

SB 608

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2002*



**ENROLLED**

*Committee Substitute for*

**SENATE BILL NO. 608**

(By Senator *Plymale*)



**PASSED *March 9, 2002***

**In Effect *ninety days from* Passage**

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

### Senate Bill No. 608

(SENATOR PLYMALE, *original sponsor*)

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[Passed March 9, 2002; in effect ninety days from passage.]

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AN ACT to amend and reenact sections two and twenty-seven-c, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty-seven-d; to amend and reenact section two, article ten-b of said chapter; to amend and reenact section seven, article ten-d of said chapter; to amend and reenact sections two-a and nine-c, article fourteen-d, chapter seven of said code; to further amend said article by adding thereto a new section, designated section nine-d; to amend article two, chapter fifteen of said code by adding thereto a new section, designated section twenty-five-a; to amend and reenact section forty-six of said article; to amend and reenact sections two and six-c, article two-a of said chapter; to

further amend said article by adding thereto a new section, designated section six-d; to amend and reenact sections three and twenty-eight-c, article seven-a, chapter eighteen of said code; to further amend said article by adding thereto a new section, designated section twenty-eight-d; to amend and reenact sections two and thirteen-b, article seven-b of said chapter; to further amend said article by adding thereto a new section, designated section eleven-a; to amend and reenact sections one-a and twelve-c, article nine, chapter fifty-one of said code; and to further amend said article by adding thereto a new section, designated section twelve-d, all relating to amending the definition of internal revenue code for the public retirement systems administered by the consolidated public retirement board to comply with federal tax law amendments; increasing the limitation on compensation for benefits or contributions to qualified state retirement systems in accordance with changes in federal limitations; incorporating changes to the direct rollover rules as required by federal law for the public retirement systems which are qualified under Section 401(a) of the Internal Revenue Code; permitting the use of rollovers from IRAs, 401(a) and 457 plans and trustee to trustee transfers from 401(a) plans to the teachers' defined contribution retirement system to repay cashed-out or withdrawn contributions; and permitting the use of rollovers and trustee to trustee transfers to the teachers retirement system, the public employees retirement system, the deputy sheriff retirement system, the judges' retirement system and the state police retirement system from IRA's, 401(a), 403(b) and 457 plans to purchase service credit or repay contributions previously withdrawn which resulted in forfeited service.

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

That sections two and twenty-seven-c, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-seven-d; that section two, article ten-

b of said chapter be amended and reenacted; that section seven, article ten-d of said chapter be amended and reenacted; that sections two-a and nine-c, article fourteen-d, chapter seven of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated section nine-d; that article two, chapter fifteen of said code be amended by adding thereto a new section, designated section twenty-five-a; that section forty-six of said article be amended and reenacted; that sections two and six-c, article two-a of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section six-d; that sections three and twenty-eight-c, article seven-a, chapter eighteen of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-eight-d; that sections two and thirteen-b, article seven-b of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eleven-a; that sections one-a and twelve-c, article nine, chapter fifty-one of said code be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twelve-d, all to read as follows:

**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  
2 context, the following words and phrases as used in this  
3 article, have the following meanings:

4 (1) "State" means the state of West Virginia;

5 (2) "Retirement system" or "system" means the West  
6 Virginia public employees retirement system created and  
7 established by this article;

8 (3) "Board of trustees" or "board" means the board of  
9 trustees of the West Virginia public employees retirement  
10 system;

11 (4) "Political subdivision" means the state of West  
12 Virginia, a county, city or town in the state; a school  
13 corporation or corporate unit; any separate corporation or  
14 instrumentality established by one or more counties, cities  
15 or towns, as permitted by law; any corporation or instru-  
16 mentality supported in most part by counties, cities or  
17 towns; and any public corporation charged by law with the  
18 performance of a governmental function and whose  
19 jurisdiction is coextensive with one or more counties, cities  
20 or towns: *Provided*, That any mental health agency  
21 participating in the public employees retirement system  
22 before the first day of July, one thousand nine hundred  
23 ninety-seven, is considered a political subdivision solely  
24 for the purpose of permitting those employees who are  
25 members of the public employees retirement system to  
26 remain members and continue to participate in the retire-  
27 ment system at their option after the first day of July, one  
28 thousand nine hundred ninety-seven: *Provided, however*,  
29 That the regional community policing institute which  
30 participated in the public employees retirement system  
31 before the first day of July, two thousand, is considered a  
32 political subdivision solely for the purpose of permitting  
33 those employees who are members of the public employees  
34 retirement system to remain members and continue to  
35 participate in the public employees retirement system after  
36 the first day of July, two thousand;

37 (5) "Participating public employer" means the state of  
38 West Virginia, any board, commission, department,  
39 institution or spending unit, and includes any agency  
40 created by rule of the supreme court of appeals having  
41 full-time employees, which for the purposes of this article  
42 is considered a department of state government; and any  
43 political subdivision in the state which has elected to cover

44 its employees, as defined in this article, under the West  
45 Virginia public employees retirement system;

46 (6) "Employee" means any person who serves regularly  
47 as an officer or employee, full time, on a salary basis,  
48 whose tenure is not restricted as to temporary or provi-  
49 sional appointment, in the service of, and whose compen-  
50 sation is payable, in whole or in part, by any political  
51 subdivision, or an officer or employee whose compensation  
52 is calculated on a daily basis and paid monthly or on  
53 completion of assignment, including technicians and other  
54 personnel employed by the West Virginia national guard  
55 whose compensation, in whole or in part, is paid by the  
56 federal government: *Provided*, That members of the  
57 Legislature, the clerk of the House of Delegates, the clerk  
58 of the Senate, employees of the Legislature whose term of  
59 employment is otherwise classified as temporary and who  
60 are employed to perform services required by the Legisla-  
61 ture for its regular sessions or during the interim between  
62 regular sessions and who have been or are employed  
63 during regular sessions or during the interim between  
64 regular sessions in seven consecutive calendar years, as  
65 certified by the clerk of the house in which the employee  
66 served, members of the legislative body of any political  
67 subdivision and judges of the state court of claims are  
68 considered to be employees, anything contained in this  
69 article to the contrary notwithstanding. In any case of  
70 doubt as to who is an employee within the meaning of this  
71 article, the board of trustees shall decide the question;

72 (7) "Member" means any person who is included in the  
73 membership of the retirement system;

74 (8) "Retirant" means any member who retires with an  
75 annuity payable by the retirement system;

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

79 (10) "Service" means personal service rendered to a  
80 participating public employer by an employee, as defined  
81 in this article, of a participating public employer;

82 (11) "Prior service" means service rendered prior to the  
83 first day of July, one thousand nine hundred sixty-one, to  
84 the extent credited a member as provided in this article;

85 (12) "Contributing service" means service rendered by a  
86 member within this state and for which the member made  
87 contributions to a public retirement system account of this  
88 state, to the extent credited him or her as provided by this  
89 article. This revised definition is retroactive and applica-  
90 ble to the first day of April, one thousand nine hundred  
91 eighty-eight, and thereafter;

92 (13) "Credited service" means the sum of a member's  
93 prior service credit and contributing service credit stand-  
94 ing to his or her credit as provided in this article;

95 (14) "Limited credited service" means service by em-  
96 ployees of the West Virginia educational broadcasting  
97 authority, in the employment of West Virginia university,  
98 during a period when the employee made contributions to  
99 another retirement system, as required by West Virginia  
100 university, and did not make contributions to the public  
101 employees retirement system: *Provided*, That while limited  
102 credited service can be used for the formula set forth in  
103 subsection (e), section twenty-one of this article, it may not  
104 be used to increase benefits calculated under section  
105 twenty-two of this article;

106 (15) "Compensation" means the remuneration paid a  
107 member by a participating public employer for personal  
108 services rendered by him or her to the participating public  
109 employer. In the event a member's remuneration is not all  
110 paid in money, his or her participating public employer  
111 shall fix the value of the portion of his or her remuneration  
112 which is not paid in money;

113 (16) "Final average salary" means either:

114 (A) The average of the highest annual compensation  
115 received by a member (including a member of the Legisla-  
116 ture who participates in the retirement system in the year  
117 one thousand nine hundred seventy-one or thereafter)  
118 during any period of three consecutive years of his or her  
119 credited service contained within his or her ten years of  
120 credited service immediately preceding the date his or her  
121 employment with a participating public employer last  
122 terminated; or

123 (B) If he or she has less than five years of credited  
124 service, the average of the annual rate of compensation  
125 received by him or her during his or her total years of  
126 credited service; and in determining the annual compensa-  
127 tion, under either paragraph (A) or (B) of this subdivision,  
128 of a member of the Legislature who participates in the  
129 retirement system as a member of the Legislature in the  
130 year one thousand nine hundred seventy-one or in any  
131 year thereafter, his or her actual legislative compensation  
132 (the total of all compensation paid under sections two,  
133 three, four and five, article two-a, chapter four of this  
134 code) in the year one thousand nine hundred seventy-one  
135 or in any year thereafter, plus any other compensation he  
136 or she receives in any year from any other participating  
137 public employer including the state of West Virginia,  
138 without any multiple in excess of one times his or her  
139 actual legislative compensation and other compensation,  
140 shall be used: *Provided*, That "final average salary" for  
141 any former member of the Legislature or for any member  
142 of the Legislature in the year one thousand nine hundred  
143 seventy-one who, in either event, was a member of the  
144 Legislature on the thirtieth day of November, one thou-  
145 sand nine hundred sixty-eight, or the thirtieth day of  
146 November, one thousand nine hundred sixty-nine, or the  
147 thirtieth day of November, one thousand nine hundred  
148 seventy, or on the thirtieth day of November in any one or  
149 more of those three years and who participated in the  
150 retirement system as a member of the Legislature in any  
151 one or more of those years means: (i) Either (notwithstand-



