19 system on or after July 1, 2012, who has five or more years of
20 contributing service and who leaves the employ of a participating
21 public employer prior to attaining age sixty-two years for any
22 reason except his or her disability or death, is entitled to an
23 annuity computed according to section twenty-two of this article,
24 as that section was in force as of the date of his or her

1 separation from the employ of a participating public employer:
2 Provided, That he or she does not withdraw his or her accumulated
3 contributions from the members' deposit fund. His or her annuity
4 shall begin the first day of the calendar month next following the
5 month in which his or her application for same is filed with the
6 board of trustees on or after his or her attaining age sixty-four
7 years.

8 (c) Any member who qualifies for deferred retirement benefits
9 in accordance with subsection (a) of this subsection and has 20 or
10 more years of contributing service in force is entitled to an
11 annuity computed as in subsection (a) of this section, Provided,
12 That his or her annuity shall begin the first day of the calendar
13 month next following the month in which his or her application for
14 same is filed with the board of trustees on or after his or
15 attaining age sixty-three.

16 (d) Notwithstanding any of the other provisions of this
17 section or of this article, except sections twenty-eight-a and
18 twenty-eight-b of this article, and pursuant to rules promulgated
19 by the board, any member who first becomes a member of the
20 retirement system on or after July 1, 2012, and has ten or more
21 years of contributing service in force, and who elects to take
22 early retirement, which for the purposes of this subsection means
23 retirement following attainment of age sixty but prior to age
24 attaining age sixty-two, is entitled to the full computation of

1 annuity according to section twenty-two of this article, as that
2 section was in force as of the date of retirement application, but
3 with the reduced actuarial equivalent of the annuity the member
4 would have received if his or her benefit had commenced at age
5 sixty-two when he or she would have been entitled to full
6 computation of benefit without any reduction.

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

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

1 annuity according to section twenty-two of this article, as that
2 section was in force as of the date of retirement application, but
3 with the reduced actuarial equivalent of the annuity the member
4 would have received if his or her benefit had commenced at age
5 sixty-two when he or she would have been entitled to full
6 computation of benefit without any reduction.

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-26b are new; therefore, strike-throughs and underscoring have been omitted.