

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

House Bill 4540

BY DELEGATES STORCH, EVANS, BATES, ANDERSON, PETHTEL,

AND GEARHEART

(BY REQUEST OF THE CONSOLIDATED PUBLIC RETIREMENT BOARD)

[Originating in the Committee on Finance;

February 21, 2022]

1 A BILL to amend and reenact §5-10-2, §5-10-27b and §5-10-44 of the Code of West Virginia,
2 1931, as amended; to amend and reenact §7-14D-2, §7-14D-7a and §7-14D-9b; to amend
3 and reenact §8-22A-2, §8-22A-8a and §8-22A-11; to amend and reenact §15-2-25b, §15-
4 2-45 and §15-2-54; to amend and reenact §15-2A-2, §15-2A-6b and §15-2A-23; to amend
5 and reenact §16-5V-2, §16-5V-8a and §16-5V-13; to amend and reenact §18-7A-3, §18-
6 7A-14c and §18-7A-28b; to amend and reenact §18-7B-2, §18-7B-12a and §18-7B-21; to
7 amend and reenact §20-18-2, §20-18-9 and §20-18-14; and to amend and reenact §51-
8 9-1a, §51-9-12b and §51-9-18, all relating to updating provisions of the retirement and
9 pension benefits of the West Virginia Public Employees Retirement System, the Deputy
10 Sheriffs' Retirement System, the Municipal Police and Firefighters Retirement System, the
11 State Police Death, Disability and Retirement Fund, the West Virginia State Police
12 Retirement Fund, the Emergency Medical Services Retirement System, the Teachers
13 Retirement System, the Teachers' Defined Contribution Retirement System, the Natural
14 Resources Police Officers Retirement System and the Judges' Retirement Fund in order
15 to comply with federal law; changing age threshold for plan members born after June 30,
16 1949; clarifying provisions regarding correction of errors; and amending definitions for
17 each retirement system named here.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.

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

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

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

8 (3) "Actuarial equivalent" means a benefit of equal value computed upon the basis of a
9 mortality table and regular interest adopted by the board of trustees from time to time: *Provided,*
10 That when used in the context of compliance with the federal maximum benefit requirements of
11 Section 415 of the Internal Revenue Code, actuarial equivalent shall be computed using the
12 mortality tables and interest rates required to comply with those requirements;

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

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

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

21 (7) "Board of Trustees" or "board" means the Board of Trustees of the West Virginia
22 Consolidated Public Retirement ~~System~~ Board;

23 (8) "Compensation" means the remuneration paid a member by a participating public
24 employer for personal services rendered by the member to the participating public employer. In
25 the event a member's remuneration is not all paid in money, his or her participating public
26 employer shall fix the value of the portion of the remuneration which is not paid in money:
27 *Provided,* That members hired in a position for the first time on or after July 1, 2014, who receive
28 nonmonetary remuneration shall not have nonmonetary remuneration included in compensation

29 for retirement purposes and nonmonetary remuneration may not be used in calculating a
30 member's final average salary. Any lump sum or other payments paid to members that do not
31 constitute regular salary or wage payments are not considered compensation for the purpose of
32 withholding contributions for the system or for the purpose of calculating a member's final average
33 salary. These payments include, but are not limited to, attendance or performance bonuses, one-
34 time flat fee or lump sum payments, payments paid as a result of excess budget, or employee
35 recognition payments. The board shall have final power to decide whether the payments shall be
36 considered compensation for purposes of this article;

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

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

43 (11) "Employee" means any person who serves regularly as an officer or employee, full
44 time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment,
45 in the service of, and whose compensation is payable, in whole or in part, by any political
46 subdivision, or an officer or employee whose compensation is calculated on a daily basis and
47 paid monthly or on completion of assignment, including technicians and other personnel
48 employed by the West Virginia National Guard whose compensation, in whole or in part, is paid
49 by the federal government: *Provided*, That an employee of the Legislature whose term of
50 employment is otherwise classified as temporary and who is employed to perform services
51 required by the Legislature for its regular sessions or during the interim between regular sessions
52 and who has been or is employed during regular sessions or during the interim between regular
53 sessions in seven or more consecutive calendar years, as certified by the clerk of the house in
54 which the employee served, is an employee, any provision to the contrary in this article

55 notwithstanding, and is entitled to credited service in accordance with provisions of §5-10-14 of
56 this code: *Provided, however,* That members of the legislative body of any political subdivision
57 and ~~judges~~ commissioners of the ~~state Court of Claims~~ West Virginia Claims Commission are
58 employees receiving one year of service credit for each one-year term served and prorated
59 service credit for any partial term served, anything contained in this article to the contrary
60 notwithstanding: *Provided further,* That only a compensated board member of a participating
61 public employer appointed to a board of a nonlegislative body for the first time on or after July 1,
62 2014, who normally is required to work 12 months per year and 1040 hours of service per year is
63 an employee. In any case of doubt as to who is an employee within the meaning of this article,
64 the board of trustees shall decide the question;

65 (12) “Employer error” means an omission, misrepresentation, or deliberate act in violation
66 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations
67 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
68 Regulations by the participating public employer that has resulted in an underpayment or
69 overpayment of contributions required; ~~A deliberate act contrary to the provisions of this section~~
70 ~~by a participating public employer does not constitute employer error~~

71 (13) “Final average salary” means either of the following: *Provided,* That salaries for
72 determining benefits during any determination period may not exceed the maximum
73 compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and
74 Section 401 (a) (17) of the Internal Revenue Code: *Provided, however,* That the provisions of §5-
75 10-22h of this code are not applicable to the amendments made to this subdivision during the
76 2011 regular session of the Legislature;

77 (A) The average of the highest annual compensation received by a member, including a
78 member of the Legislature who participates in the retirement system in the year 1971 or thereafter,
79 during any period of three consecutive years of credited service contained within the member’s
80 15 years of credited service immediately preceding the date his or her employment with a

81 participating public employer last terminated: *Provided*, That for persons who were first hired on
82 or after July 1, 2015, any period of five consecutive years of contributing service contained within
83 the member's fifteen years of credited service immediately preceding the date his or her
84 employment with a participating public employer last terminated; or

85 (B) If the member has less than five years of credited service, the average of the annual
86 rate of compensation received by the member during his or her total years of credited service;
87 and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision,
88 of a member of the Legislature who participates in the retirement system as a member of the
89 Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation
90 (the total of all compensation paid under §4-2A-2, §4-2A-3, §4-2A-4, and §4-2A-5 of this code),
91 in the year 1971, or in any year thereafter, plus any other compensation he or she receives in any
92 year from any other participating public employer including the State of West Virginia, without any
93 multiple in excess of one times his or her actual legislative compensation and other compensation,
94 shall be used: *Provided*, That final average salary for any former member of the Legislature or for
95 any member of the Legislature in the year 1971 who, in either event, was a member of the
96 Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on
97 November 30 in any one or more of those three years and who participated in the retirement
98 system as a member of the Legislature in any one or more of those years means: (i) Either,
99 notwithstanding the provisions of this subdivision preceding this proviso, \$1,500 multiplied by
100 eight, plus the highest other compensation the former member or member received in any one of
101 the three years from any other participating public employer including the State of West Virginia;
102 or (ii) final average salary determined in accordance with paragraph (A) or (B) of this subdivision,
103 whichever computation produces the higher final average salary, and in determining the annual
104 compensation under subparagraph (ii) of this paragraph, the legislative compensation of the
105 former member shall be computed on the basis of \$1,500 multiplied by eight, and the legislative
106 compensation of the member shall be computed on the basis set forth in the provisions of this

107 subdivision immediately preceding this paragraph or on the basis of \$1,500 multiplied by eight,
108 whichever computation as to the member produces the higher annual compensation;

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

111 (15) "Limited credited service" means service by employees of the West Virginia
112 Educational Broadcasting Authority, in the employment of West Virginia University, during a
113 period when the employee made contributions to another retirement system, as required by West
114 Virginia University, and did not make contributions to the Public Employees Retirement System:
115 *Provided*, That while limited credited service can be used for the formula set forth in §5-10-21(e)
116 of this code, it may not be used to increase benefits calculated under §5-10-22 of this code;

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

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

125 (18) "Plan year" means the same as referenced in §5-10-42 of this code;

126 (19) "Political subdivision" means the State of West Virginia, a county, city or town in the
127 state; a school corporation or corporate unit; any separate corporation or instrumentality
128 established by one or more counties, cities or towns, as permitted by law; any corporation or
129 instrumentality supported in most part by counties, cities or towns; and any public corporation
130 charged by law with the performance of a governmental function and whose jurisdiction is
131 coextensive with one or more counties, cities or towns: *Provided*, That any mental health agency
132 participating in the Public Employees Retirement System before July 1, 1997, is considered a

133 political subdivision solely for the purpose of permitting those employees who are members of the
134 Public Employees Retirement System to remain members and continue to participate in the
135 retirement system at their option after July 1, 1997: *Provided, however,* That the Regional
136 Community Policing Institute which participated in the Public Employees Retirement System
137 before July 1, 2000, is considered a political subdivision solely for the purpose of permitting those
138 employees who are members of the Public Employees Retirement System to remain members
139 and continue to participate in the Public Employees Retirement System after July 1, 2000;

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

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

144 (22) "Required beginning date" means April 1 of the calendar year following the later of:
145 (A) The calendar year in which the member attains age ~~seventy and one-half years of age~~ 70.5
146 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in
147 which a member ~~who has attained the age seventy and one-half years of age and who ceases~~
148 providing service covered under this retirement system to a participating employer;

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

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

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

155 (26) "Retroactive service" means: (1) Service between July 1, 1961, and the date an
156 employer decides to become a participating member of the Public Employees Retirement System;
157 (2) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost
158 in accordance with 162 CSR ~~5.13~~ 5.12; and (3) service of any member of a legislative body or

159 employees of the State Legislature whose term of employment is otherwise classified as
160 temporary for which the employee is eligible, but for which the employee did not elect to participate
161 at that time;

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

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

§5-10-27b. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution of a member's or beneficiary's
2 interest and take precedence over any inconsistent provisions of this code. This provision applies
3 to plan years beginning after December 31, 1986. Notwithstanding anything in this code to the
4 contrary, the payment of benefits under this article shall be determined and made in accordance
5 with Section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated
6 thereunder as applicable to governmental plans, including without limitation the minimum
7 distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations
8 thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term
9 used in this article has the same meaning as when used in a comparable context in section
10 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder
11 unless a different meaning is clearly required by the context or definition in this article. The
12 following provisions apply to payments of benefits required under this article:

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

20 to a particular member under this retirement system: Provided, however, That if the member
21 elects an annuity option which provides survivor benefits to a beneficiary who is not the member's
22 spouse, and the annuity option elected would provide survivor payments that exceed the
23 applicable percentage permitted by the MDIB regulations under Section 401(a)(9) of the Internal
24 Revenue Code, the member's annuity election shall be changed to the highest survivor annuity
25 option offered under this retirement system which satisfies the MDIB regulations. Benefit
26 payments under this section shall not be delayed pending, or contingent upon, receipt of an
27 application for retirement from the member.

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

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

36 (d) If a member dies before distribution to him or her has commenced, and the member's
37 interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary,
38 distributions are to be made over the life of that beneficiary or over a period certain not greater
39 than the life expectancy of that beneficiary, commencing on or before the following:

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

42 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
43 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
44 percent of the survivor benefit, distributions are to commence on or before the later of:

45 (A) December 31 of the calendar year in which the member would have attained age
46 ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

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

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

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

60 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
61 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
62 percent of the survivor benefit, election of life expectancy treatment must be made on or before
63 the earlier of (A) or (B) below:

64 (A) The later of: (i) December 31 of the calendar year immediately following the calendar
65 year in which the member died; or (ii) December 31 of the calendar year in which the member
66 would have attained age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born
67 after June 30, 1949); or

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

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

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

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

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

25 or credited to the employer under any of the means used by the board for returning employer
26 overpayments to the retirement system.

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

41 (e) *Overpayments from the retirement system.* — If any error results in any member,
42 retirant, beneficiary, entity or other individual receiving from the system more than he would have
43 been entitled to receive had the error not occurred, the board, upon learning of the error, shall
44 correct the error in a timely manner. If correction of the error occurs after annuity payments to a
45 retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the
46 benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person
47 who received the overpayment from the retirement system shall repay the amount of any
48 overpayment to the retirement system in any manner permitted by the board. If the member,
49 retirant, beneficiary or other person who received the overpayment is deceased and an annuity
50 or lump sum benefit is still payable, the amount of the remaining overpayment shall be offset

51 against the benefit payment owed in a manner consistent with the board's error correction policy.

52 Interest shall not accumulate on any corrective payment made to the retirement system pursuant
53 to this subsection.

54 (f) *Underpayments from the retirement system.* — If any error results in any member,
55 retirant, beneficiary, entity or other individual receiving from the retirement system less than he
56 would have been entitled to receive had the error not occurred, the board, upon learning of the
57 error, shall correct the error in a timely manner. If correction of the error occurs after annuity
58 payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the
59 payment of the benefit to the correct amount. In addition, the board shall pay the amount of such
60 underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall
61 not be paid on any corrective payment made by the retirement system pursuant to this subsection.

62 (g) *Eligibility errors.* — If the board finds that an individual, employer, or both individual
63 and employer currently or formerly participating in the retirement system is not eligible to
64 participate, the board shall notify the individual and his or her employer of the determination and
65 terminate participation in the retirement system. Any erroneous payments to the retirement
66 system shall be returned to the employer and individual in accordance with the methods described
67 in subsections (c) and (d) of this section and any erroneous payments from the retirement system
68 to such individual shall be returned to the retirement system in accordance with the methods
69 described in subsection (e) of this section. Any erroneous service credited to the individual shall
70 be removed. If the board determines that an individual or employer, or both, has not been
71 participating in the retirement system, but was eligible to and required to be participating in the
72 retirement system, the board shall as soon as practicable notify the individual and his or her
73 employer of the determination and the individual and his or her employer shall prospectively
74 commence participation in the retirement system as soon as practicable. Service credit for service
75 prior to the date on which the individual prospectively commences participation in the retirement

76 system shall be granted only if the board receives the required employer and employee
77 contributions for such service, in accordance with subsection (b) of this section, including interest.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.

1 As used in this article, unless a federal law or regulation or the context clearly requires a
2 different meaning:

3 (a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the
4 member's final average salary multiplied by the member's years of credited service: *Provided*,
5 That members who are retired on or retire after July 1, 2018, shall have an accrued benefit of two
6 and one-half percent of the member's final average salary multiplied by the member's years of
7 credited service. A member's accrued benefit may not exceed the limits of Section 415 of the
8 Internal Revenue Code and is subject to the provisions of §7-14D-9a of this code.

9 (b) "Accumulated contributions" means the sum of all amounts deducted from the
10 compensation of a member, or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code,
11 either pursuant to §7-14D-7 of this code or §5-10-29 of this code as a result of covered
12 employment together with regular interest on the deducted amounts.

13 (c) "Active member" means a member who is active and contributing to the plan.

14 (d) "Active military duty" means full-time active duty with any branch of the armed forces
15 of the United States, including service with the National Guard or reserve military forces when the
16 member has been called to active full-time duty and has received no compensation during the
17 period of that duty from any board or employer other than the armed forces.

18 (e) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the
19 mortality table and interest rates as set and adopted by the retirement board in accordance with
20 the provisions of this article: *Provided*, That when used in the context of compliance with the

21 federal maximum benefit requirements of Section 415 of the Internal Revenue Code, “actuarial
22 equivalent” shall be computed using the mortality tables and interest rates required to comply with
23 those requirements.

24 (f) “Annual compensation” means the wages paid to the member during covered
25 employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined
26 without regard to any rules that limit the remuneration included in wages based upon the nature
27 or location of employment or services performed during the plan year plus amounts excluded
28 under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense
29 allowances, cash, or noncash fringe benefits or both, deferred compensation, and welfare
30 benefits. Annual compensation for determining benefits during any determination period may not
31 exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-
32 10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

33 (g) “Annual leave service” means accrued annual leave.

34 (h) “Annuity starting date” means the first day of the first calendar month following receipt
35 of the retirement application by the board or the required beginning date, if earlier: *Provided*, That
36 the member has ceased covered employment and reached early or normal retirement age.

37 (i) “Base salary” means a member’s cash compensation exclusive of overtime from
38 covered employment during the last 12 months of employment. Until a member has worked 12
39 months, annualized base salary is used as base salary.

40 (j) “Beneficiary” means a natural person who is entitled to, or will be entitled to, an annuity
41 or other benefit payable by the plan.

42 (k) “Board” means the Consolidated Public Retirement Board created pursuant to §5-10D-
43 1 *et seq.* of this code.

44 (l) “County commission” has the meaning ascribed to it in §7-1-1 of this code.

45 (m) “Covered employment” means either: (1) Employment as a deputy sheriff and the
46 active performance of the duties required of a deputy sheriff; (2) the period of time which active

47 duties are not performed but disability benefits are received under §7-14D-14 or §7-14D-15 of
48 this code; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or
49 her employment as a deputy sheriff where the secondary employment requires the deputy sheriff
50 to be a member of another retirement system which is administered by the Consolidated Public
51 Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the deputy sheriff
52 contributes to the fund created in §7-14D-6 of this code the amount specified as the deputy
53 sheriff's contribution in §7-14D-7 of this code.