152 ing the provisions of this subdivision preceding this  
153 proviso) one thousand five hundred dollars multiplied by  
154 eight, plus the highest other compensation the former  
155 member or member received in any one of the three years  
156 from any other participating public employer including  
157 the state of West Virginia; or (ii) "final average salary"  
158 determined in accordance with paragraph (A) or (B) of this  
159 subdivision, whichever computation produces the higher  
160 final average salary (and in determining the annual  
161 compensation under (ii) of this proviso, the legislative  
162 compensation of the former member shall be computed on  
163 the basis of one thousand five hundred dollars multiplied  
164 by eight, and the legislative compensation of the member  
165 shall be computed on the basis set forth in the provisions  
166 of this subdivision immediately preceding this proviso or  
167 on the basis of one thousand five hundred dollars multi-  
168 plied by eight, whichever computation as to the member  
169 produces the higher annual compensation);

170 (17) "Accumulated contributions" means the sum of all  
171 amounts deducted from the compensations of a member  
172 and credited to his or her individual account in the mem-  
173 bers' deposit fund, together with regular interest on the  
174 contributions;

175 (18) "Regular interest" means the rate or rates of interest  
176 per annum, compounded annually, as the board of trustees  
177 adopts from time to time;

178 (19) "Annuity" means an annual amount payable by the  
179 retirement system throughout the life of a person. All  
180 annuities shall be paid in equal monthly installments,  
181 using the upper cent for any fraction of a cent;

182 (20) "Annuity reserve" means the present value of all  
183 payments to be made to a retirant or beneficiary of a  
184 retirant on account of any annuity, computed upon the  
185 basis of mortality and other tables of experience, and  
186 regular interest, adopted by the board of trustees from  
187 time to time;

188 (21) "Retirement" means a member's withdrawal from  
189 the employ of a participating public employer with an  
190 annuity payable by the retirement system;

191 (22) "Actuarial equivalent" means a benefit of equal  
192 value computed upon the basis of a mortality table and  
193 regular interest adopted by the board of trustees from time  
194 to time;

195 (23) "Retroactive service" means: (1) Service an em-  
196 ployee was entitled to, but which the employer has not  
197 withheld or paid for; or (2) that service from the first day  
198 of July, one thousand nine hundred sixty-one, and the date  
199 an employer decides to become a participating member of  
200 the public employees retirement system; or (3) service prior  
201 to the first day of July, one thousand nine hundred  
202 sixty-one, for which the employee is not entitled to prior  
203 service at no cost in accordance with 162 CSR 5.16;

204 (24) "Required beginning date" means the first day of  
205 April of the calendar year following the later of: (A) The  
206 calendar year in which the member attains age seventy  
207 and one-half; or (B) the calendar year in which the mem-  
208 ber ceases providing service covered under this system to  
209 a participating employer;

210 (25) "Internal Revenue Code" means the Internal Reve-  
211 nue Code of 1986, as it has been amended; and

212 (26) "Plan year" means the same as referenced in section  
213 forty-two of this article.

**§5-10-27c. Direct rollovers.**

1 (a) This section applies to distributions made on or after  
2 the first day of January, one thousand nine hundred  
3 ninety-three. Notwithstanding any provision of this  
4 article to the contrary that would otherwise limit a  
5 distributee's election under this system, a distributee may  
6 elect, at the time and in the manner prescribed by the  
7 board, to have any portion of an eligible rollover distribu-

8 tion that is equal to at least five hundred dollars paid  
9 directly to an eligible retirement plan specified by the  
10 distributee in a direct rollover. For purposes of this  
11 section, the following definitions apply:

12 (1) "Eligible rollover distribution" means any distribu-  
13 tion of all or any portion of the balance to the credit of the  
14 distributee, except that an eligible rollover distribution  
15 does not include any of the following: (i) Any distribution  
16 that is one of a series of substantially equal periodic  
17 payments not less frequently than annually made for the  
18 life or life expectancy of the distributee or the joint lives  
19 or the joint life expectancies of the distributee and the  
20 distributee's designated beneficiary, or for a specified  
21 period of ten years or more; (ii) any distribution to the  
22 extent the distribution is required under Section 401(a)(9)  
23 of the Internal Revenue Code; (iii) the portion of any  
24 distribution that is not includable in gross income deter-  
25 mined without regard to the exclusion for net unrealized  
26 appreciation with respect to employer securities; (iv) any  
27 hardship distribution described in Section  
28 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v)  
29 any other distribution or distributions reasonably ex-  
30 pected to total less than two hundred dollars during a  
31 year. For distributions after the thirty-first day of Decem-  
32 ber, two thousand one, a portion of a distribution shall not  
33 fail to be an eligible rollover distribution merely because  
34 the portion consists of after-tax employee contributions  
35 which are not includable in gross income. However, this  
36 portion may be paid only to an individual retirement  
37 account or annuity described in Section 408(a) or (b) of the  
38 Internal Revenue Code, or to a qualified defined contribu-  
39 tion plan described in Section 401(a) or 403(a) of the  
40 Internal Revenue Code that agrees to separately account  
41 for amounts transferred, including separately accounting  
42 for the portion of the distribution which is includable in  
43 gross income and the portion of the distribution which is  
44 not includable.

45 (2) "Eligible retirement plan" means an individual  
46 retirement account described in Section 408(a) of the  
47 Internal Revenue Code, an individual retirement annuity  
48 described in Section 408(b) of the Internal Revenue Code,  
49 an annuity plan described in Section 403(a) of the Internal  
50 Revenue Code or a qualified plan described in Section  
51 401(a) of the Internal Revenue Code that accepts the  
52 distributee's eligible rollover distribution: *Provided*, That  
53 in the case of an eligible rollover distribution to the  
54 surviving spouse, an eligible retirement plan is an individ-  
55 ual retirement account or individual retirement annuity.  
56 For distributions after the thirty-first day of December,  
57 two thousand one, an eligible retirement plan also means  
58 an annuity contract described in Section 403(b) of the  
59 Internal Revenue Code and an eligible plan under Section  
60 457(b) of the Internal Revenue Code which is maintained  
61 by a state, political subdivision of a state, or any agency or  
62 instrumentality of a state or political subdivision of a state  
63 and which agrees to separately account for amounts  
64 transferred into the plan from this system.

65 (3) "Distributee" means an employee or former em-  
66 ployee. In addition, the employee's or former employee's  
67 surviving spouse and the employee's or former employee's  
68 spouse or former spouse who is the alternate payee under  
69 a qualified domestic relations order, as defined in Section  
70 414(p) of the Internal Revenue Code with respect to  
71 governmental plans, are distributees with regard to the  
72 interest of the spouse or former spouse.

73 (4) "Direct rollover" means a payment by the retirement  
74 system to an eligible retirement plan.

75 (b) Nothing in this section may be construed as permit-  
76 ting rollovers into this system or any other system admin-  
77 istered by the retirement board.

**§5-10-27d. Rollovers and transfers to purchase service credit or  
repay withdrawn contributions.**

1 (a) This section applies to rollovers and transfers as  
2 specified in this section made on or after the first day of  
3 January, two thousand two. Notwithstanding any provi-  
4 sion of this article to the contrary that would otherwise  
5 prohibit or limit rollovers and plan transfers to this  
6 system, the retirement system shall accept the following  
7 rollovers and plan transfers on behalf of a member solely  
8 for the purpose of purchasing permissive service credit, in  
9 whole or in part, as otherwise provided in this article or  
10 for the repayment of withdrawn or refunded contributions,  
11 in whole or in part, with respect to a previous forfeiture of  
12 service credit as otherwise provided in this article: (i) One  
13 or more rollovers within the meaning of Section 408(d)(3)  
14 of the Internal Revenue Code from an individual retire-  
15 ment account described in Section 408(a) of the Internal  
16 Revenue Code or from an individual retirement annuity  
17 described in Section 408(b) of the Internal Revenue Code;  
18 (ii) one or more rollovers described in Section 402(c) of the  
19 Internal Revenue Code from a retirement plan that is  
20 qualified under Section 401(a) of the Internal Revenue  
21 Code or from a plan described in Section 403(b) of the  
22 Internal Revenue Code; (iii) one or more rollovers de-  
23 scribed in Section 457(e)(16) of the Internal Revenue Code  
24 from a governmental plan described in Section 457 of the  
25 Internal Revenue Code; or (iv) direct trustee-to-trustee  
26 transfers or rollovers from a plan that is qualified under  
27 Section 401(a) of the Internal Revenue Code, from a plan  
28 described in Section 403(b) of the Internal Revenue Code  
29 or from a governmental plan described in Section 457 of  
30 the Internal Revenue Code: *Provided*, That any rollovers or  
31 transfers pursuant to this section shall be accepted by the  
32 system only if made in cash or other asset permitted by the  
33 board and only in accordance with policies, practices and  
34 procedures established by the board from time to time.  
35 For purposes of this section, the following definitions  
36 apply:

37 (1) "Permissive service credit" means service credit  
38 which is permitted to be purchased under the terms of the

39 retirement system by voluntary contributions in an  
40 amount which does not exceed the amount necessary to  
41 fund the benefit attributable to the period of service for  
42 which the service credit is being purchased, all as defined  
43 in Section 415(n)(3)(A) of the Internal Revenue Code.

44 (2) "Repayment of withdrawn or refunded contribu-  
45 tions" means the payment into the retirement system of  
46 the funds required pursuant to this article for the rein-  
47 statement of service credit previously forfeited on account  
48 of any refund or withdrawal of contributions permitted in  
49 this article, as set forth in Section 415(k)(3) of the Internal  
50 Revenue Code.

51 (b) Nothing in this section shall be construed as permit-  
52 ting rollovers or transfers into this system or any other  
53 system administered by the retirement board other than as  
54 specified in this section and no rollover or transfer shall be  
55 accepted into the system in an amount greater than the  
56 amount required for the purchase of permissive service  
57 credit or repayment of withdrawn or refunded contribu-  
58 tions.

59 (c) Nothing in this section shall be construed as permit-  
60 ting the purchase of service credit or repayment of with-  
61 drawn or refunded contributions except as otherwise  
62 permitted in this article.

**ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION  
PLANS.**

**§5-10B-2. Definitions.**

1 Unless the context in which used clearly indicates a  
2 different meaning, as used in this article:

3 (a) "Board" means the consolidated public retirement  
4 board provided for in article ten of this chapter.

5 (b) "Deferred compensation plan" means a trust whereby  
6 the state of West Virginia, as the public employer, or a  
7 public employer agrees with an employee for the voluntary

8 reduction in employee compensation for the payment of  
9 benefits by the state employer or the public employer to  
10 the employee at a later date pursuant to this article and  
11 the federal laws and regulations relating to eligible state  
12 deferred compensation plans as described in Section 457  
13 of the Internal Revenue Code.

14 (c) "Employee" means any person, whether appointed,  
15 elected, or under contract, providing services for the state  
16 employer or public employer for which compensation is  
17 paid.

18 (d) "Public employer" means counties, municipalities or  
19 political subdivisions of those governmental bodies which  
20 meet the definition of "state" as described in Internal  
21 Revenue Code Section 457 (d)(1), but which do not meet  
22 the definition of "state employer" as used in this article.

23 (e) "State employer" means the state of West Virginia  
24 and any state agency or instrumentality of the state.

25 (f) "Internal Revenue Code" means the Internal Revenue  
26 Code of 1986, as it has been amended.

**ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.**

**§5-10D-7. Compensation limitations; effective dates.**

1 (a) Effective for plan years beginning after the  
2 thirty-first day of December, one thousand nine hundred  
3 ninety-five, and prior to the first day of January, two  
4 thousand two, the annual compensation of a participant  
5 taken into account in determining benefits or contribu-  
6 tions under any of the public retirement plans adminis-  
7 tered by the board and which are qualified plans under  
8 Section 401(a) of the Internal Revenue Code may not  
9 exceed one hundred fifty thousand dollars, as indexed in  
10 accordance with the provisions of Section 401(a)(17) of the  
11 Internal Revenue Code. Effective for plan years beginning  
12 on or after the first day of January, two thousand two, the  
13 annual compensation of each participant taken into

14 account in determining allocations for any plan year  
15 beginning on or after the first day of January, two thou-  
16 sand two, shall not exceed two hundred thousand dollars  
17 as adjusted for cost-of-living increases in accordance with  
18 Section 401(a)(17)(B) of the Internal Revenue Code. In  
19 determining benefit accruals in plan years beginning after  
20 the thirty-first day of December, two thousand one, the  
21 annual compensation limit for determination periods  
22 beginning before the first day of January, two thousand  
23 two, shall be two hundred thousand dollars. Annual  
24 compensation means compensation during the plan year or  
25 any other consecutive twelve-month period over which  
26 compensation is otherwise determined (the determination  
27 period). The cost-of-living adjustment in effect for a  
28 calendar year applies to annual compensation for the  
29 determination period that begins with or within that  
30 calendar year. This provision applies notwithstanding any  
31 other provision to the contrary in this code and notwith-  
32 standing any provisions of any legislative rule.

33 (b) In applying the limitations of subsection (a) of this  
34 section, the consolidated public retirement board may: (1)  
35 Adopt policies or procedures that may be necessary or  
36 appropriate in applying the compensation limitations of  
37 Section 401(a)(17) to participants, including, without  
38 limitation, the adoption and application of any transi-  
39 tional rules to implement the compensation limitations;  
40 and (2) to take any actions that may at any time be re-  
41 quired by the internal revenue service regarding compli-  
42 ance with the requirements of Section 401(a)(17), includ-  
43 ing, without limitation, distributions, credits, set-asides or  
44 other adjustments.

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM.**

#### **§7-14D-2a. Meaning of terms.**

1 Any term used in this article has the same meaning as  
2 when used in a comparable context in the laws of the



3 United States, unless a different meaning is clearly  
4 required. Any reference in this article to the Internal  
5 Revenue Code means the Internal Revenue Code of 1986,  
6 as it has been amended.

**§7-14D-9c. Direct rollovers.**

1 (a) This section applies to distributions made on or after  
2 the first day of January, one thousand nine hundred  
3 ninety-three. Notwithstanding any provision of this  
4 article to the contrary that would otherwise limit a  
5 distributee's election under this plan, a distributee may  
6 elect, at the time and in the manner prescribed by the  
7 board, to have any portion of an eligible rollover distribu-  
8 tion that is equal to at least five hundred dollars paid  
9 directly to an eligible retirement plan specified by the  
10 distributee in a direct rollover. For purposes of this  
11 section, the following definitions apply:

12 (1) "Eligible rollover distribution" means any distribu-  
13 tion of all or any portion of the balance to the credit of the  
14 distributee, except that an eligible rollover distribution  
15 does not include any of the following: (i) Any distribution  
16 that is one of a series of substantially equal periodic  
17 payments not less frequently than annually made for the  
18 life or life expectancy of the distributee or the joint lives  
19 or the joint life expectancies of the distributee and the  
20 distributee's designated beneficiary, or for a specified  
21 period of ten years or more; (ii) any distribution to the  
22 extent the distribution is required under Section 401(a)(9)  
23 of the Internal Revenue Code; (iii) the portion of any  
24 distribution that is not includable in gross income deter-  
25 mined without regard to the exclusion for net unrealized  
26 appreciation with respect to employer securities; (iv) any  
27 hardship distribution described in Section  
28 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v)  
29 any other distribution or distributions reasonably ex-  
30 pected to total less than two hundred dollars during a  
31 year. For distributions after the thirty-first day of Decem-  
32 ber, two thousand one, a portion of a distribution shall not

33 fail to be an eligible rollover distribution merely because  
34 the portion consists of after-tax employee contributions  
35 which are not includable in gross income. However, this  
36 portion may be paid only to an individual retirement  
37 account or annuity described in Section 408(a) or (b) of the  
38 Internal Revenue Code, or to a qualified defined contribu-  
39 tion plan described in Section 401(a) or 403(a) of the  
40 Internal Revenue Code that agrees to separately account  
41 for amounts transferred, including separately accounting  
42 for the portion of the distribution which is includable in  
43 gross income and the portion of the distribution which is  
44 not includable.

45 (2) "Eligible retirement plan" means an individual  
46 retirement account described in Section 408(a) of the  
47 Internal Revenue Code, an individual retirement annuity  
48 described in Section 408(b) of the Internal Revenue Code,  
49 an annuity plan described in Section 403(a) of the Internal  
50 Revenue Code or a qualified plan described in Section  
51 401(a) of the Internal Revenue Code that accepts the  
52 distributee's eligible rollover distribution: *Provided*, That  
53 in the case of an eligible rollover distribution to the  
54 surviving spouse, an eligible retirement plan is an individ-  
55 ual retirement account or individual retirement annuity.  
56 For distributions after the thirty-first day of December,  
57 two thousand one, an eligible retirement plan also means  
58 an annuity contract described in Section 403(b) of the  
59 Internal Revenue Code and an eligible plan under Section  
60 457(b) of the Internal Revenue Code which is maintained  
61 by a state, political subdivision of a state, or any agency or  
62 instrumentality of a state or political subdivision of a state  
63 and which agrees to separately account for amounts  
64 transferred into the plan from this system.

65 (3) "Distributee" means an employee or former em-  
66 ployee. In addition, the employee's or former employee's  
67 surviving spouse and the employee's or former employee's  
68 spouse or former spouse who is the alternate payee under  
69 a qualified domestic relations order, as defined in Section

70 414(p) of the Internal Revenue Code with respect to  
71 governmental plans, are distributees with regard to the  
72 interest of the spouse or former spouse.

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

75 (b) Nothing in this section shall be construed as permit-  
76 ting rollovers to this plan or any other retirement system  
77 administered by the board.