54 (n) "Credited service" means the sum of a member's years of service, active military duty,
55 disability service, unused annual leave service, and unused sick leave service.

56 (o) "Deputy sheriff" means an individual employed as a county law-enforcement deputy
57 sheriff in this state and as defined by §7-14-2 of this code.

58 (p) "Dependent child" means either:

59 (1) An unmarried person under age 18 who is:

60 (A) A natural child of the member;

61 (B) A legally adopted child of the member;

62 (C) A child who at the time of the member's death was living with the member while the
63 member was an adopting parent during any period of probation; or

64 (D) A stepchild of the member residing in the member's household at the time of the
65 member's death; or

66 (2) Any unmarried child under age 23:

67 (A) Who is enrolled as a full-time student in an accredited college or university;

68 (B) Who was claimed as a dependent by the member for federal income tax purposes at
69 the time of the member's death; and

70 (C) Whose relationship with the member is described in subparagraph (A), (B), or (C),
71 paragraph (1) of this subdivision.

72 (q) "Dependent parent" means the father or mother of the member who was claimed as a
73 dependent by the member for federal income tax purposes at the time of the member's death.

74 (r) "Disability service" means service credit received by a member, expressed in whole
75 years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both,
76 during which time a member receives disability benefits under §7-14D-14 or §7-14D-15 of this
77 code.

78 (s) "Early retirement age" means age 40 or over and completion of 20 years of service.

79 (t) "Employer error" means an omission, misrepresentation, or deliberate act in violation
80 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or
81 the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
82 Rules by the participating public employer that has resulted in an underpayment or overpayment
83 of contributions required. ~~A deliberate act contrary to the provisions of this section by a~~
84 ~~participating public employer does not constitute employer error~~

85 (u) "Effective date" means July 1, 1998.

86 (v) "Final average salary" means the average of the highest annual compensation received
87 for covered employment by the member during any five consecutive plan years within the
88 member's last 10 years of service. If the member did not have annual compensation for the five
89 full plan years preceding the member's attainment of normal retirement age and during that period
90 the member received disability benefits under §7-14D-14 or §7-14D-15 of this code then "final
91 average salary" means the average of the full monthly salary determined paid to the member
92 during that period multiplied by 12.

93 (w) "Fund" means the West Virginia Deputy Sheriff Retirement Fund created pursuant to
94 §7-14D-6 of this code.

95 (x) "Hour of service" means:

96 (1) Each hour for which a member is paid or entitled to payment for covered employment
97 during which time active duties are performed. These hours shall be credited to the member for
98 the plan year in which the duties are performed; and

99 (2) Each hour for which a member is paid or entitled to payment for covered employment
100 during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity
101 including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof
102 and without regard to whether the employment relationship has terminated. Hours under this
103 paragraph shall be calculated and credited pursuant to West Virginia Division of Labor rules. A
104 member will not be credited with any hours of service for any period of time he or she is receiving
105 benefits under §7-14D-14 or §7-14D-15 of this code; and

106 (3) Each hour for which back pay is either awarded or agreed to be paid by the employing
107 county commission, irrespective of mitigation of damages. The same hours of service shall not
108 be credited both under this paragraph and paragraph (1) or (2) of this subdivision. Hours under
109 this paragraph shall be credited to the member for the plan year or years to which the award or
110 agreement pertains rather than the plan year in which the award, agreement, or payment is made.

111 (y) "Member" means a person first hired as a deputy sheriff after the effective date of this
112 article, as defined in subdivision (u) of this section, or a deputy sheriff first hired prior to the
113 effective date and who elects to become a member pursuant to §7-14D-5 or §7-14D-17 of this
114 code. A member shall remain a member until the benefits to which he or she is entitled under
115 this article are paid or forfeited or until cessation of membership pursuant to §7-14D-5 of this
116 code.

117 (z) "Monthly salary" means the portion of a member's annual compensation which is paid
118 to him or her per month.

119 (aa) "Normal form" means a monthly annuity which is one-twelfth of the amount of the
120 member's accrued benefit which is payable for the member's life. If the member dies before the
121 sum of the payments he or she receives equals his or her accumulated contributions on the

122 annuity starting date, the named beneficiary shall receive in one lump sum the difference between
123 the accumulated contributions at the annuity starting date and the total of the retirement income
124 payments made to the member.

125 (bb) "Normal retirement age" means the first to occur of the following: (1) Attainment of
126 age 50 years and the completion of 20 or more years of service; (2) while still in covered
127 employment, attainment of at least age 50 years, and when the sum of current age plus years of
128 service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least
129 age 60 years, and completion of five years of service; or (4) attainment of age 62 years and
130 completion of five or more years of service.

131 (cc) "Partially disabled" means a member's inability to engage in the duties of deputy
132 sheriff by reason of any medically determinable physical or mental impairment that can be
133 expected to result in death or that has lasted or can be expected to last for a continuous period
134 of not less than 12 months. A member may be determined partially disabled for the purposes of
135 this article and maintain the ability to engage in other gainful employment which exists within the
136 state but which ability would not enable him or her to earn an amount at least equal to two thirds
137 of the average annual compensation earned by all active members of this plan during the plan
138 year ending as of the most recent June 30, as of which plan data has been assembled and used
139 for the actuarial valuation of the plan.

140 (dd) "Public Employees Retirement System" means the West Virginia Public Employees
141 Retirement System created by §5-10-1 *et seq.* of this code.

142 (ee) "Plan" means the West Virginia Deputy Sheriff Death, Disability, and Retirement Plan
143 established by this article.

144 (ff) "Plan year" means the 12-month period commencing on July 1 of any designated year
145 and ending the following June 30.

146 (gg) "Qualified public safety employee" means any employee of a participating state or
147 political subdivision who provides police protection, fire-fighting services, or emergency medical

148 services for any area within the jurisdiction of the state or political subdivision, or such other
149 meaning given to the term by section 72(t)(10)(B) of the Internal Revenue Code or by Treasury
150 Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

151 (hh) "Regular interest" means the rate or rates of interest per annum, compounded
152 annually, as the board adopts in accordance with the provisions of this article.

153 (ii) "Required beginning date" means April 1 of the calendar year following the later of: (i)
154 The calendar year in which the member attains age ~~70 and one-half~~ 70.5 (if born before July 1,
155 1949) or age 72 (if born after June 30, 1949); or (ii) the calendar year in which he or she retires or
156 otherwise separates from covered employment.

157 (jj) "Retire" or "retirement" means a member's withdrawal from the employ of a
158 participating public employer and the commencement of an annuity by the plan.

159 (kk) "Retirement income payments" means the annual retirement income payments
160 payable under the plan.

161 (ll) "Spouse" means the person to whom the member is legally married on the annuity
162 starting date.

163 (mm) "Surviving spouse" means the person to whom the member was legally married at
164 the time of the member's death and who survived the member.

165 (nn) "Totally disabled" means a member's inability to engage in substantial gainful activity
166 by reason of any medically determined physical or mental impairment that can be expected to
167 result in death or that has lasted or can be expected to last for a continuous period of not less
168 than 12 months. For purposes of this subdivision:

169 (1) A member is totally disabled only if his or her physical or mental impairment or
170 impairments are so severe that he or she is not only unable to perform his or her previous work
171 as a deputy sheriff but also cannot, considering his or her age, education and work experience,
172 engage in any other kind of substantial gainful employment which exists in the state regardless

173 of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific
174 job vacancy exists; or (C) the member would be hired if he or she applied for work.

175 (2) "Physical or mental impairment" is an impairment that results from an anatomical,
176 physiological, or psychological abnormality that is demonstrated by medically accepted clinical
177 and laboratory diagnostic techniques. A member's receipt of Social Security disability benefits
178 creates a rebuttable presumption that the member is totally disabled for purposes of this plan.
179 Substantial gainful employment rebuts the presumption of total disability.

180 (oo) "Year of service". — A member shall, except in his or her first and last years of covered
181 employment, be credited with year of service credit based upon the hours of service performed
182 as covered employment and credited to the member during the plan year based upon the following
183 schedule:

184	Hours of Service	Years of Service Credited
185	Less than 500	0
186	500 to 999	1/3
187	1,000 to 1,499	2/3
188	1,500 or more	1

189 During a member's first and last years of covered employment, the member shall be
190 credited with one-twelfth of a year of service for each month during the plan year in which the
191 member is credited with an hour of service. A member is not entitled to credit for years of service
192 for any time period during which he or she received disability payments under §7-14D-14 or §7-
193 14D-15 of this code. Except as specifically excluded, years of service include covered
194 employment prior to the effective date. Years of service which are credited to a member prior to
195 his or her receipt of accumulated contributions upon termination of employment pursuant to §7-
196 14D-13 or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the
197 member repays the accumulated contributions with interest pursuant to §7-14D-13 of this code
198 or had prior to the effective date made the repayment pursuant to §5-10-18 of this code.

§7-14D-7a. Correction of errors; underpayments; overpayments.

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

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

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

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

40 (e) Overpayments from the plan: If any error results in any member, retirant, beneficiary,
41 entity or other individual receiving from the system more than he would have been entitled to
42 receive had the error not occurred, the board, upon learning of the error, shall correct the error in
43 a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary
44 have commenced, the board shall prospectively adjust the payment of the benefit to the correct
45 amount. In addition, the member, retirant, beneficiary, entity or other person who received the
46 overpayment from the plan shall repay the amount of any overpayment to the plan in any manner
47 permitted by the board. If the member, retirant, beneficiary or other person who received the
48 overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the
49 remaining overpayment shall be offset against the benefit payment owed in a manner consistent
50 with the board's error correction policy. Interest shall not accumulate on any corrective payment
51 made to the plan pursuant to this subsection.

52 (f) Underpayments from the plan: If any error results in any member, retiree, beneficiary,
53 entity or other individual receiving from the plan less than he would have been entitled to receive
54 had the error not occurred, the board, upon learning of the error, shall correct the error in a timely
55 manner. If correction of the error occurs after annuity payments to a retiree or beneficiary have
56 commenced, the board shall prospectively adjust the payment of the benefit to the correct amount.
57 In addition, the board shall pay the amount of such underpayment to the member, retiree,
58 beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment
59 made by the plan pursuant to this subsection.

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

§7-14D-9b. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution of a member's or beneficiary's
2 interest and take precedence over any inconsistent provisions of this plan. This section applies to

3 plan years beginning after December 31, 1986. Notwithstanding anything in the plan to the
4 contrary, the payment of benefits under this article shall be determined and made in accordance
5 with section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated
6 thereunder as applicable to governmental plans, including without limitation the minimum
7 distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations
8 thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term
9 used in this article has the same meaning as when used in a comparable context in section
10 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder
11 unless a different meaning is clearly required by the context or definition in this article. The
12 following provisions apply to payments of benefits required under this article:

13 (a) The payment of benefits under the plan to any member shall be distributed to him or
14 her not later than the required beginning date, or be distributed to him or her commencing not
15 later than the required beginning date, in accordance with regulations prescribed under section
16 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the
17 member and his or her beneficiary or over a period not extending beyond the life expectancy of
18 the member and his or her beneficiary: *Provided*, That the requirements of this section shall not
19 be construed to grant a right to a form of benefit which is not otherwise available to a particular
20 member under this retirement system: *Provided, however*, That if the member elects an annuity
21 option which provides survivor benefits to a beneficiary who is not the member's spouse, and the
22 annuity option elected would provide survivor payments that exceed the applicable percentage
23 permitted by the MDIB regulations under section 401(a)(9) of the Internal Revenue Code, the
24 member's annuity election shall be changed to the highest survivor annuity option offered under
25 this plan which satisfies the MDIB regulations. Benefit payments under this section shall not be
26 delayed pending, or contingent upon, receipt of an application for retirement from the member.

27 (b) If a member dies after distribution to him or her has commenced pursuant to this
28 section but before his or her entire interest in the plan has been distributed, then the remaining

29 portion of that interest shall be distributed at least as rapidly as under the method of distribution
30 being used at the date of his or her death.

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

35 (d) If a member dies before distribution to him or her has commenced, and the member's
36 interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary,
37 distributions are to be made over the life of that beneficiary or over a period certain not greater
38 than the life expectancy of that beneficiary, commencing on or before the following:

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

41 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
42 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
43 percent of the survivor benefit, distributions are to commence on or before the later of:

44 (A) December 31 of the calendar year in which the member would have attained age
45 ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

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

48 (e) If a member dies before distribution to him or her has commenced and the survivor
49 annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary
50 who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section
51 may elect to have life expectancy treatment apply to the distribution for purposes of determining
52 whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such
53 election shall not delay the required distribution of the deceased member's entire interest in the
54 retirement system beyond December 31 of the calendar year containing the fifth anniversary of

55 the member's death as required by subsection (c) of this section: *Provided, however,* That the
56 election is timely made in a form acceptable to the board on or before the following:

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

59 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
60 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
61 percent of the survivor benefit, election of life expectancy treatment must be made on or before
62 the earlier of (A) or (B) below:

63 (A) The later of: (i) December 31 of the calendar year immediately following the calendar
64 year in which the member died; or (ii) December 31 of the calendar year in which the member
65 would have attained age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born
66 after June 30, 1949); or

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

CHAPTER 8. MUNICIPAL CORPORATIONS.

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

§8-22A-2. Definitions.

1 As used in this article, unless a federal law or regulation or the context clearly requires a
2 different meaning:

3 (a) "Accrued benefit" means on behalf of any member two and six-tenths percent per year
4 of the member's final average salary for the first 20 years of credited service. Additionally, two
5 percent per year for 21 through 25 years and one percent per year for 26 through 30 years will be
6 credited with a maximum benefit of 67 percent of a member's final average salary. A member's
7 accrued benefit may not exceed the limits of section 415 of the Internal Revenue Code and is
8 subject to the provisions of §8-22A-10 of this code.

9 (b) "Accumulated contributions" means the sum of all retirement contributions deducted
10 from the compensation of a member, or paid on his or her behalf as a result of covered
11 employment, together with regular interest on the deducted amounts.

12 (c) "Active military duty" means full-time duty in the active military service of the United
13 States Army, Navy, Air Force, Coast Guard or Marine Corps. The term does not include regularly
14 required training or other duty performed by a member of a reserve component or National Guard
15 unless the member can substantiate that he or she was called into the full-time active military
16 service of the United States and has received no compensation during the period of that duty from
17 any board or employer other than the armed forces.

18 (d) "Actuarial equivalent" means a benefit of equal value computed on the basis of the
19 mortality table and interest rates as set and adopted by the board in accordance with the
20 provisions of this article: *Provided*, That when used in the context of compliance with the federal
21 maximum benefit requirements of section 415 of the Internal Revenue Code, "actuarial
22 equivalent" shall be computed using the mortality tables and interest rates required to comply with
23 those requirements.

24 (e) "Annual compensation" means the wages paid to the member during covered
25 employment within the meaning of section 3401(a) of the Internal Revenue Code, but determined
26 without regard to any rules that limit the remuneration included in wages based on the nature or
27 location of employment or services performed during the plan year plus amounts excluded under
28 section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense
29 allowances, cash or noncash fringe benefits, or both, deferred compensation and welfare benefits.
30 Annual compensation for determining benefits during any determination period may not exceed
31 the maximum compensation allowed as adjusted for cost-of-living in accordance with §5-10D-7
32 of this code and section 401(a) (17) of the Internal Revenue Code.

33 (f) "Annual leave service" means accrued annual leave.

34 (g) "Annuity starting date" means the first day of the month for which an annuity is payable
35 after submission of a retirement application or the required beginning date, if earlier. For purposes
36 of this subsection, if retirement income payments commence after the normal retirement age,
37 "retirement" means the first day of the month following or coincident with the latter of the last day
38 the member worked in covered employment or the member's normal retirement age and after
39 completing proper written application for retirement on an application supplied by the board.

40 (h) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity
41 or other benefit payable by the plan.

42 (i) "Board" means the Consolidated Public Retirement Board.

43 (j) "Covered employment" means either: (1) Employment as a full-time municipal police
44 officer or firefighter and the active performance of the duties required of that employment; or (2)
45 the period of time during which active duties are not performed but disability benefits are received
46 under this article; or (3) concurrent employment by a municipal police officer or firefighter in a job
47 or jobs in addition to his or her employment as a municipal police officer or firefighter in this plan
48 where the secondary employment requires the police officer or firefighter to be a member of
49 another retirement system which is administered by the Consolidated Public Retirement Board
50 pursuant to this code: *Provided*, That the police officer or firefighter contributes to the fund created
51 in this article the amount specified as the member's contribution in §8-22A-8 of this code.

52 (k) "Credited service" means the sum of a member's years of service, active military duty
53 and disability service.

54 (l) "Dependent child" means either: (1) An unmarried person under age 18 who is: (A) A
55 natural child of the member; (B) a legally adopted child of the member; (C) a child who at the time
56 of the member's death was living with the member while the member was an adopting parent
57 during any period of probation; or (D) a stepchild of the member residing in the member's
58 household at the time of the member's death; or (2) Any unmarried child under age 23: (A) Who
59 is enrolled as a full-time student in an accredited college or university; (B) who was claimed as a

60 dependent by the member for federal income tax purposes at the time of the member's death;
61 and (C) whose relationship with the member is described in paragraph (A), (B) or (C), subdivision
62 (1) of this subsection.