**§7-14D-9d. Rollovers and transfers to purchase service credit or  
repay withdrawn contributions.**

1 (a) This section applies to rollovers and transfers as  
2 specified in this section made on or after the first day of  
3 January, two thousand two. Notwithstanding any provi-  
4 sion of this article to the contrary that would otherwise  
5 prohibit or limit rollovers and plan transfers to this  
6 system, the retirement system shall accept the following  
7 rollovers and plan transfers on behalf of a member solely  
8 for the purpose of purchasing permissive service credit, in  
9 whole or in part, as otherwise provided in this article or  
10 for the repayment of withdrawn or refunded contributions,  
11 in whole and in part, with respect to a previous forfeiture  
12 of service credit as otherwise provided in this article: (i)  
13 One or more rollovers within the meaning of Section  
14 408(d)(3) of the Internal Revenue Code from an individual  
15 retirement account described in Section 408(a) of the  
16 Internal Revenue Code or from an individual retirement  
17 annuity described in Section 408(b) of the Internal Reve-  
18 nue Code; (ii) one or more rollovers described in Section  
19 402(c) of the Internal Revenue Code from a retirement plan  
20 that is qualified under Section 401(a) of the Internal  
21 Revenue Code or from a plan described in Section 403(b)  
22 of the Internal Revenue Code; (iii) one or more rollovers  
23 described in Section 457(e)(16) of the Internal Revenue  
24 Code from a governmental plan described in Section 457  
25 of the Internal Revenue Code; or (iv) direct trustee-to-  
26 trustee transfers or rollovers from a plan that is qualified

27 under Section 401(a) of the Internal Revenue Code, from a  
28 plan described in Section 403(b) of the Internal Revenue  
29 Code or from a governmental plan described in Section  
30 457 of the Internal Revenue Code: *Provided*, That any  
31 rollovers or transfers pursuant to this section shall be  
32 accepted by the system only if made in cash or other asset  
33 permitted by the board and only in accordance with such  
34 policies, practices and procedures established by the board  
35 from time to time. For purposes of this section, the  
36 following definitions apply:

37 (1) "Permissive service credit" means service credit  
38 which is permitted to be purchased under the terms of the  
39 retirement system by voluntary contributions in an  
40 amount which does not exceed the amount necessary to  
41 fund the benefit attributable to the period of service for  
42 which the service credit is being purchased, all as defined  
43 in Section 415(n)(3)(A) of the Internal Revenue Code.

44 (2) "Repayment of withdrawn or refunded contribu-  
45 tions" means the payment into the retirement system of  
46 the funds required pursuant to this article for the rein-  
47 statement of service credit previously forfeited on account  
48 of any refund or withdrawal of contributions permitted in  
49 this article, as set forth in Section 415(k)(3) of the Internal  
50 Revenue Code.

51 (b) Nothing in this section shall be construed as permit-  
52 ting rollovers or transfers into this system or any other  
53 system administered by the retirement board other than as  
54 specified in this section and no rollover or transfer shall be  
55 accepted into the system in an amount greater than the  
56 amount required for the purchase of permissive service  
57 credit or repayment of withdrawn or refunded contribu-  
58 tions.

59 (c) Nothing in this section shall be construed as permit-  
60 ting the purchase of service credit or repayment of with-  
61 drawn or refunded contributions except as otherwise  
62 permitted in this article.

**CHAPTER 15. PUBLIC SAFETY.**

**ARTICLE 2. WEST VIRGINIA STATE POLICE.**

**§15-2-25a. Meaning of terms.**

1 Any term used in this article relating to the death,  
2 disability and retirement fund shall have the same mean-  
3 ing as when used in a comparable context of the laws of  
4 the United States, unless a different meaning as clearly  
5 required. Any reference in this article to the Internal  
6 Revenue Code means the Internal Revenue Code, as it has  
7 been amended.

**§15-2-46. Direct rollovers.**

1 (a) This section applies to distributions made on or after  
2 the first day of January, one thousand nine hundred  
3 ninety-three. Notwithstanding any provision of this  
4 article to the contrary that would otherwise limit a  
5 distributee's election under this fund, a distributee may  
6 elect, at the time and in the manner prescribed by the  
7 board, to have any portion of an eligible rollover distribu-  
8 tion that is equal to at least five hundred dollars paid  
9 directly to an eligible retirement plan specified by the  
10 distributee in a direct rollover. For purposes of this  
11 section, the following definitions apply:

12 (1) "Eligible rollover distribution" means any distribu-  
13 tion of all or any portion of the balance to the credit of the  
14 distributee, except that an eligible rollover distribution  
15 does not include any of the following: (i) Any distribution  
16 that is one of a series of substantially equal periodic  
17 payments not less frequently than annually made for the  
18 life or life expectancy of the distributee or the joint lives  
19 or the joint life expectancies of the distributee and the  
20 distributee's designated beneficiary, or for a specified  
21 period

22 of ten years or more; (ii) any distribution to the extent the  
23 distribution is required under Section 401(a)(9) of the

24 Internal Revenue Code; (iii) the portion of any distribution  
25 that is not includable in gross income determined without  
26 regard to the exclusion for net unrealized appreciation  
27 with respect to employer securities; (iv) any hardship  
28 distribution described in Section 401(k)(2)(B)(i)(iv) [26  
29 USCS §401(k)(2)(B)(i)(iv)] of the Internal Revenue Code;  
30 and (v) any other distribution or distributions that are  
31 reasonably expected to total less than two hundred dollars  
32 during a year. For distributions after the thirty-first day  
33 of December, two thousand one, a portion of a distribution  
34 shall not fail to be an eligible rollover distribution merely  
35 because the portion consists of after-tax employee contri-  
36 butions which are not includable in gross income. How-  
37 ever, this portion may be paid only to an individual  
38 retirement account or annuity described in Section 408(a)  
39 or (b) of the Internal Revenue Code, or to a qualified  
40 defined contribution plan described in Section 401(a) or  
41 403(a) of the Internal Revenue Code that agrees to sepa-  
42 rately account for amounts transferred, including sepa-  
43 rately accounting for the portion of the distribution which  
44 is includable in gross income and the portion of the  
45 distribution which is not includable.

46 (2) "Eligible retirement plan" means an individual  
47 retirement account described in Section 408(a) of the  
48 Internal Revenue Code, an individual retirement annuity  
49 described in Section 408(b) of the Internal Revenue Code,  
50 an annuity plan described in Section 403(a) of the Internal  
51 Revenue Code, or a qualified plan described in Section  
52 401(a) of the Internal Revenue Code, that accepts the  
53 distributee's eligible rollover distribution: *Provided*, That  
54 in the case of an eligible rollover distribution to the  
55 surviving spouse, an eligible retirement plan is an individ-  
56 ual retirement account or individual retirement annuity.  
57 For distributions after the thirty-first day of December,  
58 two thousand one, an eligible retirement plan also means  
59 an annuity contract described in Section 403(b) of the  
60 Internal Revenue Code and an eligible plan under Section  
61 457(b) of the Internal Revenue Code which is maintained

62 by a state, political subdivision of a state, or any agency or  
63 instrumentality of a state or political subdivision of a state  
64 and which agrees to separately account for amounts  
65 transferred into the plan from this system.

66 (3) "Distributee" means a member. In addition, the  
67 member's surviving spouse and the member's spouse or  
68 former spouse who is the alternate payee under a qualified  
69 domestic relations order, as defined in Section 414(p) of  
70 the Internal Revenue Code with respect to governmental  
71 plans, are distributees with regard to the interest of the  
72 spouse or former spouse.

73 (4) "Direct rollover" means a payment by the system to  
74 the eligible retirement plan.

75 (b) Nothing in this section may be construed as permit-  
76 ting rollovers into this fund or any other retirement system  
77 administered by the board.

#### ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

##### §15-2A-2. Definitions.

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

3 (1) "Active military duty" means full-time active duty  
4 with the armed forces of the United States, namely, the  
5 United States air force, army, coast guard, marines or  
6 navy; and service with the national guard or reserve  
7 military forces of any of the armed forces when the  
8 member has been called to active full-time duty and has  
9 received no compensation during the period of that duty  
10 from any person other than the armed forces.

11 (2) "Base salary" means compensation paid to a member  
12 without regard to any overtime pay.

13 (3) "Board" means the consolidated public retirement  
14 board created pursuant to article ten-d, chapter five of this  
15 code.

16 (4) "Division" means the division of public safety.

17 (5) "Final average salary" means the average of the  
18 highest annual compensation received for employment  
19 with the division, including compensation paid for over-  
20 time service, received by the member during any five years  
21 within the member's last ten years of service.

22 (6) "Fund" means the West Virginia state police retire-  
23 ment fund created pursuant to section four of this article.

24 (7) "Member" or "employee" means a person regularly  
25 employed in the service of the division of public safety  
26 after the effective date of this article.

27 (8) "Salary" means the compensation of a member,  
28 excluding any overtime payments.

29 (9) "Internal Revenue Code" means the Internal Revenue  
30 Code of 1986, as it has been amended.

31 (10) "Plan year" means the twelve-month period com-  
32 mencing on the first day of July of any designated year and  
33 ending the following thirtieth day of June.

34 (11) "Required beginning date" means the first day of  
35 April of the calendar year following the later of: (a) The  
36 calendar year in which the member attains age seventy  
37 and one-half; or (b) the calendar year in which he or she  
38 retires or otherwise separates from service with the  
39 department.

40 (12) "Retirement system" or "system" means the West  
41 Virginia state police retirement system created and  
42 established by this article.

**§15-2A-6c. Direct rollovers.**

1 (a) This section applies to distributions made on or after  
2 the first day of January, one thousand nine hundred  
3 ninety-three. Notwithstanding any provision of this article  
4 to the contrary that would otherwise limit a distributee's



5 election under this system, a distributee may elect, at the  
6 time and in the manner prescribed by the board, to have  
7 any portion of an eligible rollover distribution that is  
8 equal to at least five hundred dollars paid directly to an  
9 eligible retirement plan specified by the distributee in a  
10 direct rollover. For purposes of this section, the following  
11 definitions apply:

12 (1) "Eligible rollover distribution" means any distribu-  
13 tion of all or any portion of the balance to the credit of the  
14 distributee, except that an eligible rollover distribution  
15 does not include any of the following: (i) Any distribution  
16 that is one of a series of substantially equal periodic  
17 payments not less frequently than annually made for the  
18 life or life expectancy of the distributee or the joint lives  
19 or the joint life expectancies of the distributee and the  
20 distributee's designated beneficiary, or for a specified  
21 period of ten years or more; (ii) any distribution to the  
22 extent such distribution is required under Section  
23 401(a)(9) of the Internal Revenue Code; (iii) the portion of  
24 any distribution that is not includable in gross income  
25 determined without regard to the exclusion for net unreal-  
26 ized appreciation with respect to employer securities; (iv)  
27 any hardship distribution described in Section  
28 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v)  
29 any other distribution or distributions expected to total  
30 less than two hundred dollars during a year. For distribu-  
31 tions after the thirty-first day of December, two thousand  
32 one, a portion of a distribution shall not fail to be an  
33 eligible rollover distribution merely because the portion  
34 consists of after-tax employee contributions which are not  
35 includable in gross income. However, this portion may be  
36 paid only to an individual retirement account or annuity  
37 described in Section 408(a) or (b) of the Internal Revenue  
38 Code, or to a qualified defined contribution plan described  
39 in Section 401(a) or 403(a) of the Internal Revenue Code  
40 that agrees to separately account for amounts transferred,  
41 including separately accounting for the portion of the

42 distribution which is includable in gross income and the  
43 portion of the distribution which is not includable.