63 (m) "Dependent parent" means the father or mother of the member who was claimed as
64 a dependent by the member for federal income tax purposes at the time of the member's death.

65 (n) "Disability service" means service credit received by a member, expressed in whole
66 years, fractions thereof, or both, equal to one half of the whole years, fractions thereof, or both,
67 during which time a member receives disability benefits under this article.

68 (o) "Effective date" means January 1, 2010.

69 (p) "Employer error" means an omission, misrepresentation or deliberate act in violation
70 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations
71 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
72 Regulations by the participating public employer that has resulted in an underpayment or
73 overpayment of contributions required.

74 ~~(p)~~ (q) "Final average salary" means the average of the highest annual compensation
75 received for covered employment by the member during any five consecutive plan years within
76 the member's last 10 years of service while employed, prior to any disability payment. If the
77 member did not have annual compensation for the five full plan years preceding the member's
78 attainment of normal retirement age and during that period the member received disability benefits
79 under this article, then "final average salary" means the average of the monthly compensation
80 which the member was receiving in the plan year prior to the initial disability. "Final average salary"
81 does not include any lump sum payment for unused, accrued leave of any kind or character.

82 ~~(q)~~ (r) "Full-time employment" means permanent employment of an employee by a
83 participating municipality in a position which normally requires 12 months per year service and
84 requires at least 1,040 hours per year service in that position.

85 ~~(f)~~ (s) “Fund” means the West Virginia Municipal Police Officers and Firefighters
86 Retirement Fund created by this article.

87 ~~(s)~~ (t) “Hour of service” means: (1) Each hour for which a member is paid or entitled to
88 payment for covered employment during which time active duties are performed. These hours
89 shall be credited to the member for the plan year in which the duties are performed; and (2) each
90 hour for which a member is paid or entitled to payment for covered employment during a plan
91 year but where no duties are performed due to vacation, holiday, illness, incapacity including
92 disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without
93 regard to whether the employment relationship has terminated. Hours under this subdivision shall
94 be calculated and credited pursuant to West Virginia Division of Labor rules. A member may not
95 be credited with any hours of service for any period of time he or she is receiving benefits under
96 §8-22A-17 and §8-22A-18 of this code; and (3) each hour for which back pay is either awarded
97 or agreed to be paid by the employing municipality, irrespective of mitigation of damages. The
98 same hours of service may not be credited both under subdivision (1) or (2) of this subsection
99 and under this subdivision. Hours under this paragraph shall be credited to the member for the
100 plan year or years to which the award or agreement pertains, rather than the plan year in which
101 the award, agreement or payment is made.

102 ~~(t)~~ (u) “Member” means, except as provided in §8-22A-32 and §8-22A-33 of this code, a
103 person hired as a municipal police officer or municipal firefighter, as defined in this section, by a
104 participating municipal employer on or after January 1, 2010. A member shall remain a member
105 until the benefits to which he or she is entitled under this article are paid or forfeited.

106 ~~(u)~~ (v) “Monthly salary” means the W-2 reportable compensation received by a member
107 during the month.

108 ~~(v)~~ (w) “Municipality” has the meaning ascribed to it in this code.

109 ~~(w)~~ (x)(1) “Municipal police officer” means an individual employed as a member of a paid
110 police department by a West Virginia municipality or municipal subdivision which has established

111 and maintains a municipal policemen's pension and relief fund, and who is not a member of, and
112 not eligible for membership in, a municipal policemen's pension and relief fund as provided in §8-
113 22-16 of this code: *Provided*, That municipal police officer also means an individual employed as
114 a member of a paid police department by a West Virginia municipality or municipal subdivision
115 which is authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid
116 police department does not mean a department whose employees are paid nominal salaries or
117 wages or are paid only for services actually rendered on an hourly basis.

118 (2) "Municipal firefighter" means an individual employed as a member of a paid fire
119 department by a West Virginia municipality or municipal subdivision which has established and
120 maintains a municipal firemen's pension and relief fund, and who is not a member of, and not
121 eligible for membership in, a municipal firemen's pension and relief fund as provided in §8-22-16
122 of this code: *Provided*, That municipal firefighter also means an individual employed as a member
123 of a paid fire department by a West Virginia municipality or municipal subdivision which is
124 authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid fire
125 department does not mean a department whose employees are paid nominal salaries or wages
126 or are paid only for services actually rendered on an hourly basis.

127 ~~(x)~~ (y) "Municipal subdivision" means any separate corporation or instrumentality
128 established by one or more municipalities, as permitted by law; and any public corporation
129 charged by law with the performance of a governmental function and whose jurisdiction is
130 coextensive with one or more municipalities.

131 ~~(y)~~ (z) "Normal form" means a monthly annuity which is one twelfth of the amount of the
132 member's accrued benefit which is payable for the member's life. If the member dies before the
133 sum of the payments he or she receives equals his or her accumulated contributions on the
134 annuity starting date, the named beneficiary shall receive in one lump sum the difference between
135 the accumulated contributions at the annuity starting date and the total of the retirement income
136 payments made to the member.

137 ~~(z)~~ (aa) “Normal retirement age” means the first to occur of the following: (1) Attainment
138 of age 50 years and the completion of 20 or more years of regular contributory service; (2) while
139 still in covered employment, attainment of at least age 50 years and when the sum of current age
140 plus regular contributory service equals or exceeds 70 years; (3) while still in covered
141 employment, attainment of at least age 60 years and completion of 10 years of regular
142 contributory service; or (4) attainment of age 62 years and completion of five or more years of
143 regular contributory service.

144 ~~(aa)~~ (bb) “Plan” means the West Virginia Municipal Police Officers and Firefighters
145 Retirement System established by this article.

146 ~~(bb)~~ (cc) “Plan year” means the 12-month period commencing on January 1 of any
147 designated year and ending the following December 31.

148 ~~(cc)~~ (dd) “Qualified public safety employee” means any employee of a participating state
149 or political subdivision who provides police protection, firefighting services or emergency medical
150 services for any area within the jurisdiction of the state or political subdivision, or such other
151 meaning given to the term by section 72(t) (10) (B) of the Internal Revenue Code or by Treasury
152 Regulation §1.401(a)-1(b) (2) (v) as they may be amended from time to time.

153 ~~(dd)~~ (ee) “Regular contributory service” means a member’s credited service excluding
154 active military duty, disability service and accrued annual and sick leave service.

155 ~~(ee)~~ (ff) “Regular interest” means the rate or rates of interest per annum, compounded
156 annually, as the board adopts in accordance with the provisions of this article.

157 ~~(ff)~~ (gg) “Required beginning date” means April 1 of the calendar year following the later
158 of: (1) The calendar year in which the member attains age ~~70 and one-half~~ 70.5 (if born before
159 July 1, 1949) or age 72 (if born after June 30, 1949); or (2) the calendar year in which he or she
160 retires or otherwise separates from covered employment.

161 ~~(gg)~~ (hh) “Retirement income payments” means the monthly retirement income payments
162 payable.

163 ~~(hh)~~ (ii) “Spouse” means the person to whom the member is legally married on the annuity
164 starting date.

165 ~~(ii)~~ (jj) “Surviving spouse” means the person to whom the member was legally married at
166 the time of the member’s death and who survived the member.

167 ~~(jj)~~ (kk) “Totally disabled” means a member’s inability to engage in substantial gainful
168 activity by reason of any medically determined physical or mental impairment that can be
169 expected to result in death or that has lasted or can be expected to last for a continuous period
170 of not less than 12 months. For purposes of this subsection: (1) A member is totally disabled only
171 if his or her physical or mental impairment or impairments ~~is~~ are so severe that he or she is not
172 only unable to perform his or her previous work as a police officer or firefighter but also cannot,
173 considering his or her age, education and work experience, engage in any other kind of substantial
174 gainful employment which exists in the state regardless of whether: (A) The work exists in the
175 immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member
176 would be hired if he or she applied for work. For purposes of this article, substantial gainful
177 employment is the same definition as used by the United States Social Security Administration;
178 and (2) “Physical or mental impairment” is an impairment that results from an anatomical,
179 physiological or psychological abnormality that is demonstrated by medically accepted clinical
180 and laboratory diagnostic techniques. The board may require submission of a member’s annual
181 tax return for purposes of monitoring the earnings limitation.

182 ~~(kk)~~ (ll) “Vested” means eligible for retirement income payments after completion of five or
183 more years of regular contributory service.

184 ~~(ll)~~ (mm) “Year of service” means a member shall, except in his or her first and last years
185 of covered employment, be credited with years of service credit based on the hours of service
186 performed as covered employment and credited to the member during the plan year based on
187 the following schedule:

188	Hours of Service	Year of Service Credited
189	Less than 500	0
190	500 to 999	1/3
191	1,000 to 1,499	2/3
192	1,500 or more	1

193 During a member’s first and last years of covered employment, the member shall be
 194 credited with one twelfth of a year of service for each month during the plan year in which the
 195 member is credited with an hour of service for which contributions were received by the fund. A
 196 member is not entitled to credit for years of service for any time period during which he or she
 197 received disability payments under §8-22A-17 and §8-22A-18 of this code.

§8-22A-8a. Correction of errors; underpayments; overpayments.

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

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

16 only after the board receives full payment of all required employee and employer contributions or
17 underpayments, including interest.

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

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

39 (e) *Overpayments from the plan.* — If any error results in any member, retirant, beneficiary,
40 entity or other individual receiving from the plan more than he would have been entitled to receive
41 had the error not occurred the board, ~~after~~ upon learning of the error shall correct the error in a

42 timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary
43 have commenced, the board shall prospectively adjust the payment of the benefit to the correct
44 amount. In addition, the member, retirant, beneficiary, entity or other person who received the
45 overpayment from the plan shall repay the amount of any overpayment to the retirement system
46 in any manner permitted by the board. If the member, retirant, beneficiary, or other person who
47 received the overpayment is deceased and an annuity or lump sum benefit is still payable, the
48 amount of the remaining overpayment shall be offset against the benefit payment owed in a
49 manner consistent with the board's error correction policy. Interest shall not accumulate on any
50 corrective payment made to the plan pursuant to this subsection.

51 (f) *Underpayments from the plan.* — If any error results in any member, retirant,
52 beneficiary, entity or other individual receiving from the plan less than he would have been entitled
53 to receive had the error not occurred, the board, upon learning of the error, shall correct the error
54 in a timely manner. If correction of the error occurs after annuity payments to a retirant or
55 beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to
56 the correct amount. In addition, the board shall pay the amount of such underpayment to the
57 member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any
58 corrective payment made by the retirement system pursuant to this subsection.

59 (g) *Eligibility errors.* — If the board finds that an individual, employer, or both individual
60 and employer formerly or currently participating in the plan is not eligible to participate, the board
61 shall notify the individual and his or her employer of the determination, and terminate participation
62 in the plan. Any erroneous payments to the plan shall be returned to the employer and individual
63 in accordance with the methods described in subsections (c) and (d) of this section, and any
64 erroneous payments from the plan to such individual shall be returned to the plan in accordance
65 with the methods described in subsection (e) of this section. Any erroneous service credited to
66 the individual shall be removed. If the board determines that an individual or employer, or both,
67 has not been participating in the retirement plan, but was eligible to and required to be

68 participating in the plan, the board shall as soon as practicable notify the individual and his or her
69 employer of the determination, and the individual and his or her employer shall prospectively
70 commence participation in the plan as soon as practicable. Service credit for service prior to the
71 date on which the individual prospectively commences participation in the plan shall be granted
72 only if the board receives the required employer and employee contributions for such service, in
73 accordance with subsection (b) of this section, including interest.

§8-22A-11. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution of a member's or beneficiary's
2 interest and take precedence over any inconsistent provisions of this plan. This section applies to
3 plan years beginning after December 31, 1986. Notwithstanding anything in the plan to the
4 contrary, the payment of benefits under this article shall be determined and made in accordance
5 with section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated
6 thereunder as applicable to governmental plans, including without limitation the minimum
7 distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations
8 thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term
9 used in this article has the same meaning as when used in a comparable context in section
10 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder
11 unless a different meaning is clearly required by the context or definition in this article. The
12 following provisions apply to payments of benefits required under this article:

13 (a) The payment of benefits under the plan to any member shall be distributed to him or
14 her not later than the required beginning date, or be distributed to him or her commencing not
15 later than the required beginning date, in accordance with regulations prescribed under section
16 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the
17 member and his or her beneficiary or over a period not extending beyond the life expectancy of
18 the member and his or her beneficiary: *Provided*, That the requirements of this section shall not
19 be construed to grant a right to a form of benefit which is not otherwise available to a particular

20 member under this retirement system: Provided, however, That if the member elects an annuity
21 option which provides survivor benefits to a beneficiary who is not the member's spouse, and the
22 annuity option elected would provide survivor payments that exceed the applicable percentage
23 permitted by the MDIB regulations under section 401(a)(9) of the Internal Revenue Code, the
24 member's annuity election shall be changed to the highest survivor annuity option offered under
25 this plan which satisfies the MDIB regulations. Benefit payments under this section shall not be
26 delayed pending, or contingent on, receipt of an application for retirement from the member.

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

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

35 (d) If a member dies before distribution to him or her has commenced, and the member's
36 interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary,
37 distributions are to be made over the life of that beneficiary or over a period certain not greater
38 than the life expectancy of that beneficiary, commencing on or before the following:

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

41 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
42 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
43 percent of the survivor benefit, distributions are to commence on or before the later of:

44 (A) December 31 of the calendar year in which the member would have attained age
45 ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

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

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

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

59 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
60 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
61 percent of the survivor benefit, election of life expectancy treatment must be made on or before
62 the earlier of (A) or (B) below:

63 (A) The later of: (i) December 31 of the calendar year immediately following the calendar
64 year in which the member died; or (ii) December 31 of the calendar year in which the member
65 would have attained age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born
66 after June 30, 1949); or

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

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-25b. Definitions.

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

2 (a) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value
3 computed upon the basis of the mortality table and interest rates as set and adopted by the
4 retirement board in accordance with the provisions of this article: *Provided*, That when used in
5 the context of compliance with the federal maximum benefit requirements of section 415 of the
6 Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and
7 interest rates required to comply with those requirements.

8 (b) "Agency" means the West Virginia State Police.

9 (c) "Beneficiary" means a surviving spouse or other surviving beneficiary who is entitled
10 to, or will be entitled to, an annuity or other benefit payable by the fund.

11 (d) "Board" means the West Virginia Consolidated Public Retirement Board created
12 pursuant to §5-10D-1 *et seq.* of this code.

13 (e) "Dependent child" means any unmarried child or children born to or adopted by a
14 member of the fund who is:

15 (1) Under the age of 18;

16 (2) After reaching 18 years of age, continues as a full-time student in an accredited high
17 school, college, university, business or trade school, until the child or children reaches the age of
18 20 years; or

19 (3) Is financially dependent on the member by virtue of a permanent mental or physical
20 disability upon evidence satisfactory to the board.

21 (f) "Dependent parent" means the member's parent or stepparent claimed as a dependent
22 by the member for federal income tax purposes at the time of the member's death.

23 (g) "Employee" means any person regularly employed in the service of the agency as a
24 law-enforcement officer before March 12, 1994, and who is eligible to participate in the fund.

25 (h) "Employer error" means an omission, misrepresentation or deliberate act in violation
26 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations
27 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State

28 Regulations by the participating public employer that has resulted in an underpayment or
29 overpayment of contributions required.

30 (i) “Fund”, “plan” or “system” means the West Virginia State Police Death, Disability and
31 Retirement Fund.

32 ~~(j)~~ (i) “Law-enforcement officer” means an individual employed or otherwise engaged in
33 either a public or private position which involves the rendition of services relating to enforcement
34 of federal, state or local laws for the protection of public or private safety, including, but not limited
35 to, positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any
36 other law-enforcement position which requires certification, but excluding positions held by
37 elected sheriffs or appointed chiefs of police whose duties are determined by the board to be
38 purely administrative in nature.

39 ~~(j)~~ (k) “Member” means any person who has contributions standing to his or her credit in
40 the fund and who has not yet entered into retirement status.

41 ~~(k)~~ (l) “Partially disabled” means an employee’s inability, on a probable permanent basis,
42 to perform the essential duties of a law-enforcement officer by reason of any medically
43 determinable physical or mental impairment which has lasted or can be expected to last for a
44 continuous period of not less than 12 months, but which impairment does not preclude the
45 employee from engaging in other types of nonlaw-enforcement employment.

46 ~~(l)~~ (m) “Physical or mental impairment” means an impairment that results from an
47 anatomical, physiological or psychological abnormality that is demonstrated by medically
48 accepted clinical and laboratory diagnostic techniques.

49 ~~(m)~~ (n) “Plan year” means the 12-month period commencing on July 1 of any designated
50 year and ending the following June 30.

51 ~~(n)~~ (o) “Qualified public safety employee” means any employee of a participating state or
52 political subdivision who provides police protection, fire-fighting services or emergency medical
53 services for any area within the jurisdiction of the state or political subdivision, or such other

54 meaning given to the term by section 72(t)(10)(B) of the Internal Revenue Code or by Treasury
55 Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

56 ~~(e)~~ (p) “Retirant” or “retiree” means any former member who is receiving an annuity
57 payable by the fund.