44 (2) "Eligible retirement plan" means an individual  
45 retirement account described in Section 408(a) of the  
46 Internal Revenue Code, an individual retirement annuity  
47 described in Section 408(b) of the Internal Revenue Code,  
48 an annuity plan described in Section 403(a) of the Internal  
49 Revenue Code or a qualified plan described in Section  
50 401(a) of the Internal Revenue Code that accepts the  
51 distributee's eligible rollover distribution: *Provided*, That  
52 in the case of an eligible rollover distribution to the  
53 surviving spouse, an eligible retirement plan is an individ-  
54 ual retirement account or individual retirement annuity.  
55 For distributions after the thirty-first day of December,  
56 two thousand one, an eligible retirement plan also means  
57 an annuity contract described in Section 403(b) of the  
58 Internal Revenue Code and an eligible plan under Section  
59 457(b) of the Internal Revenue Code which is maintained  
60 by a state, political subdivision of a state, or any agency or  
61 instrumentality of a state or political subdivision of a state  
62 and which agrees to separately account for amounts  
63 transferred into the plan from this system.

64 (3) "Distributee" means an employee or former em-  
65 ployee. In addition, the employee's or former employee's  
66 surviving spouse and the employee's or former employee's  
67 spouse or former spouse who is the alternate payee under  
68 a qualified domestic relations order, as defined in Section  
69 414(p) of the Internal Revenue Code with respect to  
70 governmental plans, are distributees with regard to the  
71 interest of the spouse or former spouse.

72 (4) "Direct rollover" means a payment by the system to  
73 the eligible retirement plan.

74 (b) Nothing in this section may be construed as permit-  
75 ting rollovers into this system or any other retirement  
76 system administered by the board.

**§15-2A-6d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.**

1 (a) This section applies to rollovers and transfers as  
2 specified in this section made on or after the first day of  
3 January, two thousand two. Notwithstanding any provi-  
4 sion of this article to the contrary that would otherwise  
5 prohibit or limit rollovers and plan transfers to this  
6 system, the retirement system shall accept the following  
7 rollovers and plan transfers on behalf of a member solely  
8 for the purpose of purchasing permissive service credit, in  
9 whole and in part, as otherwise provided in this article or  
10 for the repayment of withdrawn or refunded contributions,  
11 in whole and in part, with respect to a previous forfeiture  
12 of service credit as otherwise provided in this article: (i)  
13 One or more rollovers within the meaning of Section  
14 408(d)(3) of the Internal Revenue Code from an individual  
15 retirement account described in Section 408(a) of the  
16 Internal Revenue Code or from an individual retirement  
17 annuity described in Section 408(b) of the Internal Reve-  
18 nue Code; (ii) one or more rollovers described in Section  
19 402(c) of the Internal Revenue Code from a retirement plan  
20 that is qualified under Section 401(a) of the Internal  
21 Revenue Code or from a plan described in Section 403(b)  
22 of the Internal Revenue Code; (iii) one or more rollovers  
23 described in Section 457(e)(16) of the Internal Revenue  
24 Code from a governmental plan described in Section 457  
25 of the Internal Revenue Code; or (iv) direct trustee-to-  
26 trustee transfers or rollovers from a plan that is qualified  
27 under Section 401(a) of the Internal Revenue Code, from a  
28 plan described in Section 403(b) of the Internal Revenue  
29 Code or from a governmental plan described in Section  
30 457 of the Internal Revenue Code: *Provided*, That any  
31 rollovers or transfers pursuant to this section shall be  
32 accepted by the system only if made in cash or other asset  
33 permitted by the board and only in accordance with the  
34 policies, practices and procedures established by the board  
35 from time to time. For purposes of this section, the  
36 following definitions apply:

37 (1) "Permissive service credit" means service credit  
38 which is permitted to be purchased under the terms of the  
39 retirement system by voluntary contributions in an  
40 amount which does not exceed the amount necessary to  
41 fund the benefit attributable to the period of service for  
42 which the service credit is being purchased, all as defined  
43 in Section 415(n)(3)(A) of the Internal Revenue Code.

44 (2) "Repayment of withdrawn or refunded contribu-  
45 tions" means the payment into the retirement system of  
46 the funds required pursuant to this article for the rein-  
47 statement of service credit previously forfeited on account  
48 of any refund or withdrawal of contributions permitted in  
49 this article, as set forth in Section 415(k)(3) of the Internal  
50 Revenue Code.

51 (b) Nothing in this section shall be construed as permit-  
52 ting rollovers or transfers into this system or any other  
53 system administered by the retirement board other than as  
54 specified in this section and no rollover or transfer shall be  
55 accepted into the system in an amount greater than the  
56 amount required for the purchase of permissive service  
57 credit or repayment of withdrawn or refunded contribu-  
58 tions.

59 (c) Nothing in this section shall be construed as permit-  
60 ting the purchase of service credit or repayment of with-  
61 drawn or refunded contributions except as otherwise  
62 permitted in this article.

## CHAPTER 18. EDUCATION.

### ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

#### §18-7A-3. Definitions.

1 "Teacher member" means the following persons, if  
2 regularly employed for full-time service: (a) Any person  
3 employed for instructional service in the public schools of  
4 West Virginia; (b) principals; (c) public school librarians;  
5 (d) superintendents of schools and assistant county

6 superintendents of schools; (e) any county school atten-  
7 dance director holding a West Virginia teacher's certifi-  
8 cate; (f) the executive secretary of the retirement board; (g)  
9 members of the research, extension, administrative or  
10 library staffs of the public schools; (h) the state superin-  
11 tendent of schools, heads and assistant heads of the  
12 divisions under his or her supervision, or any other em-  
13 ployee under the state superintendent performing services  
14 of an educational nature; (i) employees of the state board  
15 of education who are performing services of an educa-  
16 tional nature; (j) any person employed in a nonteaching  
17 capacity by the state board of education, the West Virginia  
18 board of regents [abolished], any county board of educa-  
19 tion, the state department of education or the teachers  
20 retirement board, if that person was formerly employed as  
21 a teacher in the public schools; (k) all classroom teachers,  
22 principals and educational administrators in schools under  
23 the supervision of the division of corrections, the division  
24 of health or the division of human services; and (l) employ-  
25 ees of the state board of school finance, if that person was  
26 formerly employed as a teacher in the public schools.

27 "Nonteaching member" means any person, except a  
28 teacher member, who is regularly employed for full-time  
29 service by: (a) Any county board of education; (b) the state  
30 board of education; (c) the West Virginia board of regents  
31 [abolished]; or (d) the teachers retirement board.

32 "Members of the administrative staff of the public  
33 schools" means deans of instruction, deans of men, deans  
34 of women, and financial and administrative secretaries.

35 "Members of the extension staff of the public schools"  
36 means every agricultural agent, boys' and girls' club agent  
37 and every member of the agricultural extension staff  
38 whose work is not primarily stenographic, clerical or  
39 secretarial.

40 "Retirement system" means the state teachers retirement  
41 system provided for in this article.

42 "Present teacher" means any person who was a teacher  
43 within the thirty-five years beginning the first day of July,  
44 one thousand nine hundred thirty-four, and whose mem-  
45 bership in the retirement system is currently active.

46 "New entrant" means a teacher who is not a present  
47 teacher.

48 "Regularly employed for full-time service" means  
49 employment in a regular position or job throughout the  
50 employment term regardless of the number of hours  
51 worked or the method of pay. "Employment term" means  
52 employment for at least ten months, a month being defined  
53 as twenty employment days.

54 "Present member" means a present teacher who is a  
55 member of the retirement system.

56 "Total service" means all service as a teacher while a  
57 member of the retirement system since last becoming a  
58 member and, in addition thereto, credit for prior service,  
59 if any.

60 "Prior service" means all service as a teacher completed  
61 prior to the first day of July, one thousand nine hundred  
62 forty-one, and all service of a present member who was  
63 employed as a teacher, and did not contribute to a retire-  
64 ment account because he or she was legally ineligible for  
65 membership during the service.

66 "Pick-up service" means service that a member was  
67 entitled to, but which the employer has not withheld or  
68 paid for.

69 "Average final salary" means the average of the five  
70 highest fiscal year salaries earned as a member within the  
71 last fifteen fiscal years of total service credit, including  
72 military service as provided in this article, or if total  
73 service is less than fifteen years, the average annual salary  
74 for the period on which contributions were made.

75 "Accumulated contributions" means all deposits and all  
76 deductions from the earnable compensation of a contribu-  
77 tor minus the total of all supplemental fees deducted from  
78 his or her compensation.

79 "Regular interest" means interest at four percent  
80 compounded annually, or a higher earnable rate if set  
81 forth in the formula established in legislative rules, series  
82 seven of the consolidated public retirement board.

83 "Refund interest" means interest compounded, accord-  
84 ing to the formula established in legislative rules, series  
85 seven of the consolidated public retirement board.

86 "Employer" means the agency of and within the state  
87 which has employed or employs a member.

88 "Contributor" means a member of the retirement system  
89 who has an account in the teachers accumulation fund.

90 "Beneficiary" means the recipient of annuity payments  
91 made under the retirement system.

92 "Refund beneficiary" means the estate of a deceased  
93 contributor or a person he or she has nominated as benefi-  
94 ciary of his or her contributions by written designation  
95 duly executed and filed with the retirement board.

96 "Earnable compensation" means the full compensation  
97 actually received by members for service as teachers  
98 whether or not a part of the compensation is received from  
99 other funds, federal or otherwise, than those provided by  
100 the state or its subdivisions. Allowances from employers  
101 for maintenance of members shall be considered a part of  
102 earnable compensation for those members whose allow-  
103 ances were approved by the teachers retirement board and  
104 contributions to the teachers retirement system were  
105 made, in accordance therewith, on or before the first day  
106 of July, one thousand nine hundred eighty.

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

109 "Member" means a member of the retirement system.

110 "Public schools" means all publicly supported schools,  
111 including normal schools, colleges and universities in this  
112 state.

113 "Deposit" means a voluntary payment to his or her  
114 account by a member.

115 "Plan year" means the twelve-month period commenc-  
116 ing on the first day of July and ending the following  
117 thirtieth day of June of any designated year.

118 "Internal Revenue Code" means the Internal Revenue  
119 Code of 1986, as it has been amended.

120 "Required beginning date" means the first day of April  
121 of the calendar year following the later of: (a) The calendar  
122 year in which the member attains age seventy and  
123 one-half; or (b) the calendar year in which the member  
124 retires or ceases covered employment under the system.

125 The masculine gender shall be construed so as to include  
126 the feminine.

127 Age in excess of seventy years shall be considered to be  
128 seventy years.

**§18-7A-28c. Direct rollovers.**

1 (a) This section applies to distributions made on or after  
2 the first day of January, one thousand nine hundred  
3 ninety-three. Notwithstanding any provision of this  
4 article to the contrary that would otherwise limit a  
5 distributee's election under this system, a distributee may  
6 elect, at the time and in the manner prescribed by the  
7 board, to have any portion of an eligible rollover distribu-  
8 tion that is equal to at least five hundred dollars paid  
9 directly to an eligible retirement plan specified by the  
10 distributee in a direct rollover. For purposes of this  
11 section, the following definitions apply:



12 (1) "Eligible rollover distribution" means any distribu-  
13 tion of all or any portion of the balance to the credit of the  
14 distributee, except that an eligible rollover distribution  
15 does not include any of the following: (i) Any distribution  
16 that is one of a series of substantially equal periodic  
17 payments not less frequently than annually made for the  
18 life or life expectancy of the distributee or the joint lives  
19 or the joint life expectancies of the distributee and the  
20 distributee's designated beneficiary, or for a specified  
21 period of ten years or more; (ii) any distribution to the  
22 extent such distribution is required under Section  
23 401(a)(9) of the Internal Revenue Code; (iii) the portion of  
24 any distribution that is not includable in gross income  
25 determined without regard to the exclusion for net unreal-  
26 ized appreciation with respect to employer securities; (iv)  
27 any hardship distribution described in Section  
28 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v)  
29 any other distribution reasonably or distributions ex-  
30 pected to total less than two hundred dollars during a  
31 year. For distributions after the thirty-first day of Decem-  
32 ber, two thousand one, a portion of a distribution shall not  
33 fail to be an eligible rollover distribution merely because  
34 the portion consists of after-tax employee contributions  
35 which are not includable in gross income. However, this  
36 portion may be paid only to an individual retirement  
37 account or annuity described in Section 408(a) or (b) of the  
38 Internal Revenue Code, or to a qualified defined contribu-  
39 tion plan described in Section 401(a) or 403(a) of the  
40 Internal Revenue Code that agrees to separately account  
41 for amounts transferred, including separately accounting  
42 for the portion of the distribution which is includable in  
43 gross income and the portion of the distribution which is  
44 not includable.

45 (2) "Eligible retirement plan" means an individual  
46 retirement account described in Section 408(a) of the  
47 Internal Revenue Code, an individual retirement annuity  
48 described in Section 408(b) of the Internal Revenue Code,  
49 an annuity plan described in Section 403(a) of the Internal

50 Revenue Code, or a qualified plan described in Section  
51 401(a) of the Internal Revenue Code, that accepts the  
52 distributee's eligible rollover distribution: *Provided*, That  
53 in the case of an eligible rollover distribution to the  
54 surviving spouse, an eligible retirement plan is an individ-  
55 ual retirement account or individual retirement annuity.  
56 For distributions after the thirty-first day of December,  
57 two thousand one, an eligible retirement plan also means  
58 an annuity contract described in Section 403(b) of the  
59 Internal Revenue Code and an eligible plan under Section  
60 457(b) of the Internal Revenue Code which is maintained  
61 by a state, political subdivision of a state, or any agency or  
62 instrumentality of a state or political subdivision of a state  
63 and which agrees to separately account for amounts  
64 transferred into the plan from this system.

65 (3) "Distributee" means an employee or former em-  
66 ployee. In addition, the employee's or former employee's  
67 surviving spouse and the employee's or former employee's  
68 spouse or former spouse who is the alternate payee under  
69 a qualified domestic relations order, as defined in Section  
70 414(p) of the Internal Revenue Code, as applicable to  
71 governmental plans, are distributees with regard to the  
72 interest of the spouse or former spouse.

73 (4) "Direct rollover" means a payment by the system to  
74 the eligible retirement plan.

75 (b) Nothing in this section may be construed as permit-  
76 ting rollovers into this system or any other retirement  
77 system administered by the board.

**§18-7A-28d. Rollovers and transfers to purchase service credit  
or repay withdrawn contributions.**

1 (a) This section applies to rollovers and transfers as  
2 specified in this section made on or after the first day of  
3 January, two thousand two. Notwithstanding any provi-  
4 sion of this article to the contrary that would otherwise  
5 prohibit or limit rollovers and plan transfers to this

6 system, the retirement system shall accept the following  
7 rollovers and plan transfers on behalf of a member solely  
8 for the purpose of purchasing permissive service credit, in  
9 whole or in part, as otherwise provided in this article or  
10 for the repayment of withdrawn or refunded contributions,  
11 in whole or in part, with respect to a previous forfeiture of  
12 service credit as otherwise provided in this article: (i) One  
13 or more rollovers within the meaning of Section 408(d)(3)  
14 of the Internal Revenue Code from an individual retire-  
15 ment account described in Section 408(a) of the Internal  
16 Revenue Code or from an individual retirement annuity  
17 described in Section 408(b) of the Internal Revenue Code;  
18 (ii) one or more rollovers described in Section 402(c) of the  
19 Internal Revenue Code from a retirement plan that is  
20 qualified under Section 401(a) of the Internal Revenue  
21 Code or from a plan described in Section 403(b) of the  
22 Internal Revenue Code; (iii) one or more rollovers de-  
23 scribed in Section 457(e)(16) of the Internal Revenue Code  
24 from a governmental plan described in Section 457 of the  
25 Internal Revenue Code; or (iv) direct trustee-to-trustee  
26 transfers or rollovers from a plan that is qualified under  
27 Section 401(a) of the Internal Revenue Code, from a plan  
28 described in Section 403(b) of the Internal Revenue Code  
29 or from a governmental plan described in Section 457 of  
30 the Internal Revenue Code: *Provided*, That any rollovers or  
31 transfers pursuant to this section shall be accepted by the  
32 system only if made in cash or other asset permitted by the  
33 board and only in accordance with the policies, practices  
34 and procedures established by the board from time to time.  
35 For purposes of this section, the following definitions  
36 apply:

37 (1) "Permissive service credit" means service credit  
38 which is permitted to be purchased under the terms of the  
39 retirement system by voluntary contributions in an  
40 amount which does not exceed the amount necessary to  
41 fund the benefit attributable to the period of service for  
42 which the service credit is being purchased, all as defined  
43 in Section 415(n)(3)(A) of the Internal Revenue Code.

44 (2) "Repayment of withdrawn or refunded contribu-  
45 tions" means the payment into the retirement system of  
46 the funds required pursuant to this article for the rein-  
47 statement of service credit previously forfeited on account  
48 of any refund or withdrawal of contributions permitted in  
49 this article, as set forth in Section 415(k)(3) of the Internal  
50 Revenue Code.

51 (b) Nothing in this section shall be construed as permit-  
52 ting rollovers or transfers into this system or any other  
53 system administered by the retirement board other than as  
54 specified in this section and no rollover or transfer shall be  
55 accepted into the system in an amount greater than the  
56 amount required for the purchase of permissive service  
57 credit or repayment of withdrawn or refunded contribu-  
58 tions.

59 (c) Nothing in this section shall be construed as permit-  
60 ting the purchase of service credit or repayment of with-  
61 drawn or refunded contributions except as otherwise  
62 permitted in this article.

**ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT  
SYSTEM.**

**§18-7B-2. Definitions.**

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

3 (1) "Defined contribution system" or "system" means the  
4 teachers' defined contribution retirement system created  
5 and established by this article;

6 (2) "Existing retirement system" means the state teach-  
7 ers retirement system established in article seven-a of this  
8 chapter;

9 (3) "Existing employer" means any employer who  
10 employed or employs a member of the existing retirement  
11 system;

12 (4) "Consolidated board" or "board" means the consoli-  
13 dated public retirement board created and established  
14 pursuant to article ten-d, chapter five of this code;

15 (5) "Member" or "employee" means the following  
16 persons, if regularly employed for full-time service: (a)  
17 Any person employed for instructional service in the  
18 public schools of West Virginia; (b) principals; (c) public  
19 school librarians; (d) superintendents of schools and  
20 assistant county superintendents of schools; (e) any county  
21 school attendance director holding a West Virginia  
22 teacher's certificate; (f) the executive secretary of the  
23 retirement board; (g) members of the research, extension,  
24 administrative or library staffs of the public schools; (h)  
25 the state superintendent of schools, heads and assistant  
26 heads of the divisions under his or her supervision, or any  
27 other employee under the state superintendent performing  
28 services of an educational nature; (i) employees of the state  
29 board of education who are performing services of an  
30 educational nature; (j) any person employed in a  
31 nonteaching capacity by the state board of education, any  
32 county board of education, the state department of  
33 education or the teachers retirement board, if that person  
34 was formerly employed as a teacher in the public schools;  
35 (k) all classroom teachers, principals and educational  
36 administrators in schools under the supervision of the  
37 department of corrections and the department of health  
38 and human resources; (l) any person who is regularly  
39 employed for full-time service by any county board of  
40 education, the state board of education or the teachers  
41 retirement board; and (m) the administrative staff of the  
42 public schools including deans of instruction, deans of men  
43 and deans of women, and financial and administrative  
44 secretaries;

45 (6) "Regularly employed for full-time service" means  
46 employment in a regular position or job throughout the  
47 employment term regardless of the number of hours  
48 worked or the method of pay;

49 (7) "Year of employment service" means employment for  
50 at least ten months, a month being defined as twenty  
51 employment days: *Provided*, That no more than one year  
52 of service may be accumulated in any twelve-month  
53 period;

54 (8) "Employer" means the agency of and within the state  
55 which has employed or employs a member;

56 (9) "Compensation" means the full compensation  
57 actually received by members for service whether or not a  
58 part of the compensation is received from other funds,  
59 federal or otherwise, than those provided by the state or its  
60 subdivisions;

61 (10) "Public schools" means all publicly supported  
62 schools, including normal schools, colleges and universities  
63 in this state;

64 (11) "Member contribution" means an amount reduced  
65 from the employee's regular pay periods, and deposited  
66 into the member's individual annuity account within the  
67 defined contribution retirement system;

68 (12) "Employer contribution" means an amount depos-  
69 ited into the member's individual annuity account on a  
70 periodic basis coinciding with the employee's regular pay  
71 period by an employer from its own funds;

72 (13) "Annuity account" or "annuity" means an account  
73 established for each member to record the deposit of  
74 member contributions and employer contributions and  
75 interest, dividends or other accumulations credited on  
76 behalf of the member;

77 (14) "Retirement" means a member's withdrawal from  
78 the active employment of a participating employer and  
79 completion of all conditions precedent to retirement;

80 (15) "Permanent, total disability" means a mental or  
81 physical incapacity requiring the absence from employ-  
82 ment service for at least six months: *Provided*, That the

83 incapacity is shown by an examination by a physician or  
84 physicians selected by the board;

85 (16) "Plan year" means the twelve-month period com-  
86 mencing on the first day of July of any designated year and  
87 ending on the following thirtieth day of June;

88 (17) "Required beginning date" means the first day of  
89 April of the calendar year following the later of: (a) The  
90 calendar year in which the member attains age seventy one  
91 and one-half; or (b) the calendar year in which the member  
92 retires or otherwise ceases employment with a participat-  
93 ing employer; and

94 (18) "Internal Revenue Code" means the Internal Reve-  
95 nue Code of 1986, as it has been amended.

**§18-7B-11a. Rollovers and transfers to repay cashed-out or  
withdrawn contributions.**

1 (a) This section applies to rollovers and transfers as  
2 specified in this section made on or after the first day of  
3 January, two thousand two. Notwithstanding any provi-  
4 sion of this article to the contrary that would otherwise  
5 prohibit or limit rollovers and plan transfers to this  
6 system, the defined contribution system shall accept the  
7 following rollovers and plan transfers on behalf of a  
8 member solely for the purpose of repayment of cashed-out  
9 or withdrawn contributions, in whole or in part, as  
10 otherwise provided in this article or the rules applicable to  
11 the defined contribution system: (i) One or more rollovers  
12 within the meaning of section 408(d)(3) of the Internal  
13 Revenue Code from an individual retirement account  
14 described in Section 408(a) of the Internal Revenue Code  
15 or from an individual retirement annuity described in  
16 Section 408(b) of the Internal Revenue Code; (ii) one or  
17 more rollovers described in Section 402(c) of the Internal  
18 Revenue Code from a retirement plan that is qualified  
19 under Section 401(a) of the Internal Revenue Code or from  
20 a plan described in Section 403(b) of the Internal Revenue

21 Code; (iii) one or more rollovers described in Section  
 22 457(e)(16) of the Internal Revenue Code from a govern-  
 23 mental plan described in Section 457 of the Internal  
 24 Revenue Code; or (iv) direct trustee-to-trustee transfers or  
 25 rollovers from a plan that is qualified under Section 401(a)  
 26 of the Internal Revenue Code: *Provided*, That any rollovers  
 27 or transfers pursuant to this section shall be accepted by  
 28 the system only if made in cash or other asset permitted by  
 29 the board and only in accordance with the policies estab-  
 30 lished by the board from time to time.

31 (b) Nothing in this section shall be construed as permit-  
 32 ting rollovers or transfers into this system or any other  
 33 system administered by the retirement board other than as  
 34 specified in this section and no rollover or transfer shall be  
 35 accepted into the system in an amount greater than the  
 36 amount required for the repayment of cashed-out or  
 37 withdrawn contributions.

38 (c) Nothing in this section shall be construed as permit-  
 39 ting the repayment of cashed-out or withdrawn contribu-  
 40 tions except as otherwise permitted in this article or the  
 41 rules applicable to the defined contribution system.

**§18-7B-13b. Direct rollovers.**

1 (a) This section applies to distributions made on or after  
 2 the first day of January, one thousand nine hundred  
 3 ninety-three. Notwithstanding any provision of this  
 4 article to the contrary that would otherwise limit a  
 5 distributee's election under this system, a distributee may  
 6 elect, at the time and in the manner prescribed by the  
 7 board, to have any portion of an eligible rollover distribu-  
 8 tion that is equal to at least five hundred dollars paid  
 9 directly to an eligible retirement plan specified by the  
 10 distributee in a direct rollover. For purposes of this  
 11 section, the following definitions apply:

12 (1) "Eligible rollover distribution" means any distribu-  
 13 tion of all or any portion of the balance to the credit of the



14 distributee, except that an eligible rollover distribution  
15 does not include any of the following: (i) Any distribution  
16 that is one of a series of substantially equal periodic  
17 payments not less frequently than annually made for the  
18 life or life expectancy of the distributee or the joint lives  
19 or the joint life expectancies of the distributee and the  
20 distributee's designated beneficiary, or for a specified  
21 period of ten years or more; (ii) any distribution to the  
22 extent such distribution is required under Section  
23 401(a)(9) of the Internal Revenue Code; (iii) the portion of  
24 any distribution that is not includable in gross income  
25 determined without regard to the exclusion for net unreal-  
26 ized appreciation with respect to employer securities; (iv)  
27 any hardship distribution described in Section  
28 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v)  
29 any other distribution or distributions reasonably ex-  
30 pected to total less than two hundred dollars during a  
31 year. For distributions after the thirty-first day of Decem-  
32 ber, two thousand one, a portion of a distribution shall not  
33 fail to be an eligible rollover distribution merely because  
34 the portion consists of after-tax employee contributions  
35 which are not includable in gross income. However, this  
36 portion may be paid only to an individual retirement  
37 account or annuity described in Section 408(a) or (b) of the  
38 Internal Revenue Code, or to a qualified defined contribu-  
39 tion plan described in Section 401(a) or 403(a) of the  
40 Internal Revenue Code that agrees to separately account  
41 for amounts transferred, including separately accounting  
42 for the portion of the distribution which is includable in  
43 gross income and the portion of the distribution which is  
44 not includable.

45 (2) "Eligible retirement plan" means an individual  
46 retirement account described in Section 408(a) of the  
47 Internal Revenue Code, an individual retirement annuity  
48 described in Section 408(b) of the Internal Revenue Code,  
49 an annuity plan described in Section 403(a) of the Internal  
50 Revenue Code or a qualified plan described in Section  
51 401(a) of the Internal Revenue Code that accepts the

52 distributee's eligible rollover distribution: *Provided*, That  
53 in the case of an eligible rollover distribution to the  
54 surviving spouse, an eligible retirement plan is an individ-  
55 ual retirement account or individual retirement annuity.  
56 For distributions after the thirty-first day of December,  
57 two thousand one, an eligible retirement plan shall also  
58 mean an annuity contract described in Section 403(b) of  
59 the Internal Revenue Code and an eligible plan under  
60 Section 457(b) of the Internal Revenue Code which is  
61 maintained by a state, political subdivision of a state, or  
62 any agency or instrumentality of a state or political  
63 subdivision of a state and which agrees to separately  
64 account for amounts transferred into the plan from this  
65 system.

66 (3) "Distributee" means an employee or former em-  
67 ployee. In addition, the employee's or former employee's  
68 surviving spouse and the employee's or former employee's  
69 spouse or former spouse who is the alternate payee under  
70 a qualified domestic relations order, as defined in Section  
71 414(p) of the Internal Revenue Code with respect to  
72 governmental plans, are distributees with regard to the  
73 interest of the spouse or former spouse.