58 ~~(f)~~ (q) “Surviving spouse” means the person to whom the member was legally married at
59 the time of the member’s death and who survived the member.

60 ~~(g)~~ (r) “Totally disabled” means an employee’s probable permanent inability to engage in
61 substantial gainful activity by reason of any medically determined physical or mental impairment
62 that can be expected to result in death or that has lasted or can be expected to last for a
63 continuous period of not less than 12 months. For purposes of this subsection, an employee is
64 totally disabled only if his or her physical or mental impairments are so severe that he or she is
65 not only unable to perform his or her previous work as an employee of the agency but also cannot,
66 considering his or her age, education and work experience, engage in any other kind of substantial
67 gainful employment which exists in the state regardless of whether: (1) The work exists in the
68 immediate area in which the employee lives; (2) a specific job vacancy exists; or (3) the employee
69 would be hired if he or she applied for work.

§15-2-45. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution of a member’s or beneficiary’s
2 interest and take precedence over any inconsistent provisions of this code. This section applies
3 to plan years beginning after December 31, 1986. Notwithstanding anything in the retirement
4 system to the contrary, the payment of benefits under this article shall be determined and made
5 in accordance with section 401(a)(9) of the Internal Revenue Code and the federal regulations
6 promulgated thereunder as applicable to governmental plans, including without limitation the
7 minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the
8 regulations thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the
9 regulations. Any term used in this article has the same meaning as when used in a comparable

10 context in section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated
11 thereunder unless a different meaning is clearly required by the context or definition in this article.

12 The following provisions apply to payments of benefits required under this article:

13 (a) The payment of benefits under the fund to any member shall be distributed to him or
14 her not later than the required beginning date, or be distributed to him or her commencing not
15 later than the required beginning date, in accordance with regulations prescribed under section
16 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the
17 member and his or her beneficiary, or over a period not extending beyond the life expectancy of
18 the member and his or her beneficiary: *Provided*, That the requirements of this section may not
19 be construed to grant a right to a form of benefit which is not otherwise available to a particular
20 member under this retirement system. For purposes of this section, the term "required beginning
21 date" means April 1 of the calendar year following the later of: (i) The calendar year in which the
22 member attains age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after
23 June 30, 1949); or (ii) the calendar year in which the member retires or otherwise ceases providing
24 covered service under this fund. Benefit payments under this section shall not be delayed
25 pending, or contingent upon, receipt of an application for retirement from the member.

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

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

34 (d) If a member dies before distribution to him or her has commenced, and the member's
35 interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary,

36 distributions are to be made over the life of that beneficiary or over a period certain not greater
37 than the life expectancy of that beneficiary, commencing on or before the following:

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

40 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
41 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
42 percent of the survivor benefit, distributions are to commence on or before the later of:

43 (A) December 31 of the calendar year in which the member would have attained age
44 ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

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

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

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

58 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
59 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
60 percent of the survivor benefit, election of life expectancy treatment must be made on or before
61 the earlier of (A) or (B) below:

62 (A) The later of: (i) December 31 of the calendar year immediately following the calendar
63 year in which the member died; or (ii) December 31 of the calendar year in which the member
64 would have attained age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born
65 after June 30, 1949); or

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

§15-2-54. Correction of errors; underpayments; overpayments.

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

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

18 (c) *Overpayments to the system by an employer.* — When mistaken or excess employer
19 contributions, including any overpayments have been made to the system by the employer, the
20 board shall credit the employer with an amount equal to the overpayment, to be offset against the

21 employer's future liability for employer contributions to the system. If the employer has no future
22 liability for employer contributions to the retirement system, the board shall refund the erroneous
23 contributions directly to the employer. Earnings or interest shall not be returned, offset or credited
24 to the employer under any of the means used by the board for returning employer overpayments
25 to the retirement system.

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

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

47 who received the overpayment is deceased and an annuity or lump sum benefit is still payable,
48 the amount of the remaining overpayment shall be offset against the benefit payment owed in a
49 manner consistent with the board's error correction policy. Interest shall not accumulate on any
50 corrective payment made to the system pursuant to this subsection.

51 (f) *Underpayments from the system.* — If any error results in any member, retirant,
52 beneficiary, entity or other individual receiving from the retirement system less than he would
53 have been entitled to receive had the error not occurred, the board, upon learning of the error,
54 shall correct the error in a timely manner. If correction of the error occurs after annuity payments
55 to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of
56 the benefit to the correct amount. In addition, the board shall pay the amount of such
57 underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall
58 not be paid on any corrective payment made by the system pursuant to this subsection.

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

72 system shall be granted only if the board receives the required employer and employee
73 contributions for such service, in accordance with subsection (b) in this section, including interest.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-2. Definitions.

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

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

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

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

14 (4) "Agency" means the West Virginia State Police.

15 (5) "Base salary" means compensation paid to an employee without regard to any
16 overtime pay.

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

19 (7) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-
20 1 *et seq.* of this code.

21 (8) "Dependent child" means any unmarried child or children born to or adopted by a
22 member or retirant of the fund who:

23 (A) Is under the age of 18;

24 (B) After reaching 18 years of age, continues as a full-time student in an accredited high
25 school, college, university or business or trade school until the child or children ~~reaches~~ reaches
26 the age of 23 years; or

27 (C) Is financially dependent on the member or retirant by virtue of a permanent mental or
28 physical disability upon evidence satisfactory to the board.

29 (9) "Dependent parent" means the member's or retirant's parent or stepparent claimed as
30 a dependent by the member or retirant for federal income tax purposes at the time of the
31 member's or retirant's death.

32 (10) "Employee" means any person regularly employed in the service of the agency as a
33 law-enforcement officer after March 12, 1994, and who is eligible to participate in the fund.

34 (11) "Employer error" means an omission, misrepresentation or deliberate act in violation
35 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations
36 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
37 Regulations by the participating public employer that has resulted in an underpayment or
38 overpayment of contributions required.

39 (12) "Final average salary" means the average of the highest annual compensation
40 received for employment with the agency, including compensation paid for overtime service,
41 received by the employee during any five calendar years within the employee's last 10 years of
42 service: *Provided*, That annual compensation for determining benefits during any determination
43 period may not exceed the maximum compensation allowed as adjusted for cost of living in
44 accordance with §5-10D-7 of this code and section 401(a)(17) of the Internal Revenue Code.

45 ~~(12)~~ (13) "Fund", "plan", "system" or "retirement system" means the West Virginia State
46 Police Retirement Fund created and established by this article.

47 ~~(13)~~ (14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as
48 amended.

49 ~~(14)~~ (15) “Law-enforcement officer” means an individual employed or otherwise engaged
50 in either a public or private position which involves the rendition of services relating to enforcement
51 of federal, state or local laws for the protection of public or private safety, including, but not limited
52 to, positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any
53 other law-enforcement position which requires certification, but excluding positions held by
54 elected sheriffs or appointed chiefs of police whose duties are purely administrative in nature.

55 ~~(15)~~ (16) “Member” means any person who has contributions standing to his or her credit
56 in the fund and who has not yet entered into retirement status.

57 ~~(16)~~ (17) “Month of service” means each month for which an employee is paid or entitled
58 to payment for at least one hour of service for which contributions were remitted to the fund. These
59 months shall be credited to the member for the calendar year in which the duties are performed.

60 ~~(17)~~ (18) “Partially disabled” means an employee’s inability, on a probable permanent
61 basis, to perform the essential duties of a law-enforcement officer by reason of any medically
62 determinable physical or mental impairment which has lasted or can be expected to last for a
63 continuous period of not less than 12 months, but which impairment does not preclude the
64 employee from engaging in other types of nonlaw-enforcement employment.

65 ~~(18)~~ (19) “Physical or mental impairment” means an impairment that results from an
66 anatomical, physiological or psychological abnormality that is demonstrated by medically
67 accepted clinical and laboratory diagnostic techniques.

68 ~~(19)~~ (20) “Plan year” means the 12-month period commencing on July 1 of any designated
69 year and ending the following June 30.

70 ~~(20)~~ (21) “Qualified public safety employee” means any employee of a participating state
71 or political subdivision who provides police protection, fire fighting services or emergency medical
72 services for any area within the jurisdiction of the state or political subdivision, or such other
73 meaning given to the term by section 72(t)(10)(B) of the Internal Revenue Code or by Treasury
74 Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

75 ~~(24)~~ (22) “Required beginning date” means April 1 of the calendar year following the later
76 of: (A) The calendar year in which the member attains age ~~seventy and one-half years~~ 70.5 (if
77 born before July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which
78 he or she retires or otherwise separates from service with the agency. ~~after having attained the~~
79 ~~age of 70.5 years.~~

80 ~~(22)~~ (23) “Retirant” or “retiree” means any member who commences an annuity payable
81 by the retirement system.

82 ~~(23)~~ (24) “Salary” means the compensation of an employee, excluding any overtime
83 payments.

84 ~~(24)~~ (25) “Surviving spouse” means the person to whom the member or retirant was legally
85 married at the time of the member’s or retirant’s death and who survived the member or retirant.

86 ~~(25)~~ (26) “Totally disabled” means an employee’s probable permanent inability to engage
87 in substantial gainful activity by reason of any medically determined physical or mental impairment
88 that can be expected to result in death or that has lasted or can be expected to last for a
89 continuous period of not less than 12 months. For purposes of this subdivision, an employee is
90 totally disabled only if his or her physical or mental impairments are so severe that he or she is
91 not only unable to perform his or her previous work as an employee of the agency, but also cannot,
92 considering his or her age, education and work experience, engage in any other kind of substantial
93 gainful employment which exists in the state regardless of whether: (A) The work exists in the
94 immediate area in which the employee lives; (B) a specific job vacancy exists; or (C) the employee
95 would be hired if he or she applied for work.

96 ~~(26)~~ (27) “Years of service” means the months of service acquired by a member while in
97 active employment with the agency divided by 12. Years of service shall be calculated in years
98 and fraction of a year from the date of active employment of the member with the agency through
99 the date of termination of employment or retirement from the agency. If a member returns to active
100 employment with the agency following a previous termination of employment with the agency and

101 the member has not received a refund of contributions plus interest for the previous employment
102 under ~~section eight of this article~~ §15-2A-8 of this code, service shall be calculated separately for
103 each period of continuous employment and years of service shall be the total service for all
104 periods of employment. Years of service shall exclude any periods of employment with the agency
105 for which a refund of contributions plus interest has been paid to the member unless the employee
106 repays the previous withdrawal, as provided in ~~section eight of this article~~ §15-2A-8 of this code,
107 to reinstate the years of service.

§15-2A-6b. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution of a member's interest and take
2 precedence over any inconsistent provisions of this retirement system. This section applies to
3 plan years beginning after December 31, 1986. Notwithstanding anything in the retirement system
4 to the contrary, the payment of benefits under this article shall be determined and made in
5 accordance with section 401(a)(9) of the Internal Revenue Code and the federal regulations
6 promulgated thereunder as applicable to governmental plans, including without limitation the
7 minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the
8 regulations thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the
9 regulations. Any term used in this article has the same meaning as when used in a comparable
10 context in section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated
11 thereunder unless a different meaning is clearly required by the context or definition in this article.

12 The following provisions apply to payments of benefits required under this article:

13 (a) The payment of benefits under the retirement system to any member shall be
14 distributed to him or her not later than the required beginning date, or be distributed to him or her
15 commencing not later than the required beginning date, in accordance with regulations prescribed
16 under section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the
17 lives of the member and his or her beneficiary or over a period not extending beyond the life
18 expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this

19 section may not be construed to grant a right to a form of benefit which is not otherwise available
20 to a particular member under this retirement system. Benefit payments under this section shall
21 not be delayed pending, or contingent upon, receipt of an application for retirement from the
22 member.

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

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

31 (d) If a member dies before distribution to him or her has commenced, and the member's
32 interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary,
33 distributions are to be made over the life of that beneficiary or over a period certain not greater
34 than the life expectancy of that beneficiary, commencing on or before the following:

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

37 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
38 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
39 percent of the survivor benefit, distributions are to commence on or before the later of:

40 (A) December 31 of the calendar year in which the member would have attained age
41 ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

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

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

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

55 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
56 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
57 percent of the survivor benefit, election of life expectancy treatment must be made on or before
58 the earlier of (A) or (B) below:

59 (A) The later of: (i) December 31 of the calendar year immediately following the calendar
60 year in which the member died; or (ii) December 31 of the calendar year in which the member
61 would have attained age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born
62 after June 30, 1949); or

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

§15-2A-23. Correction of errors; underpayments; overpayments.

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

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

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

26 (d) *Overpayments to the system by an employee.* — When mistaken or excess employee
27 contributions or overpayments have been made to the system, the board shall have sole authority
28 for determining the means of return, offset or credit to or for the benefit of the individual making
29 the mistaken or excess employee contribution of the amounts, and may use any means
30 authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue

31 Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full
32 and complete discretion, the board may require the employer employing the individual to pay the
33 individual the amounts as wages, with the board crediting the employer with a corresponding
34 amount to offset against its future contributions to the plan. If the employer has no future liability
35 for employer contributions to the retirement system, the board shall refund said amount directly
36 to the employer: *Provided*, That the wages paid to the individual shall not be considered
37 compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or
38 credited under any of the means used by the board for returning employee overpayments.

39 (e) *Overpayments from the system.* — If any error results in any member, retirant,
40 beneficiary, entity or other individual receiving from the system more than he would have been
41 entitled to receive had the error not occurred the board, upon learning of the error, shall correct
42 the error in a timely manner. If correction of the error occurs after annuity payments to a retirant
43 or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit
44 to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who
45 received the overpayment from the system shall repay the amount of any overpayment to the
46 system in any manner permitted by the board. If the member, retirant, beneficiary or other person
47 who received the overpayment is deceased and an annuity or lump sum benefit is still payable,
48 the amount of the remaining overpayment shall be offset against the benefit payment owed in a
49 manner consistent with the board's error correction policy. Interest shall not accumulate on any
50 corrective payment made to the system pursuant to this subsection.

51 (f) *Underpayments from the system.* — If any error results in any member, retirant,
52 beneficiary, entity or other individual receiving from the system less than he would have been
53 entitled to receive had the error not occurred, the board, upon learning of the error, shall correct
54 the error in a timely manner. If correction of the error occurs after annuity payments to a retirant
55 or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit
56 to the correct amount. In addition, the board shall pay the amount of such underpayment to the

57 member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any
58 corrective payment made by the system pursuant to this subsection.

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

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-2. Definitions.

1 As used in this article, unless a federal law or regulation or the context clearly requires a
2 different meaning:

3 (a) “Accrued benefit” means on behalf of any member two and six 10ths percent per year
4 of the member’s final average salary for the first 20 years of credited service. Additionally, two
5 percent per year for 21 through 25 years and one and one-half percent per year for each year

6 over 25 years will be credited with a maximum benefit of 67 percent. A member's accrued benefit
7 may not exceed the limits of section 415 of the Internal Revenue Code and is subject to the
8 provisions of ~~section 12 of this article~~ §16-5V-12 of this code.

9 (1) The board may, upon the recommendation of the board's actuary, increase the
10 employees' contribution rate to 10 and five-tenths percent should the funding of the plan not reach
11 70 percent funded by July 1, 2012. The board shall decrease the contribution rate to eight and
12 one-half percent once the plan funding reaches the 70 percent support objective as of any later
13 actuarial valuation date.

14 (2) Upon reaching the 75 percent actuarial funded level, as of an actuarial valuation date,
15 the board shall increase the two and six-tenths percent to two and three-quarter percent for the
16 first 20 years of credited service. The maximum benefit will also be increased from 67 percent to
17 90 percent.

18 (b) "Accumulated contributions" means the sum of all retirement contributions deducted
19 from the compensation of a member, or paid on his or her behalf as a result of covered
20 employment, together with regular interest on the deducted amounts.

21 (c) "Active military duty" means full-time active duty with any branch of the armed forces
22 of the United States, including service with the National Guard or reserve military forces when the
23 member has been called to active full-time duty and has received no compensation during the
24 period of that duty from any board or employer other than the armed forces.

25 (d) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the
26 mortality table and interest rates as set and adopted by the board in accordance with the
27 provisions of this article.

28 (e) "Annual compensation" means the wages paid to the member during covered
29 employment within the meaning of section 3401(a) of the Internal Revenue Code, but determined
30 without regard to any rules that limit the remuneration included in wages based upon the nature
31 or location of employment or services performed during the plan year plus amounts excluded

32 under section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense
33 allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits.
34 Annual compensation for determining benefits during any determination period may not exceed
35 the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of
36 this code and section 401(a)(17) of the Internal Revenue Code.

37 (f) "Annual leave service" means accrued annual leave.

38 (g) "Annuity starting date" means the first day of the month for which an annuity is payable
39 after submission of a retirement application. For purposes of this subsection, if retirement income
40 payments commence after the normal retirement age, "retirement" means the first day of the
41 month following or coincident with the latter of the last day the member worked in covered
42 employment or the member's normal retirement age and after completing proper written
43 application for retirement on an application supplied by the board.

44 (h) "Board" means the Consolidated Public Retirement Board.

45 (i) "Contributing service" or "contributory service" means service rendered by a member
46 while employed by a participating public employer for which the member made contributions to
47 the plan.

48 (j) "County commission or political subdivision" has the meaning ascribed to it in this code.

49 (k) "Covered employment" means either: (1) Employment as a full-time emergency
50 medical technician, emergency medical technician/paramedic or emergency medical
51 services/registered nurse and the active performance of the duties required of emergency medical
52 services officers; or (2) the period of time during which active duties are not performed but
53 disability benefits are received under this article; or (3) concurrent employment by an emergency
54 medical services officer in a job or jobs in addition to his or her employment as an emergency
55 medical services officer where the secondary employment requires the emergency medical
56 services officer to be a member of another retirement system which is administered by the
57 Consolidated Public Retirement Board pursuant to this code: *Provided*, That the emergency

58 medical services officer contributes to the fund created in this article the amount specified as the
59 member's contribution in §16-5V-8 of this code.

60 (l) "Credited service" means the sum of a member's years of service, active military duty,
61 disability service and accrued annual and sick leave service.

62 (m) "Dependent child" means either:

63 (1) An unmarried person under age 18 who is:

64 (A) A natural child of the member;

65 (B) A legally adopted child of the member;

66 (C) A child who at the time of the member's death was living with the member while the
67 member was an adopting parent during any period of probation; or

68 (D) A stepchild of the member residing in the member's household at the time of the
69 member's death; or

70 (2) Any unmarried child under age 23:

71 (A) Who is enrolled as a full-time student in an accredited college or university;

72 (B) Who was claimed as a dependent by the member for federal income tax purposes at
73 the time of the member's death; and

74 (C) Whose relationship with the member is described in paragraph (A), (B) or (C),
75 subdivision (1) of this subsection.

76 (n) "Dependent parent" means the father or mother of the member who was claimed as a
77 dependent by the member for federal income tax purposes at the time of the member's death.

78 (o) "Disability service" means service received by a member, expressed in whole years,
79 fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during
80 which time a member receives disability benefits under this article.

81 (p) "Early retirement age" means age 45 or over and completion of 20 years of contributory
82 service.

83 (q) "Effective date" means January 1, 2008.

84 (r) "Emergency medical services officer" means an individual employed by the state,
85 county or other political subdivision as a medical professional who is qualified to respond to
86 medical emergencies, aids the sick and injured and arranges or transports to medical facilities,
87 as defined by the West Virginia Office of Emergency Medical Services. This definition is construed
88 to include employed ambulance providers and other services such as law enforcement, rescue
89 or fire department personnel who primarily perform these functions and are not provided any other
90 credited service benefits or retirement plans. These persons may hold the rank of emergency
91 medical technician/basic, emergency medical technician/paramedic, emergency medical
92 services/registered nurse, or others as defined by the West Virginia Office of Emergency Medical
93 Services and the Consolidated Public Retirement Board.

94 (s) "Employer error" means an omission, misrepresentation or deliberate act in violation
95 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or
96 the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
97 Rules by the participating public employer that has resulted in an underpayment or overpayment
98 of contributions required. ~~A deliberate act contrary to the provisions of this article by a participating~~
99 ~~public employer does not constitute employer error.~~

100 (t) "Final average salary" means the average of the highest annual compensation received
101 for covered employment by the member during any five consecutive plan years within the
102 member's last 10 years of service while employed, prior to any disability payment. If the member
103 did not have annual compensation for the five full plan years preceding the member's attainment
104 of normal retirement age and during that period the member received disability benefits under this
105 article, then "final average salary" means the average of the monthly salary determined paid to
106 the member during that period as determined under §16-5V-19 of this code multiplied by 12. Final
107 average salary does not include any lump sum payment for unused, accrued leave of any kind or
108 character.

109 (u) "Full-time employment" means permanent employment of an employee by a
110 participating public employer in a position which normally requires 12 months per year service
111 and requires at least 1040 hours per year service in that position.

112 (v) "Fund" means the West Virginia Emergency Medical Services Retirement Fund created
113 by this article.

114 (w) "Hour of service" means:

115 (1) Each hour for which a member is paid or entitled to payment for covered employment
116 during which time active duties are performed. These hours shall be credited to the member for
117 the plan year in which the duties are performed; and

118 (2) Each hour for which a member is paid or entitled to payment for covered employment
119 during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity
120 including disability, layoff, jury duty, military duty, leave of absence or any combination thereof
121 and without regard to whether the employment relationship has terminated. Hours under this
122 subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A
123 member will not be credited with any hours of service for any period of time he or she is receiving
124 benefits under §16-5V-19 or §16-5V-20 of this code; and

125 (3) Each hour for which back pay is either awarded or agreed to be paid by the employing
126 county commission or political subdivision, irrespective of mitigation of damages. The same hours
127 of service shall not be credited both under subdivision (1) or (2) of this subsection and under this
128 subdivision. Hours under this paragraph shall be credited to the member for the plan year or years
129 to which the award or agreement pertains, rather than the plan year in which the award,
130 agreement or payment is made.

131 (x) "Member" means a person first hired as an emergency medical services officer by an
132 employer which is a participating public employer of the Public Employees Retirement System or
133 the Emergency Medical Services Retirement System after the effective date of this article, as
134 defined in subsection (q) of this section, or an emergency medical services officer of an employer

135 which is a participating public employer of the Public Employees Retirement System first hired
136 prior to the effective date and who elects to become a member pursuant to this article. A member
137 shall remain a member until the benefits to which he or she is entitled under this article are paid
138 or forfeited.

139 (y) "Monthly salary" means the W-2 reportable compensation received by a member
140 during the month.

141 (z) "Normal form" means a monthly annuity which is one twelfth of the amount of the
142 member's accrued benefit which is payable for the member's life. If the member dies before the
143 sum of the payments he or she receives equals his or her accumulated contributions on the
144 annuity starting date, the named beneficiary shall receive in one lump sum the difference between
145 the accumulated contributions at the annuity starting date and the total of the retirement income
146 payments made to the member.

147 (aa) "Normal retirement age" means the first to occur of the following:

148 (1) Attainment of age 50 years and the completion of 20 or more years of regular
149 contributory service, excluding active military duty, disability service and accrued annual and sick
150 leave service;

151 (2) While still in covered employment, attainment of at least age 50 years and when the
152 sum of current age plus regular contributory years of service equals or exceeds 70 years;

153 (3) While still in covered employment, attainment of at least age 60 years and completion
154 of 10 years of regular contributory service; or

155 (4) Attainment of age 62 years and completion of five or more years of regular contributory
156 service.

157 (bb) "Participating public employer" means any county commission or political subdivision
158 in the state which has elected to cover its emergency medical services officers, as defined in this
159 article, under the West Virginia Emergency Medical Services Retirement System.

160 ~~(cc) “Political subdivision” means a county, city or town in the state; any separate~~
161 ~~corporation or instrumentality established by one or more counties, cities or towns, as permitted~~
162 ~~by law; any corporation or instrumentality supported in most part by counties, cities or towns; and~~
163 ~~any public corporation charged by law with the performance of a governmental function and~~
164 ~~whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any~~
165 ~~public corporation established under section four, article fifteen, chapter seven of this code is~~
166 ~~considered a political subdivision solely for the purposes of this article~~

167 ~~(dd)~~ “Plan” means the West Virginia Emergency Medical Services Retirement System
168 established by this article.

169 ~~(ee)~~ (dd) “Plan year” means the 12-month period commencing on January 1 of any
170 designated year and ending the following December 31.

171 (ee) “Political subdivision” means a county, city or town in the state; any separate
172 corporation or instrumentality established by one or more counties, cities or towns, as permitted
173 by law; any corporation or instrumentality supported in most part by counties, cities or towns; and
174 any public corporation charged by law with the performance of a governmental function and
175 whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any
176 public corporation established under §7-15-4 of this code is considered a political subdivision
177 solely for the purposes of this article.

178 (ff) “Public Employees Retirement System” means the West Virginia Public Employee’s
179 Retirement System created by West Virginia Code.

180 (gg) “Regular interest” means the rate or rates of interest per annum, compounded
181 annually, as the board adopts in accordance with the provisions of this article.

182 (hh) “Required beginning date” means April 1 of the calendar year following the later of:
183 (1) The calendar year in which the member attains age ~~seventy and one-half~~ 70.5 (if born before
184 July 1, 1949) or age 72 (if born after June 30, 1949); or (2) the calendar year in which he or she
185 retires or otherwise separates from covered employment.

186 (ii) "Retirant" means any member who commences an annuity payable by the plan.

187 (jj) "Retire" or "retirement" means a member's withdrawal from the employ of a
188 participating public employer and the commencement of an annuity by the plan.

189 (kk) "Retirement income payments" means the monthly retirement income payments
190 payable under the plan.

191 (ll) "Spouse" means the person to whom the member is legally married on the annuity
192 starting date.

193 (mm) "Surviving spouse" means the person to whom the member was legally married at
194 the time of the member's death and who survived the member.

195 (nn) "Totally disabled" means a member's inability to engage in substantial gainful activity
196 by reason of any medically determined physical or mental impairment that can be expected to
197 result in death or that has lasted or can be expected to last for a continuous period of not less
198 than 12 months.

199 For purposes of this subsection:

200 (1) A member is totally disabled only if his or her physical or mental impairment or
201 impairments is so severe that he or she is not only unable to perform his or her previous work as
202 an emergency medical services officer but also cannot, considering his or her age, education and
203 work experience, engage in any other kind of substantial gainful employment which exists in the
204 state regardless of whether: (A) The work exists in the immediate area in which the member lives;
205 (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.
206 For purposes of this article, substantial gainful employment is the same definition as used by the
207 United States Social Security Administration.

208 (2) "Physical or mental impairment" is an impairment that results from an anatomical,
209 physiological or psychological abnormality that is demonstrated by medically accepted clinical
210 and laboratory diagnostic techniques. The board may require submission of a member's annual
211 tax return for purposes of monitoring the earnings limitation.

212 (oo) "Year of service" means a member shall, except in his or her first and last years of
213 covered employment, be credited with years of service credit based upon the hours of service
214 performed as covered employment and credited to the member during the plan year based upon
215 the following schedule:

216	Hours of Service	Year of Service Credited.
217	Less than 500	0
218	500 to 999	1/3
219	1,000 to 1,499	2/3
220	1,500 or more	1

221 During a member's first and last years of covered employment, the member shall be
222 credited with one twelfth of a year of service for each month during the plan year in which the
223 member is credited with an hour of service for which contributions were received by the fund. A
224 member is not entitled to credit for years of service for any time period during which he or she
225 received disability payments under §16-5V-19 or §16-5V-20 of this code. Except as specifically
226 excluded, years of service include covered employment prior to the effective date.

227 Years of service which are credited to a member prior to his or her receipt of accumulated
228 contributions upon termination of employment pursuant to §16-5V-18 of this code or §5-10-30 of
229 this code, shall be disregarded for all purposes under this plan unless the member repays the
230 accumulated contributions with interest pursuant to section §16-5V-18 of this code or has prior to
231 the effective date made the repayment pursuant to §5-10-18 of this code.

§16-5V-8a. Correction of errors; underpayments; overpayments.

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

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

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

26 (d) Overpayments to the plan by an employee: When mistaken or excess employee
27 contributions or overpayments have been made to the plan, the board shall have sole authority
28 for determining the means of return, offset or credit to or for the benefit of the individual making
29 the mistaken or excess employee contribution of the amounts, and may use any means
30 authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue

31 Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full
32 and complete discretion, the board may require the participating public employer employing the
33 individual to pay the individual the amounts as wages, with the board crediting the participating
34 public employer with a corresponding amount to offset against its future contributions to the plan.
35 If the employer has no future liability for employer contributions to the plan, the board shall refund
36 said amount directly to the employer: *Provided*, That the wages paid to the individual shall not be
37 considered compensation for any purposes of this article. Earnings or interest shall not be
38 returned, offset, or credited under any of the means used by the board for returning employee
39 overpayments.

40 (e) Overpayments from the plan: If any error results in any member, retirant, beneficiary,
41 entity or other individual receiving from the system more than he would have been entitled to
42 receive had the error not occurred the board upon learning of the error shall correct the error in a
43 timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary
44 have commenced, the board shall prospectively adjust the payment of the benefit to the correct
45 amount. In addition, the member, retirant, beneficiary, entity or other person who received the
46 overpayment from the plan shall repay the amount of any overpayment to the plan in any manner
47 permitted by the board. If the member, retirant, beneficiary or other person who received the
48 overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the
49 remaining overpayment shall be offset against the benefit payment owed in a manner consistent
50 with the board's error correction policy. Interest shall not accumulate on any corrective payment
51 made to the plan pursuant to this subsection.

52 (f) Underpayments from the retirement system: If any error results in any member, retirant,
53 beneficiary, entity or other individual receiving from the plan less than he would have been entitled
54 to receive had the error not occurred, the board, upon learning of the error, shall correct the error
55 in a timely manner. If correction of the error occurs after annuity payments to a retirant or
56 beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to

57 the correct amount. In addition, the board shall pay the amount of such underpayment to the
58 member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any
59 corrective payment made by the plan pursuant to this subsection.

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

§16-5V-13. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution of a member's or beneficiary's
2 interest and take precedence over any inconsistent provisions of this plan. This section applies to
3 plan years beginning after December 31, 1986. Notwithstanding anything in the plan to the
4 contrary, the payment of benefits under this article shall be determined and made in accordance
5 with section 401(a)(9) of the Internal Revenue Code and federal regulations promulgated
6 thereunder as applicable to governmental plans, including without limitation the minimum
7 distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations

8 thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term
9 used in this article has the same meaning as when used in a comparable context in section
10 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder
11 unless a different meaning is clearly required by the context or definition in this article. The
12 following provisions apply to payments of benefits required under this article:

13 (a) The payment of benefits under the plan to any member shall be distributed to him or
14 her not later than the required beginning date, or be distributed to him or her commencing not
15 later than the required beginning date, in accordance with regulations prescribed under section
16 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the
17 member and his or her beneficiary or over a period not extending beyond the life expectancy of
18 the member and his or her beneficiary: *Provided*, That the requirements of this section may not
19 be construed to grant a right to a form of benefit which is not otherwise available to a particular
20 member under this retirement system: *Provided, however, That if the member elects an annuity*
21 *option which provides survivor benefits to a beneficiary who is not the member's spouse, and the*
22 *annuity option elected would provide survivor payments that exceed the applicable percentage*
23 *permitted by the MDIB regulations under section 401(a)(9) of the Internal Revenue Code, the*
24 *member's annuity election shall be changed to the highest survivor annuity option offered under*
25 *this plan which satisfies the MDIB regulations.* Benefit payments under this section shall not be
26 delayed pending, or contingent upon, receipt of an application for retirement from the member.

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

31 (c) If a member dies before distribution to him or her has commenced, then his or her
32 entire interest in the plan is to be distributed by December 31 of the calendar year containing the

33 fifth anniversary of the member's death, unless the provisions of subsection (d) of this section
34 apply.

35 (d) If a member dies before distribution to him or her has commenced, and the member's
36 interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary,
37 distributions are to be made over the life of that beneficiary or over a period certain not greater
38 than the life expectancy of that beneficiary, commencing on or before the following:

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

41 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
42 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
43 percent of the survivor benefit, distributions are to commence on or before the later of:

44 (A) December 31 of the calendar year in which the member would have attained age
45 ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

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

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

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

59 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
60 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is 100 percent
61 of the survivor benefit, election of life expectancy treatment must be made on or before the earlier
62 of (A) or (B) below:

63 (A) The later of: (i) December 31 of the calendar year immediately following the calendar
64 year in which the member died; or (ii) December 31 of the calendar year in which the member
65 would have attained age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born
66 after June 30, 1949); or

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

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

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

2 "Accumulated contributions" means all deposits and all deductions from the gross salary
3 of a contributor plus regular interest.

4 "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf
5 of a retired member.

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

12 "Annuities" means the annual retirement payments for life granted beneficiaries in
13 accordance with this article.

14 “Average final salary” means the average of the five highest fiscal year salaries earned as
15 a member within the last 15 fiscal years of total service credit, including military service as
16 provided in this article, or if total service is less than 15 years, the average annual salary for the
17 period on which contributions were made: *Provided*, That salaries for determining benefits during
18 any determination period may not exceed the maximum compensation allowed as adjusted for
19 cost of living in accordance with §5-10D-7 of this code and section 401(a)(17) of the Internal
20 Revenue Code.

21 “Beneficiary” means the recipient of annuity payments made under the retirement system.

22 “Contributor” means a member of the retirement system who has an account in the
23 Teachers Accumulation Fund.

24 “Deposit” means a voluntary payment to his or her account by a member.

25 “Employer” means the agency of and within the state which has employed or employs a
26 member.

27 “Employer error” means an omission, misrepresentation, or deliberate act in violation of
28 relevant provisions of the West Virginia Code, or of the West Virginia Code of State Regulations,
29 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
30 Regulations by the participating public employer that has resulted in an underpayment or
31 overpayment of contributions required. ~~A deliberate act contrary to the provisions of this section
32 by a participating public employer does not constitute employer error~~

33 “Employment term” means employment for at least 10 months, a month being defined as
34 20 employment days.

35 “Gross salary” means the fixed annual or periodic cash wages paid by a participating
36 public employer to a member for performing duties for the participating public employer for which
37 the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the
38 work was done. Gross salary also includes retroactive payments made to a member to correct a
39 clerical error, or made pursuant to a court order or final order of an administrative agency charged

40 with enforcing federal or state law pertaining to the member's rights to employment or wages, with
41 all retroactive salary payments to be allocated to and considered paid in the periods in which the
42 work was or would have been done. Gross salary does not include lump sum payments for
43 bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind
44 including, but not limited to, transportation allowances, automobiles or automobile allowances, or
45 lump sum payments for unused, accrued leave of any type or character.