74 (4) "Direct rollover" means a payment by the system to  
75 the eligible retirement plan.

76 (b) Nothing in this section may be construed as permit-  
77 ting rollovers into this retirement system or any other  
78 retirement system administered by the board.

## 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  
2 any court of record" or "judge of any court of record of  
3 this state" means, refers to and includes judges of the  
4 several circuit courts and justices of the supreme court of

5 appeals. For purposes of this article, the terms do not  
6 mean, refer to or include family court judges.

7 (b) "Beneficiary" means any person, except a member,  
8 who is entitled to an annuity or other benefit payable by  
9 the retirement system.

10 (c) "Board" means the consolidated public retirement  
11 board created pursuant to article ten-d, chapter five of this  
12 code.

13 (d) "Internal Revenue Code" means the Internal Revenue  
14 Code of 1986, as it has been amended.

15 (e) "Member" means a judge participating in this system.

16 (f) "Plan year" means the twelve-month period com-  
17 mencing on the first day of July of any designated year and  
18 ending the following thirtieth day of June.

19 (g) "Required beginning date" means the first day of  
20 April of the calendar year following the later of: (a) The  
21 calendar year in which the member attains age seventy  
22 and one-half; or (b) the calendar year in which the member  
23 retires or otherwise separates from covered employment.

24 (h) "Retirement system" or "system" means the judges  
25 retirement system created and established by this article.  
26 Notwithstanding any other provision of law to the con-  
27 trary, the provisions of this article are applicable only to  
28 circuit judges and justices of the supreme court of appeals  
29 in the manner specified in this article. No service as a  
30 family court judge may be construed to qualify a person to  
31 participate in the judges retirement system or used in any  
32 manner as credit toward eligibility for retirement benefits  
33 under the judges retirement system.

**§51-9-12c. Direct rollovers.**

1 (a) This section applies to distributions made on or after  
2 the first day of January, one thousand nine hundred  
3 ninety-three. Notwithstanding any provision of this

4 article to the contrary that would otherwise limit a  
5 distributee's election under this system, a distributee may  
6 elect, at the time and in the manner prescribed by the  
7 board, to have any portion of an eligible rollover distribu-  
8 tion that is equal to at least five hundred dollars paid  
9 directly to an eligible retirement plan specified by the  
10 distributee in a direct rollover. For purposes of this  
11 section, the following definitions apply:

12 (1) "Eligible rollover distribution" means any distribu-  
13 tion of all or any portion of the balance to the credit of the  
14 distributee, except that an eligible rollover distribution  
15 does not include any of the following: (i) Any distribution  
16 that is one of a series of substantially equal periodic  
17 payments not less frequently than annually made for the  
18 life or life expectancy of the distributee or the joint lives  
19 or the joint life expectancies of the distributee and the  
20 distributee's designated beneficiary, or for a specified  
21 period of ten years or more; (ii) any distribution to the  
22 extent such distribution is required under Section  
23 401(a)(9) of the Internal Revenue Code; (iii) the portion of  
24 any distribution that is not includable in gross income  
25 determined without regard to the exclusion for net unreal-  
26 ized appreciation with respect to employer securities; (iv)  
27 any hardship distribution described in Section  
28 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v)  
29 any other distribution or distributions expected to total  
30 less than two hundred dollars during a year. For distribu-  
31 tions after the thirty-first day of December, two thousand  
32 one, a portion of a distribution shall not fail to be an  
33 eligible rollover distribution merely because the portion  
34 consists of after-tax employee contributions which are not  
35 includable in gross income. However, this portion may be  
36 paid only to an individual retirement account or annuity  
37 described in Section 408(a) or (b) of the Internal Revenue  
38 Code, or to a qualified defined contribution plan described  
39 in Section 401(a) or 403(a) of the Internal Revenue Code  
40 that agrees to separately account for amounts transferred,  
41 including separately accounting for the portion of the

42 distribution which is includable in gross income and the  
43 portion of the distribution which is not includable.

44 (2) "Eligible retirement plan" means an individual  
45 retirement account described in Section 408(a) of the  
46 Internal Revenue Code, an individual retirement annuity  
47 described in Section 408(b) of the Internal Revenue Code,  
48 an annuity plan described in Section 403(a) of the Internal  
49 Revenue Code, or a qualified plan described in Section  
50 401(a) of the Internal Revenue Code, that accepts the  
51 distributee's eligible rollover distribution: *Provided*, That  
52 in the case of an eligible rollover distribution to the  
53 surviving spouse, an eligible retirement plan is an individ-  
54 ual retirement account or individual retirement annuity.  
55 For distributions after the thirty-first day of December,  
56 two thousand one, an eligible retirement plan also means  
57 an annuity contract described in Section 403(b) of the  
58 Internal Revenue Code and an eligible plan under Section  
59 457(b) of the Internal Revenue Code which is maintained  
60 by a state, political subdivision of a state, or any agency or  
61 instrumentality of a state or political subdivision of a state  
62 and which agrees to separately account for amounts  
63 transferred into the plan from this system.

64 (3) "Distributee" means a judge or former judge. In  
65 addition, the judge's or former judge's surviving spouse  
66 and the judge's or former judge's spouse or former spouse  
67 who is the alternate payee under a qualified domestic  
68 relations order, as defined in Section 414(p) of the Internal  
69 Revenue Code, with respect to governmental plans, are  
70 distributees with regard to the interest of the spouse or  
71 former spouse.

72 (4) "Direct rollover" means a payment by the system to  
73 the eligible retirement plan.

74 (b) Nothing in this section may be construed as permit-  
75 ting rollovers into this system or any other system admin-  
76 istered by the board.

**§51-9-12d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.**

1 (a) This section applies to rollovers and transfers as  
2 specified in this section made on or after the first day of  
3 January, two thousand two. Notwithstanding any provi-  
4 sion of this article to the contrary that would otherwise  
5 prohibit or limit rollovers and plan transfers to this  
6 system, the retirement system shall accept the following  
7 rollovers and plan transfers on behalf of a member solely  
8 for the purpose of purchasing permissive service credit, in  
9 whole and in part, as otherwise provided in this article or  
10 for the repayment of withdrawn or refunded contributions,  
11 in whole and in part, with respect to a previous forfeiture  
12 of service credit as otherwise provided in this article: (i)  
13 One or more rollovers within the meaning of Section  
14 408(d)(3) of the Internal Revenue Code from an individual  
15 retirement account described in Section 408(a) of the  
16 Internal Revenue Code or from an individual retirement  
17 annuity described in Section 408(b) of the Internal Reve-  
18 nue Code; (ii) one or more rollovers described in Section  
19 402(c) of the Internal Revenue Code from a retirement plan  
20 that is qualified under Section 401(a) of the Internal  
21 Revenue Code or from a plan described in Section 403(b)  
22 of the Internal Revenue Code; (iii) one or more rollovers  
23 described in Section 457(e)(16) of the Internal Revenue  
24 Code from a governmental plan described in Section 457  
25 of the Internal Revenue Code; or (iv) direct trustee-to-  
26 trustee transfers or rollovers from a plan that is qualified  
27 under Section 401(a) of the Internal Revenue Code, from a  
28 plan described in Section 403(b) of the Internal Revenue  
29 Code or from a governmental plan described in Section  
30 457 of the Internal Revenue Code: *Provided*, That any  
31 rollovers or transfers pursuant to this section shall be  
32 accepted by the system only if made in cash or other asset  
33 permitted by the board and only in accordance with  
34 policies, practices and procedures established by the board  
35 from time to time. For purposes of this section, the  
36 following definitions apply:

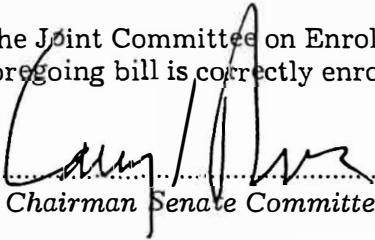
37 (1) "Permissive service credit" means service credit  
38 which is permitted to be purchased under the terms of the  
39 retirement system by voluntary contributions in an  
40 amount which does not exceed the amount necessary to  
41 fund the benefit attributable to the period of service for  
42 which the service credit is being purchased, all as defined  
43 in Section 415(n)(3)(A) of the Internal Revenue Code.

44 (2) "Repayment of withdrawn or refunded contribu-  
45 tions" means the payment into the retirement system of  
46 the funds required pursuant to this article for the rein-  
47 statement of service credit previously forfeited on account  
48 of any refund or withdrawal of contributions permitted in  
49 this article, as set forth in Section 415(k)(3) of the Internal  
50 Revenue Code.

51 (b) Nothing in this section shall be construed as permit-  
52 ting rollovers or transfers into this system or any other  
53 system administered by the retirement board other than as  
54 specified in this section and no rollover or transfer shall be  
55 accepted into the system in an amount greater than the  
56 amount required for the purchase of permissive service  
57 credit or repayment of withdrawn or refunded contribu-  
58 tions.

59 (c) Nothing in this section shall be construed as permit-  
60 ting the purchase of service credit or repayment of with-  
61 drawn or refunded contributions except as otherwise  
62 permitted in this article.

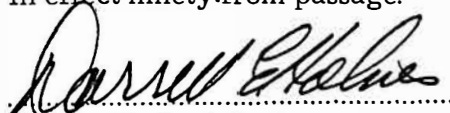
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee


  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety <sup>days</sup> from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved this the 3rd  
Day of April, 2002.

  
.....  
Governor



PRESENTED TO THE

GOVERNOR

Date

3/26/02

Time

3:15 pm