46 "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been
47 amended.

48 "Member" means any person who has accumulated contributions standing to his or her
49 credit in the State Teachers Retirement System. A member shall remain a member until the
50 benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of
51 membership pursuant to §18-7A-13 of this code.

52 "Members of the administrative staff of the public schools" means deans of instruction,
53 deans of men, deans of women, and financial and administrative secretaries.

54 "Members of the extension staff of the public schools" means every agricultural agent,
55 boys and girls club agent, and every member of the agricultural extension staff whose work is not
56 primarily stenographic, clerical, or secretarial.

57 "New entrant" means a teacher who is not a present teacher.

58 "Nonteaching member" means any person, except a teacher member, who is regularly
59 employed for full-time service by: (A) Any county board of education or educational services
60 cooperative; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D)
61 the West Virginia Council for Community and Technical College Education; (E) a governing board,
62 as defined in §18B-1-2 of this code; or (F) a public charter school established pursuant to §18-
63 5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant
64 to §18-5G-7 of this code a determination to participate in the retirement systems under this article
65 and §18-7B-1 *et seq.* of this code, subject to §18-7B-7a: *Provided*, That any person whose

66 employment with the Higher Education Policy Commission, the West Virginia Council for
67 Community and Technical College Education, or a governing board commences on or after July
68 1, 1991, is not considered a nonteaching member.

69 "Plan year" means the 12-month period commencing on July 1 and ending the following
70 June 30 of any designated year.

71 "Present member" means a present teacher or nonteacher who is a member of the
72 retirement system.

73 "Present teacher" means any person who was a teacher within the 35 years beginning
74 July 1, 1934, and whose membership in the retirement system is currently active.

75 "Prior service" means all service as a teacher completed prior to July 1, 1941, and all
76 service of a present member who was employed as a teacher and did not contribute to a
77 retirement account because he or she was legally ineligible for membership during the service.

78 "Public schools" means all publicly supported schools, including colleges and universities
79 in this state.

80 "Refund beneficiary" means the estate of a deceased contributor or a person he or she
81 has nominated as beneficiary of his or her contributions by written designation duly executed and
82 filed with the retirement board.

83 "Regular interest" means interest at four percent compounded annually, or a higher
84 earnable rate if set forth in the formula established in legislative rules, series seven of the
85 Consolidated Public Retirement Board, 162 CSR 7.

86 "Regularly employed for full-time service" means employment in a regular position or job
87 throughout the employment term regardless of the number of hours worked or the method of pay.

88 "Required beginning date" means April 1 of the calendar year following the later of: (A)
89 The calendar year in which the member attains age ~~70 and one-half years~~ 70.5 (if born before
90 July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which the member

91 retires or ceases covered employment under the retirement system. ~~after having attained the age~~
92 ~~of 70 and one-half years~~

93 “Retirant” means any member who commences an annuity payable by the retirement
94 system.

95 “Retirement board” means the Consolidated Public Retirement Board created pursuant to
96 §5-10D-1 *et seq.* of this code.

97 “Retirement system” means the State Teachers Retirement System established by this
98 article.

99 “Teacher member” means the following persons, if regularly employed for full-time service:

100 (A) Any person employed for instructional service in the public schools of West Virginia; (B)
101 principals; (C) public school librarians; (D) superintendents of schools and assistant county
102 superintendents of schools; (E) any county school attendance director holding a West Virginia
103 teacher’s certificate; (F) members of the research, extension, administrative, or library staffs of
104 the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the
105 divisions under his or her supervision, or any other employee under the state superintendent
106 performing services of an educational nature; (H) employees of the State Board of Education who
107 are performing services of an educational nature; (I) any person employed in a nonteaching
108 capacity by the State Board of Education, any county board of education, the State Department
109 of Education, or the State Teachers Retirement Board, if that person was formerly employed as
110 a teacher in the public schools; (J) all classroom teachers, principals, and educational
111 administrators in schools under the supervision of the Division of Corrections and Rehabilitation,
112 the Division of Health, or the Division of Human Services; (K) an employee of the State Board of
113 School Finance, if that person was formerly employed as a teacher in the public schools; (L)
114 employees of an educational services cooperative who are performing services of an educational
115 nature; (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of
116 this code who elects to remain a member of the State Teachers Retirement System provided in

117 this article; and (N) any person employed by a public charter school established pursuant to §18-
118 5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant
119 to §18-5G-7 of this code a determination to participate in the retirement systems under this article
120 and §18-7B-1 *et seq.* of this code.

121 “Total service” means all service as a teacher or nonteacher while a member of the
122 retirement system since last becoming a member and, in addition thereto, credit for prior service,
123 if any.

124 Age in excess of 70 years shall be considered to be 70 years.

§18-7A-14c. Correction of errors; underpayments; overpayments.

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

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

17 board receives full payment of all required employee and employer contributions or
18 underpayments, including interest.

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

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

41 (e) *Overpayments from the retirement system.* — If any error results in any member,
42 retirant, beneficiary, entity or other individual receiving from the system more than he would have

43 been entitled to receive had the error not occurred the board, upon learning of the error, shall
44 correct the error in a timely manner. If correction of the error occurs after annuity payments to a
45 retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the
46 benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person
47 who received the overpayment from the retirement system shall repay the amount of any
48 overpayment to the retirement system in any manner permitted by the board. If the member,
49 retirant, beneficiary or other person who received the overpayment is deceased and an annuity
50 or lump sum benefit is still payable, the amount of the remaining overpayment shall be offset
51 against the benefit payment owed in a manner consistent with the retirement board's error
52 correction policy. Interest shall not accumulate on any corrective payment made to the retirement
53 system pursuant to this subsection.

54 (f) *Underpayments from the retirement system.* — If any error results in any member,
55 retirant, beneficiary, entity or other individual receiving from the retirement system less than he
56 would have been entitled to receive had the error not occurred, the board, upon learning of the
57 error, shall correct the error in a timely manner. If correction of the error occurs after annuity
58 payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the
59 payment of the benefit to the correct amount. In addition, the board shall pay the amount of such
60 underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall
61 not be paid on any corrective payment made by the retirement system pursuant to this subsection.

62 (g) *Eligibility errors.* — If the board finds that an individual, employer, or both individual
63 and employer currently or formerly participating in the retirement system is not eligible to
64 participate, the board shall notify the individual and his or her employer of the determination, and
65 terminate participation in the retirement system. Any erroneous payments to the retirement
66 system shall be returned to the employer and individual in accordance with the methods described
67 in subsections (c) and (d) of this section and any erroneous payments from the retirement system
68 to such individual shall be returned to the retirement system in accordance with the methods

69 described in subsection (e) of this section. Any erroneous service credited to the individual shall
70 be removed. If the board determines that an individual or employer, or both, has not been
71 participating in the retirement system, but was eligible to and required to be participating in the
72 retirement system, the board shall as soon as practicable notify the individual and his or her
73 employer of the determination, and the individual and his or her employer shall prospectively
74 commence participation in the retirement system as soon as practicable. Service credit for service
75 prior to the date on which the individual prospectively commences participation in the retirement
76 system shall be granted only if the board receives the required employer and employee
77 contributions for such service, in accordance with subsection (b) of this section, including interest.

§18-7A-28b. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution of a member's or beneficiary's
2 interest and take precedence over any inconsistent provisions of this retirement system. This
3 section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the
4 retirement system to the contrary, the payment of benefits under this article shall be determined
5 and made in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations
6 promulgated thereunder as applicable to governmental plans, including without limitation the
7 minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the
8 regulations thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the
9 regulations. Any term used in this article has the same meaning as when used in a comparable
10 context in section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated
11 thereunder unless a different meaning is clearly required by the context or definition in this article.
12 The following provisions apply to payments of benefits required under this article:

13 (a) The payment of benefits under the retirement system to any member shall be
14 distributed to him or her not later than the required beginning date, or be distributed to him or her
15 commencing not later than the required beginning date, in accordance with regulations prescribed
16 under section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the

17 lives of the member and his or her beneficiary or over a period not extending beyond the life
18 expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this
19 section may not be construed to grant a right to a form of benefit which is not otherwise available
20 to a particular member under this retirement system: *Provided, however, That if the member*
21 *elects an annuity option which provides survivor benefits to a beneficiary who is not the member's*
22 *spouse, and the annuity option elected would provide survivor payments that exceed the*
23 *applicable percentage permitted by the MDIB regulations under section 401(a)(9) of the Internal*
24 *Revenue Code, the member's annuity election shall be changed to the highest survivor annuity*
25 *option offered under this retirement system which satisfies the MDIB regulations.* Benefit
26 payments under this section shall not be delayed pending, or contingent upon, receipt of an
27 application for retirement from the member.

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

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

36 (d) If a member dies before distribution to him or her has commenced, and the member's
37 interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary,
38 distributions are to be made over the life of that beneficiary or over a period certain not greater
39 than the life expectancy of that beneficiary, commencing on or before the following:

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

42 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
43 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
44 percent of the survivor benefit, distributions are to commence on or before the later of:

45 (A) December 31 of the calendar year in which the member would have attained age
46 ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

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

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

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

60 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
61 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
62 percent of the survivor benefit, election of life expectancy treatment must be made on or before
63 the earlier of (A) or (B) below:

64 (A) The later of: (i) December 31 of the calendar year immediately following the calendar
65 year in which the member died; or (ii) December 31 of the calendar year in which the member
66 would have attained age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born
67 after June 30, 1949); or

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

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

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

2 "Annual addition" means, for purposes of the limitations under section 415(c) of the
3 Internal Revenue Code, the sum credited to a member's account for any limitation year of: (A)
4 Employer contributions; (B) employee contributions; and (C) forfeitures. Repayment of cash-outs
5 or contributions as described in section 415(k)(3) of the Internal Revenue Code, rollover
6 contributions and picked-up employee contributions to a defined benefit plan may not be treated
7 as annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-1.

8 "Annuity account" or "annuity" means an account established for each member to record
9 the deposit of member contributions and employer contributions and interest, dividends, or other
10 accumulations credited on behalf of the member.

11 "Compensation" means the full compensation actually received by members for service
12 whether or not a part of the compensation is received from other funds, federal or otherwise, than
13 those provided by the state or its subdivisions: *Provided*, That annual compensation for
14 determining contributions during any determination period may not exceed the maximum
15 compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and
16 section 401(a)(17) of the Internal Revenue Code: *Provided, however*, That solely for purposes of
17 applying the limitations of section 415 of the Internal Revenue Code to any annual addition,
18 "compensation" has the meaning given it in §18-7B-13(d) of this code.

19 "Consolidated board" or "board" means the Consolidated Public Retirement Board created
20 and established pursuant to §5-10D-1 *et seq.* of this code.

21 "Defined contribution system" or "system" means the Teachers' Defined Contribution
22 Retirement System created and established by this article.

23 “Employer” means the agency of and within the State of West Virginia which has employed
24 or employs a member.

25 “Employer contribution” means an amount deposited into the member’s individual annuity
26 account on a periodic basis coinciding with the employee’s regular pay period by an employer
27 from its own funds.

28 “Employer error” means an omission, misrepresentation or deliberate act in violation of
29 relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations
30 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
31 Regulations by the participating public employer that has resulted in an underpayment or
32 overpayment of contributions required.

33 “Employment term” means employment for at least 10 months in any plan year with a
34 month being defined as 20 employment days.

35 “Existing employer” means any employer who employed or employs a member of the
36 system.

37 “Existing retirement system” means the State Teachers Retirement System established in
38 §18-7A-1 *et seq.* of this code.

39 “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been
40 amended.

41 “Member” or “employee” means the following persons, if regularly employed for full-time
42 service: (A) Any person employed for instructional service in the public schools of West Virginia;
43 (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county
44 superintendents of schools; (E) any county school attendance director holding a West Virginia
45 teacher’s certificate; (F) members of the research, extension, administrative, or library staffs of
46 the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the
47 divisions under his or her supervision, or any other employee under the state superintendent
48 performing services of an educational nature; (H) employees of the State Board of Education who

49 are performing services of an educational nature; (I) any person employed in a nonteaching
50 capacity by the State Board of Education, any county board of education, or the State Department
51 of Education, if that person was formerly employed as a teacher in the public schools; (J) all
52 classroom teachers, principals, and educational administrators in schools under the supervision
53 of the Division of Corrections and the Department of Health and Human Resources; (K) any
54 person who is regularly employed for full-time service by any county board of education,
55 educational services cooperative, or the State Board of Education; (L) the administrative staff of
56 the public schools including deans of instruction, deans of men and deans of women, and financial
57 and administrative secretaries; (M) any person designated as a 21st Century Learner Fellow
58 pursuant to §18A-3-11 of this code who elects to remain a member of the Teachers' Defined
59 Contribution Retirement System established by this article; and (N) any person employed by a
60 public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school
61 includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to
62 participate in the retirement systems under this article, subject to §18-7B-7a, and §18-7A-1 *et*
63 *seq.* of this code.

64 "Member contribution" means an amount reduced from the employee's regular pay
65 periods, and deposited into the member's individual annuity account within the Teachers' Defined
66 Contribution Retirement System.

67 "Permanent, total disability" means a mental or physical incapacity requiring absence from
68 employment service for at least six months: *Provided*, That the incapacity is shown by an
69 examination by a physician or physicians selected by the board: *Provided, however*, That for
70 employees hired on or after July 1, 2005, "permanent, total disability" means an inability to engage
71 in substantial gainful activity by reason of any medically determinable physical or mental
72 impairment that can be expected to result in death, or has lasted or can be expected to last for a
73 continuous period of not less than 12 months and the incapacity is so severe that the member is

74 likely to be permanently unable to perform the duties of the position the member occupied
75 immediately prior to his or her disabling injury or illness.

76 “Plan year” means the 12-month period commencing on July 1 of any designated year
77 and ending on the following June 30.

78 “Public schools” means all publicly supported schools, including normal schools, colleges,
79 and universities in this state.

80 “Regularly employed for full-time service” means employment in a regular position or job
81 throughout the employment term regardless of the number of hours worked or the method of pay.

82 “Required beginning date” means April 1 of the calendar year following the later of: (A)
83 The calendar year in which the member attains age ~~70 and one-half years~~ 70.5 (if born before
84 July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which the member
85 retires or otherwise ceases employment with a participating employer. ~~after having attained the~~
86 ~~age of 70 and one-half years.~~

87 “Retirement” means a member’s withdrawal from the active employment of a participating
88 employer and completion of all conditions precedent to retirement.

89 “Year of employment service” means employment for at least 10 months, with a month
90 being defined as 20 employment days: *Provided*, That no more than one year of service may be
91 accumulated in any 12-month period.

§18-7B-12a. Federal minimum required distributions.

1 The requirements of this section apply to any distribution of a member’s or beneficiary’s
2 interest and take precedence over any inconsistent provisions of this defined contribution system.
3 This section applies to plan years beginning after December 31, 1986. Notwithstanding anything
4 in this system to the contrary, the payment of benefits under this article shall be determined and
5 made in accordance with section 401(a)(9) of the Internal Revenue Code and the federal
6 regulations promulgated thereunder as applicable to governmental plans, including without
7 limitation the ~~incidental death benefit provisions of section 401(a)(9)(G) of the Internal Revenue~~

8 ~~Code and the regulations thereunder~~ minimum distribution incidental benefit (MDIB) requirement
9 of section 401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of section
10 1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when
11 used in a comparable context in section 401(a)(9) of the Internal Revenue Code and the federal
12 regulations promulgated thereunder unless a different meaning is clearly required by the context
13 or definition in this article. The following provisions apply to payments of benefits required under
14 this article:

15 (a) The payment of benefits under the defined contribution system to any member shall
16 be distributed to him or her not later than the required beginning date, or be distributed to him or
17 her commencing not later than the required beginning date, in accordance with regulations
18 prescribed under section 401(a)(9) of the Internal Revenue Code, over the life of the member or
19 over the lives of the member and his or her beneficiary or over a period not extending beyond the
20 life expectancy of the member and his or her beneficiary (subject to the provisions of subsection
21 (g) of this section: *Provided*, That the requirements of this section may not be construed to grant
22 a right to a form of benefit which ~~are~~ is not otherwise available to a particular member under this
23 retirement system: *Provided, however*, That if the member elects an annuity option which provides
24 survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected
25 would provide survivor payments that exceed the applicable percentage permitted by the MDIB
26 regulations under section 401(a)(9) of the Internal Revenue Code, the member's annuity election
27 shall be changed to the highest survivor annuity option offered under this retirement system which
28 satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending,
29 or contingent upon, receipt of an application for retirement from the member.

30 (b) If a member dies after distribution to him or her has commenced pursuant to this
31 section but before his or her entire interest in the system has been distributed, then the remaining
32 portion of that interest shall be distributed at least as rapidly as under the method of distribution

33 being used at the date of his or her death (subject to the provisions of subsection (g) of this
34 section).

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

39 (d) If a member dies before distribution to him or her has commenced, and the member's
40 interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary,
41 distributions are to be made over the life of that beneficiary or over a period certain not greater
42 than the life expectancy of that beneficiary (subject to the provisions of subsection (g) of this
43 section), commencing on or before the following:

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

46 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
47 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
48 percent of the survivor benefit, distributions are to commence on or before the later of:

49 (A) December 31 of the calendar year in which the member would have attained age
50 ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

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

53 (e) If a member dies before distribution to him or her has commenced and the survivor
54 annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary
55 who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section
56 may elect to have life expectancy treatment apply to the distribution for purposes of determining
57 whether any portion of the distribution is an eligible rollover distribution (subject to the provisions
58 of subsection (g) of this section, if applicable): *Provided*, That any such election shall not delay

59 the required distribution of the deceased member's entire interest in the retirement system beyond
60 December 31 of the calendar year containing the fifth anniversary of the member's death as
61 required by subsection (c) of this section: *Provided, however,* That the election is timely made in
62 a form acceptable to the board on or before the following:

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

65 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
66 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
67 percent of the survivor benefit, election of life expectancy treatment must be made on or before
68 the earlier of (A) or (B) below:

69 (A) The later of: (i) December 31 of the calendar year immediately following the calendar
70 year in which the member died; or (ii) December 31 of the calendar year in which the member
71 would have attained age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born
72 after June 30, 1949); or

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

74 (f) For purposes of this section, any amount paid to a child of a member will be treated as
75 if it had been paid to the surviving spouse of the member if the remaining amount becomes
76 payable to the surviving spouse when the child reaches the age of majority.

77 (g) The provisions of this subsection will apply to distributions with respect to members
78 who die on or after January 1, 2022, and to the designated beneficiaries of members who die
79 prior to January 1, 2022, as described in subdivision (2) of this subsection. This subsection will
80 not apply to qualified annuities described in SECURE Act section 401(b)(4)(B)IP.L. 116-94, Div.
81 Q].

82 (1) 10-Year Rule. — If the distributee of a deceased member's account is a designated
83 beneficiary who is not an "Eligible Designated Beneficiary," then the system will distribute the

84 member's vested account in full no later than December 31 of the 10th year following the year of
85 the member's death.

86 (2) *Beneficiary Death.* — If an Eligible Designated Beneficiary dies before receiving
87 distribution of the beneficiary's entire interest in the member's account, the system will distribute
88 the remaining interest in full no later than December 31 of the 10th year following the year of the
89 Eligible Designated Beneficiary's death. Similarly, if a member died before January 1, 2022, the
90 limitations of this subsection (g) shall apply to distributions to the beneficiary of the member's
91 designated beneficiary.

92 (3) *Eligible Designated Beneficiary.* — An individual is an "Eligible Designated Beneficiary"
93 of a member if the individual qualifies as a designated beneficiary under section 401(a)(9)(E) of
94 the Internal Revenue Code and is (1) the member's spouse, (2) the member's child who has not
95 reached the age of majority (as defined for purposes of section 401(a)(9)(F) of the Internal
96 Revenue Code, (3) an individual not more than 10 years younger than the member, (4) a disabled
97 individual, as defined in section 72(m)(7) of the Internal Revenue Code, or (5) an individual who
98 has been certified to be chronically ill, as defined in section 7702B(c)(2) of the Internal Revenue
99 Code, for a reasonably lengthy period, or indefinitely. Certain trusts may be treated as Eligible
100 Designated Beneficiaries pursuant to sections 401(a)(9)(H)(iv) and (v) of the Internal Revenue
101 Code. When a child of the member reaches the age of majority, the system will distribute the
102 child's account in full no later than 10 years after that date.

§18-7B-21. Correction of errors; underpayments; overpayments.

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

5 (b) *Underpayments to the system.* — Any error resulting in an underpayment to the
6 system, may be corrected by the member or retirant remitting the required employee contribution

7 or underpayment and the existing employer remitting the required employer contribution or
8 underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7
9 concerning retirement board Refund, Reinstatement, Retroactive Service, Loan and Correction
10 of Error Interest Factors and any accumulating interest owed on the employee and employer
11 contributions or underpayments resulting from an employer error shall be the responsibility of the
12 participating public employer. The participating public employer may remit total payment and the
13 employee reimburse the participating public employer through payroll deduction over a period
14 equivalent to the time period during which the employer error occurred. If the correction of an
15 error involving an underpayment to the system will result in the system paying the retirant an
16 additional amount, this additional payment shall be made only after the board receives full
17 payment of all required employee and employer contributions or underpayments, including
18 interest.

19 (c) *Overpayments to the system by an employer.* — When mistaken or excess employer
20 contributions or other employer overpayments have been made to the system, the board shall
21 credit the employer with an amount computed by the board, to be offset against the employer's
22 future liability for employer contributions to the system. If the employer has no future liability for
23 employer contributions to the retirement system, the board shall refund the erroneous
24 contributions directly to the employer.

25 (d) *Overpayments to the retirement system by an employee.* — When mistaken or excess
26 employee contributions or overpayments, have been made to the retirement system, the board
27 shall have sole authority for determining the means of return, offset or credit to or for the benefit
28 of the individual making the mistaken or excess employee contribution of the amounts, and may
29 use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the
30 Internal Revenue Code and guidance issued thereunder applicable to governmental plans.
31 Alternatively, in its full and complete discretion, the board may require the existing employer
32 employing the individual to pay the individual the amounts as wages, with the board crediting the

33 participating public employer with a corresponding amount to offset against its future contributions
34 to the plan. If the employer has no future liability for employer contributions to the retirement
35 system, the board shall refund said amount directly to the employer: *Provided*, That the wages
36 paid to the individual are not considered compensation for any purposes of this article.

37 (e) *Overpayments from the retirement system.* — If any error results in any member,
38 retirant beneficiary, entity or other individual receiving from the system more than he would have
39 been entitled to receive had the error not occurred the board upon learning of the error shall
40 correct the error in a timely manner. If correction of the error occurs after annuity payments to a
41 retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the
42 benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person
43 who received the overpayment from the retirement system shall repay the amount of any
44 overpayment to the retirement system in any manner permitted by the board. If the member,
45 retirant, beneficiary or other person who received the overpayment is deceased and an annuity
46 or lump sum benefit is still payable, the amount of the overpayment shall be offset against the
47 benefit payment owed in a manner consistent with the board's error correction policy. Interest
48 shall not accumulate on any corrective payment made to the retirement system pursuant to this
49 subsection.

50 (f) *Underpayments from the retirement system.* — If any error results in any member,
51 retirant, beneficiary, entity or other individual receiving from the retirement system less than he
52 would have been entitled to receive had the error not occurred, the board, upon learning of the
53 error, shall correct the error in a timely manner. If correction of the error occurs after annuity
54 payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the
55 payment of the benefit to the correct amount. In addition, the board shall pay the amount of such
56 underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall
57 not be paid on any corrective payment made by the retirement system pursuant to this subsection.

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

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 18. WEST VIRGINIA DIVISION OF NATURAL RESOURCES POLICE OFFICER RETIREMENT SYSTEM.

§20-18-2. Definitions.

1 As used in this article, unless a federal law or regulation or the context clearly requires a
2 different meaning:

3 (a) “Accrued benefit” means on behalf of any member two and one-quarter percent of the
4 member’s final average salary multiplied by the member’s years of credited service: *Provided*,
5 That members who retire after July 1, 2025, shall have an accrued benefit of two and one-half
6 percent of the member’s final average salary multiplied by the member’s years of credited service.
7 A member’s accrued benefit may not exceed the limits of section 415 of the Internal Revenue
8 Code and is subject to the provisions of §20-18-13 of this code.

9 (b) “Accumulated contributions” means the sum of all amounts deducted from the annual
10 compensation of a member or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code,
11 either pursuant to §20-18-8(a) or §5-10-29 of this code as a result of covered employment
12 together with regular interest on the deducted amounts.

13 (c) “Active member” means a member who is active and contributing to the plan.

14 (d) “Active military duty” means full-time active duty with any branch of the armed forces
15 of the United States, including service with the National Guard or reserve military forces when the
16 member has been called to active full-time duty and has received no compensation during the
17 period of that duty from any board or employer other than the armed forces.

18 (e) “Actuarial equivalent” means a benefit of equal value computed upon the basis of the
19 mortality table and interest rates as set and adopted by the retirement board in accordance with
20 the provisions of this article: *Provided*, That when used in the context of compliance with the
21 federal maximum benefit requirements of section 415 of the Internal Revenue Code, “actuarial
22 equivalent” shall be computed using the mortality tables and interest rates required to comply with
23 those requirements.

24 (f) “Annual compensation” means the wages paid to the member during covered
25 employment within the meaning of section 3401(a) of the Internal Revenue Code, but determined
26 without regard to any rules that limit the remuneration included in wages based upon the nature
27 or location of employment or services performed during the plan year plus amounts excluded
28 under section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense
29 allowances, cash or noncash fringe benefits or both, deferred compensation, and welfare benefits.
30 Annual compensation for determining benefits during any determination period may not exceed
31 the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of
32 this code and section 401(a)(17) of the Internal Revenue Code.

33 (g) “Annual leave service” means accrued annual leave.

34 (h) "Annuity starting date" means the first day of the first calendar month following receipt
35 of the retirement application by the board or the required beginning date, if earlier: *Provided*, That
36 the member has ceased covered employment and reached normal retirement age.

37 (i) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity
38 or other benefit payable by the plan.

39 (j) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-
40 1 *et seq.* of this code.

41 (k) "Covered employment" means either: (1) Employment as a Natural Resources Police
42 Officer and the active performance of the duties required of a Natural Resources Police Officer;
43 (2) the period of time which active duties are not performed but disability benefits are received
44 under §20-18-21 or §20-18-22 of this code; or (3) concurrent employment by a Natural Resources
45 Police Officer in a job or jobs in addition to his or her employment as a Natural Resources Police
46 Officer where the secondary employment requires the Natural Resources Police Officer to be a
47 member of another retirement system which is administered by the Consolidated Public
48 Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the Natural
49 Resources Police Officer contributes to the fund created in §20-18-7 of this code the amount
50 specified as the Natural Resource Police Officer's contribution in §20-18-8 of this code.

51 (l) "Credited service" means the sum of a member's years of service, active military duty,
52 disability service, eligible annual and sick leave service.

53 (m) "Dependent child" means either:

54 (1) An unmarried person under age 18 who is:

55 (A) A natural child of the member;

56 (B) A legally adopted child of the member;

57 (C) A child who at the time of the member's death was living with the member while the
58 member was an adopting parent during any period of probation; or

59 (D) A stepchild of the member residing in the member's household at the time of the
60 member's death; or

61 (2) Any unmarried child under age 23:

62 (A) Who is enrolled as a full-time student in an accredited college or university;

63 (B) Who was claimed as a dependent by the member for federal income tax purposes at
64 the time of the member's death; and

65 (C) Whose relationship with the member is described in subparagraph (A), (B), or (C),
66 paragraph (1) of this subdivision.

67 (n) "Dependent parent" means the father or mother of the member who was claimed as a
68 dependent by the member for Federal Income Tax purposes at the time of the member's death.

69 (o) "Director" means Director of the Division of Natural Resources.

70 (p) "Disability service" means service credit received by a member, expressed in whole
71 years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both,
72 during which time a member receives disability benefits under §20-18-21 or §20-18-22 of this
73 code.

74 (q) "Division of Natural Resources" or "division" means the West Virginia Division of
75 Natural Resources.

76 (r) "Effective date" means January 2, 2021.

77 (s) "Employer error" means an omission, misrepresentation, or deliberate act in violation
78 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or
79 the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
80 Rules by the participating public employer that has resulted in an underpayment or overpayment
81 of contributions required. ~~A deliberate act contrary to the provisions of this section by a~~
82 ~~participating public employer does not constitute employer error.~~

83 (t) "Final average salary" means the average of the highest annual compensation received
84 for covered employment by the member during any five consecutive plan years within the

85 member's last 10 years of service. If the member did not have annual compensation for the five
86 full plan years preceding the member's attainment of normal retirement age and during that period
87 the member received disability benefits under §20-18-21 or §20-18-22 of this code then "final
88 average salary" means the average of the monthly salary determined paid to the member during
89 that period determined as if the disability first commenced after the effective date of this article
90 with monthly compensation equal to that average monthly compensation which the member was
91 receiving in the plan year prior to the initial disability multiplied by 12.

92 (u) "Fund" means the West Virginia Natural Resources Police Officer Retirement Fund
93 created pursuant to §20-18-7 of this code.

94 (v) "Hour of service" means:

95 (1) Each hour for which a member is paid;

96 (2) Each hour for which a member is paid but where no duties are performed due to
97 vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of
98 absence, or any combination thereof, and without regard to whether the employment relationship
99 has terminated. Hours under this paragraph shall be calculated and credited pursuant to West
100 Virginia Division of Labor rules. A member will not be credited with any hours of service for any
101 period of time he or she is receiving benefits under §20-18-21 or §20-18-22 of this code; and

102 (3) Each hour for which back pay is either awarded or agreed to be paid by the Division of
103 Natural Resources, irrespective of mitigation of damages. The same hours of service may not be
104 credited both under this subdivision and subdivision (1) or (2) of this subsection. Hours under this
105 paragraph shall be credited to the member for the plan year or years to which the award or
106 agreement pertains rather than the plan year in which the award, agreement, or payment is made.

107 (w) "Member" means a person first hired as a Natural Resources Police Officer, as defined
108 in subsection (y) of this section, on or after January 2, 2021, or a Natural Resources Police Officer
109 first hired prior to the effective date and who elects to become a member pursuant to §20-18-6 of

110 this code. A member shall remain a member until the benefits to which he or she is entitled under
111 this article are paid or forfeited or until cessation of membership pursuant to §20-18-6 of this code.

112 (x) "Monthly salary" means the portion of a member's gross annual compensation which
113 is paid to him or her per month.

114 (y) "Natural Resources Police Officer" means any person regularly employed in the service
115 of the division as a law-enforcement officer on or after the effective date of this article, and who
116 is eligible to participate in the fund. The term shall not include Emergency Natural Resources
117 Police Officers as defined in §20-7-1(c) of this code, Special Natural Resources Police Officers
118 as defined in §20-7-1(d) of this code, Forestry Special Natural Resources Police Officers as
119 defined in §20-7-1(e) of this code, or Federal Law Enforcement Officer as defined in §20-7-1b of
120 this code.

121 (z) "Normal form" means a monthly annuity which is 1/12 of the amount of the member's
122 accrued benefit which is payable for the member's life. If the member dies before the sum of the
123 payments he or she receives equals his or her accumulated contributions on the annuity starting
124 date, the named beneficiary or beneficiaries shall receive in one lump sum the difference between
125 the accumulated contributions at the annuity starting date and the total of the retirement income
126 payments made to the member.

127 (aa) "Normal retirement age" means the first to occur of the following: (1) Attainment of
128 age 55 years and the completion of 15 or more years of service; (2) while still in covered
129 employment, attainment of at least age 55 years, and when the sum of current age plus years of
130 service equals or exceeds 70 years; or (3) attainment of at least age 62 years, and completion of
131 10 years of service: *Provided*, That any member shall in qualifying for retirement pursuant to this
132 article have 10 or more years of service, all of which years shall be actual, contributory ones.

133 (bb) "Partially disabled" means a member's inability to engage in the duties of a Natural
134 Resources Police Officer by reason of any medically determinable physical or mental impairment
135 that can be expected to result in death or that has lasted or can be expected to last for a

136 continuous period of not less than 12 months. A member may be determined partially disabled
137 for the purposes of this article and maintain the ability to engage in other gainful employment
138 which exists within the state but which ability would not enable him or her to earn an amount at
139 least equal to two thirds of the average annual compensation earned by all active members of
140 this plan during the plan year ending as of the most recent June 30, as of which plan data has
141 been assembled and used for the actuarial valuation of the plan.

142 (cc) "Plan" means the West Virginia Natural Resources Police Officers Retirement System
143 established by this article.

144 (dd) "Plan year" means the 12-month period commencing on July 1 of any designated
145 year and ending the following June 30.

146 (ee) "Public Employees Retirement System" means the West Virginia Public Employees
147 Retirement System created by §5-10-1 *et seq.* of this code.

148 (ff) "Qualified public safety employee" means any employee of the division who provides
149 police protection, fire-fighting services, or emergency medical services for any area within the
150 jurisdiction of the state or political subdivision, or such other meaning given to the term by section
151 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they
152 may be amended from time to time.

153 (gg) "Regular interest" means the rate or rates of interest per annum, compounded
154 annually, as the board adopts in accordance with the provisions of this article.

155 (hh) "Required beginning date" means April 1 of the calendar year following the later of:

156 (i) The calendar year in which the member attains age 72; or (ii) the calendar year in which ~~he or~~
157 ~~she~~ the member retires or otherwise separates from covered employment.

158 (ii) "Retirant" means any member who commences an annuity payable by the retirement
159 system.

160 (jj) "Retire" or "retirement" means a member's termination from the employ of a
161 participating public employer and the commencement of an annuity by the plan.

162 (kk) "Retirement income payments" means the annual retirement income payments
163 payable under the plan.

164 (ll) "Spouse" means the person to whom the member is legally married on the annuity
165 starting date.

166 (mm) "Substantial gainful employment" or "gainful employment" means employment in
167 which an individual may earn up to an amount that is determined by the United States Social
168 Security Administration as substantial gainful activity and still receive total disability benefits.

169 (nn) "Surviving spouse" means the person to whom the member was legally married at
170 the time of the member's death and who survived the member.

171 (oo) "Totally disabled" means a member's inability to engage in substantial gainful activity
172 by reason of any medically determined physical or mental impairment that can be expected to
173 result in death or that has lasted or can be expected to last for a continuous period of not less
174 than 12 months. For purposes of this subdivision:

175 (1) A member is totally disabled only if his or her physical or mental impairment or
176 impairments are so severe that he or she is not only unable to perform his or her previous work
177 as a Natural Resources Police Officer but also cannot, considering his or her age, education, and
178 work experience, engage in any other kind of substantial gainful employment which exists in the
179 state regardless of whether: (A) The work exists in the immediate area in which the member lives;
180 (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

181 (2) "Physical or mental impairment" is an impairment that results from an anatomical,
182 physiological, or psychological abnormality that is demonstrated by medically accepted clinical
183 and laboratory diagnostic techniques. A member's receipt of Social Security disability benefits
184 creates a rebuttable presumption that the member is totally disabled for purposes of this plan.
185 Substantial gainful employment rebuts the presumption of total disability.

186 (pp) "Year of service." A member shall, except in his or her first and last years of covered
187 employment, or within the plan year of the effective date, be credited with year of service credit,

188 based upon the hours of service performed as covered employment and credited to the member
189 during the plan year based upon the following schedule:

190	Hours of Service	Years of Service Credited
191	Less than 500	0
192	500 to 999	1/3
193	1,000 to 1,499	2/3
194	1,500 or more	1

195 During a member's first and last years of covered employment or within the plan year of
196 the effective date, the member shall be credited with 1/12 of a year of service for each month
197 during the plan year in which the member is credited with an hour of service. A member is not
198 entitled to credit for years of service for any time period during which he or she received disability
199 payments under §20-18-21 or §20-18-22 of this code. Except as specifically excluded, years of
200 service include covered employment prior to the effective date. Years of service which are
201 credited to a member prior to his or her receipt of accumulated contributions upon termination of
202 employment pursuant to §20-18-20 or §5-10-30 of this code, shall be disregarded for all purposes
203 under this plan unless the member repays the accumulated contributions with interest pursuant
204 to §20-18-20 of this code or had prior to the effective date made the repayment pursuant to §5-
205 10-18 of this code.

§20-18-9. Correction of errors; underpayments; overpayments.

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

5 (b) *Underpayments to the plan.* — Any error resulting in an underpayment to the plan may
6 be corrected by the member or retirant remitting the required employee contribution or
7 underpayment and the division remitting the required employer contribution or underpayment.

8 Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement
9 board refund, reinstatement, retroactive service, loan and correction of error interest factors and
10 any accumulating interest owed on the employee and employer contributions or underpayments
11 resulting from an employer error is the responsibility of the division. The division may remit total
12 payment and the employee reimburse the division through payroll deduction over a period
13 equivalent to the time period during which the employer error occurred. If the correction of an
14 error involving an underpayment to the plan will result in the plan paying a retirant an additional
15 amount, this additional payment may be made only after the board receives full payment of all
16 required employee and employer contributions or underpayments, including interest.

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

24 (d) *Overpayments to the plan by an employee.* — When mistaken or excess employee
25 contributions or overpayments have been made to the retirement system, the board has sole
26 authority for determining the means of return, offset or credit to or for the benefit of the individual
27 making the mistaken or excess employee contribution of the amounts, and may use any means
28 authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue
29 Code and guidance issued thereunder applicable to governmental plans. Alternatively, the board
30 may require the division to pay the individual the amounts as wages, with the board crediting the
31 division with a corresponding amount to offset against its future contributions to the plan. If the
32 division has no future liability for employer contributions to the plan, the board shall refund said
33 amount directly to the division: *Provided*, That the wages paid to the individual shall not be

34 considered compensation for any purposes of this article. Earnings or interest shall not be
35 returned, offset, or credited under any of the means used by the board for returning employee
36 overpayments.

37 (e) *Overpayments from the plan.* — If any error results in any member, retiree, beneficiary,
38 the division or other individual receiving from the system more than he or she would have been
39 entitled to receive had the error not occurred the board, upon learning of the error, shall correct
40 the error in a timely manner. If correction of the error occurs after annuity payments to a retiree
41 or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit
42 to the correct amount. In addition, the member, retiree, beneficiary, the division or other person
43 who received the overpayment from the plan shall repay the amount of any overpayment to the
44 plan in any manner permitted by the board. If the member, retiree, beneficiary or other person
45 who received the overpayment is deceased and an annuity or lump sum benefit is still payable,
46 the amount of the overpayment shall be offset against the benefit payment owed in a manner
47 consistent with the board's error correction policy. Interest shall not accumulate on any corrective
48 payment made to the plan pursuant to this subsection.

49 (f) *Underpayments from the plan.* — If any error results in any member, retiree,
50 beneficiary, the division or other individual receiving from the plan less than he or she would have
51 been entitled to receive had the error not occurred, the board, upon learning of the error, shall
52 correct the error in a timely manner. If correction of the error occurs after annuity payments to a
53 retiree or beneficiary have commenced, the board shall prospectively adjust the payment of the
54 benefit to the correct amount. In addition, the board shall pay the amount of such underpayment
55 to the member, retiree, beneficiary or other individual in a lump sum. Interest shall not be paid on
56 any corrective payment made by the plan pursuant to this subsection.

57 (g) *Eligibility errors.* — If the board finds that an individual is not eligible to participate, the
58 board shall notify the individual and the division of the determination and terminate his or her
59 participation in the plan. Any erroneous payments to the retirement system shall be returned to

60 the division and individual in accordance with the methods described in subsections (c) and (d)
61 of this section and any erroneous payments from the plan to such individual shall be returned to
62 the plan in accordance with the methods described in subsection (e) of this section. Any erroneous
63 service credited to the individual shall be removed. If the board determines that an individual has
64 not been participating in the plan, but was eligible to and required to be participating in the plan,
65 the board shall as soon as practicable notify the individual and the division of the determination,
66 and the individual shall prospectively commence participation in the plan as soon as practicable.
67 Service credit for service prior to the date on which the individual prospectively commences
68 participation in the plan shall be granted only if the board receives the required employer and
69 employee contributions for such service, in accordance with subsection (b) of this section,
70 including interest.

71 (h) *Correction of errors occurring prior to transfer from Public Employee Retirement*
72 *System.* — If any errors requiring correction occurred prior to establishment of the plan created
73 pursuant to this article or prior to the transfer of funds from the Public Employee Retirement
74 System, into the plan, or both, the employer and member contributions, if any, required to be
75 calculated in order to effect correction shall be based on the rates in effect for the retirement
76 system under which such employer or member contributions would have been made had the error
77 not occurred. For purposes of this subsection, “retirement system” means either the Public
78 Employees Retirement System or the plan. The board shall have full discretion when applying
79 this subsection (h), consistent with the general principles of subsection (a) of this section. The
80 intent of any correction is to place the affected individual, division and board in the position in
81 which each would have been had the error not occurred.

§20-18-14. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution of a member’s or beneficiary’s
2 interest and take precedence over any inconsistent provisions of this plan. This section applies to
3 plan years beginning after December 31, 1986. Notwithstanding anything in the plan to the

4 contrary, the payment of benefits under this article shall be determined and made in accordance
5 with section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated
6 thereunder as applicable to governmental plans, including without limitation the minimum
7 distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations
8 thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term
9 used in this article has the same meaning as when used in a comparable context in section
10 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder
11 unless a different meaning is clearly required by the context or definition in this article. The
12 following provisions apply to payments of benefits required under this article:

13 (a) The payment of benefits under the plan to any member shall be distributed to him or
14 her not later than the required beginning date, or be distributed to him or her commencing not
15 later than the required beginning date, in accordance with regulations prescribed under section
16 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the
17 member and his or her beneficiary or over a period not extending beyond the life expectancy of
18 the member and his or her beneficiary: *Provided*, That the requirements of this section may not
19 be construed to grant a right to a form of benefit which is not otherwise available to a particular
20 member under this retirement system: *Provided, however*, That if the member elects an annuity
21 option which provides survivor benefits to a beneficiary who is not the member's spouse, and the
22 annuity option elected would provide survivor payments that exceed the applicable percentage
23 permitted by the MDIB regulations under section 401(a)(9) of the Internal Revenue Code, the
24 member's annuity election shall be changed to the highest survivor annuity option offered under
25 this retirement plan which satisfies the MDIB regulations. Benefit payments under this section
26 may not be delayed pending, or contingent upon, receipt of an application for retirement from the
27 member.

28 (b) If a member dies after distribution to him or her has commenced pursuant to this
29 section but before his or her entire interest in the plan has been distributed, then the remaining

30 portion of that interest shall be distributed at least as rapidly as under the method of distribution
31 being used at the date of his or her death.

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

36 (d) If a member dies before distribution to him or her has commenced, and the member's
37 interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary,
38 distributions are to be made over the life of that beneficiary or over a period certain not greater
39 than the life expectancy of that beneficiary, commencing on or before the following:

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

42 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
43 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
44 percent of the survivor benefit, distributions are to commence on or before the later of:

45 (A) December 31 of the calendar year in which the member would have attained age 72;
46 or

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

49 (e) If a member dies before distribution to him or her has commenced and the survivor
50 annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary
51 who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section
52 may elect to have life expectancy treatment apply to the distribution for purposes of determining
53 whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such
54 election may not delay the required distribution of the deceased member's entire interest in the
55 retirement system beyond December 31 of the calendar year containing the fifth anniversary of

56 the member's death as required by subsection (c) of this section: *Provided, however,* That the
57 election is timely made in a form acceptable to the board on or before the following:

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

60 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
61 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
62 percent of the survivor benefit, election of life expectancy treatment must be made on or before
63 the earlier of (A) or (B) below:

64 (A) The later of: (i) December 31 of the calendar year immediately following the calendar
65 year in which the member died; or (ii) December 31 of the calendar year in which the member
66 would have attained age 72; or

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

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-1a. Definitions.

1 (a) As used in this article, the term "judge", "judge of any court of record", or "judge of any
2 court of record of this state" means, refers to, and includes judges of the several circuit courts,
3 judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals. For
4 purposes of this article, the terms do not mean, refer to, or include family court judges.

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

11 (c) "Beneficiary" means any person, except a member, who is entitled to an annuity or
12 other benefit payable by the retirement system.

13 (d) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-
14 1 *et seq.* of this code.

15 (e) "Employer error" means an omission, misrepresentation or deliberate act in violation
16 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations
17 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
18 Regulations by the participating public employer that has resulted in an underpayment or
19 overpayment of contributions required.

20 (f) "Final average salary" means the average of the highest 36 consecutive months'
21 compensation received by the member as a judge of any court of record of this state.

22 (f) (g) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been
23 amended.

24 (g) (h) "Member" means a judge participating in this system.

25 (h) (i) "Plan year" means the 12-month period commencing on July 1 of any designated
26 year and ending the following June 30.

27 (i) (j) "Required beginning date" means April 1 of the calendar year following the later of:
28 (1) The calendar year in which the member attains age ~~70 and one-half~~ 70.5 (if born before July
29 1, 1949) or age 72 (if born after June 30, 1949); or (2) the calendar year in which the member
30 retires or otherwise separates from covered employment under this retirement system.

31 (j) (k) "Retirement system" or "system" means the Judges' Retirement System created and
32 established by this article. Notwithstanding any other provision of law to the contrary, the
33 provisions of this article are applicable only to circuit judges, judges of the Intermediate Court of
34 Appeals, and justices of the Supreme Court of Appeals in the manner specified in this article. No
35 service as a family court judge may be construed to qualify a person to participate in the Judges'

36 Retirement System or used in any manner as credit toward eligibility for retirement benefits under
37 the Judges' Retirement System.

§51-9-12b. Federal minimum required distributions.

1 The requirements of this section apply to any distribution of a member's or beneficiaries'
2 interest and take precedence over any inconsistent provisions of this retirement system. This
3 section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the
4 retirement system to the contrary, the payment of benefits under this article shall be determined
5 and made in accordance with section 401(a)(9) of the Internal Revenue Code and the federal
6 regulations promulgated thereunder as applicable to governmental plans, including without
7 limitation the minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G)
8 and the regulations thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the
9 regulations. Any term used in this article has the same meaning as when used in a comparable
10 context in section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated
11 thereunder unless a different meaning is clearly required by the context or definition in this article.
12 The following provisions apply to payments of benefits required under this article:

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

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

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

31 (d) If a member dies before distribution to him or her has commenced, and the member's
32 interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary,
33 distributions are to be made over the life of that beneficiary or over a period certain not greater
34 than the life expectancy of that beneficiary, commencing on or before the following:

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

37 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
38 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
39 percent of the survivor benefit, distributions are to commence on or before the later of:

40 (A) December 31 of the calendar year in which the member would have attained age
41 ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

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

44 (e) If a member dies before distribution to him or her has commenced and the survivor
45 annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary
46 who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section
47 may elect to have life expectancy treatment apply to the distribution for purposes of determining
48 whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such

49 election shall not delay the required distribution of the deceased member's entire interest in the
50 retirement system beyond December 31 of the calendar year containing the fifth anniversary of
51 the member's death as required by subsection (c) of this section: *Provided, however,* That the
52 election is timely made in a form acceptable to the board on or before the following:

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

55 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
56 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
57 percent of the survivor benefit, election of life expectancy treatment must be made on or before
58 the earlier of (A) or (B) below:

59 (A) The later of: (i) December 31 of the calendar year immediately following the calendar
60 year in which the member died; or (ii) December 31 of the calendar year in which the member
61 would have attained age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born
62 after June 30, 1949); or

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

§51-9-18. Correction of errors; underpayments; overpayments.

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

5 (b) *Underpayments to the system.* — Any error resulting in an underpayment to the
6 system, may be corrected by the member or retirant remitting the required employee contribution
7 or underpayment and the participating public employer remitting the required employer
8 contribution or underpayment. Interest shall accumulate in accordance with the legislative rule
9 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and
10 correction of error interest factors and any accumulating interest owed on the employee and

11 employer contributions or underpayments resulting from an employer error shall be the
12 responsibility of the participating public employer. The participating public employer may remit
13 total payment and the employee reimburse the participating public employer through payroll
14 deduction over a period equivalent to the time period during which the employer error occurred.
15 If the correction of an error involving an underpayment to the system will result in the system
16 correcting an erroneous underpayment from the system, the correction of the underpayment from
17 the system shall be made only after the board receives full payment of all required employee and
18 employer contributions or underpayments, including interest.

19 (c) *Overpayments to the retirement system by an employer.* — When mistaken or excess
20 employer contributions, including any overpayments have been made to the retirement system
21 by a participating public employer, the board, upon learning of the error, shall credit the
22 participating public employer with an amount equal to the overpayment, to be offset against the
23 employer's future liability for employer contributions to the system. If the employer has no future
24 liability for employer contributions to the retirement system, the board shall refund the erroneous
25 contributions directly to the employer. Earnings or interest shall not be returned, offset or credited
26 to the employer under any of the means used by the board for returning employer overpayments
27 to the retirement system.

28 (d) *Overpayments to the retirement system by an employee.* — When mistaken or excess
29 employee contributions or overpayments have been made to the retirement system, the board,
30 upon learning of the error, shall have sole authority for determining the means of return, offset or
31 credit to or for the benefit of the individual making the mistaken or excess employee contribution
32 of the amounts, and may use any means authorized or permitted under the provisions of section
33 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to
34 governmental plans. Alternatively, in its full and complete discretion, the board may require the
35 participating public employer employing the individual to pay the individual the amounts as wages,
36 with the board crediting the participating public employer with a corresponding amount to offset

37 against its future contributions to the plan. If the employer has no future liability for employer
38 contributions to the retirement system, the board shall refund said amount directly to the
39 employer: *Provided*, That the wages paid to the individual shall not be considered compensation
40 for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under
41 any of the means used by the board for returning employee overpayments.

42 (e) *Overpayments from the retirement system.* — If any error results in any member,
43 retirant, beneficiary, entity or other individual receiving from the system more than he would have
44 been entitled to receive had the error not occurred the board, upon learning of the error, shall
45 correct the error in a timely manner. If correction of the error occurs after annuity payments to a
46 retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the
47 benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person
48 who received the overpayment from the retirement system shall repay the amount of any
49 overpayment to the retirement system in any manner permitted by the board. If the member,
50 retirant, beneficiary or other person who received the overpayment is deceased and an annuity
51 or lump sum benefit is still payable, the amount of the overpayment shall be offset against the
52 benefit payment owed in a manner consistent with the board's error correction policy. Interest
53 shall not accumulate on any corrective payment made to the retirement system pursuant to this
54 subsection.

55 (f) *Underpayments from the retirement system.* — If any error results in any member,
56 retirant, beneficiary, entity or other individual receiving from the retirement system less than he
57 would have been entitled to receive had the error not occurred, the board, upon learning of the
58 error, shall correct the error in a timely manner. If correction of the error occurs after annuity
59 payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the
60 payment of the benefit to the correct amount. In addition, the board shall pay the amount of such
61 underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall
62 not be paid on any corrective payment made by the retirement system pursuant to this subsection.

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