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Veto

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2004

ENROLLED

SENATE BILL NO. 563

(By Senator Jenkins)

PASSED March 10, 2004

In Effect ninety days from Passage

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Senate Bill No. 563

(BY SENATOR JENKINS)

[Passed March 10, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §5-10-2, §5-10-17, §5-10-21, §5-10-23, §5-10-26, §5-10-27 and §5-10-44 of the code of West Virginia, 1931, as amended, all relating to the public employees retirement system; rights of members to select a plan beneficiary; requiring annual physician review and annual statement of earnings from those persons receiving disability retirement payments; providing that interest is to be included in the calculation of terminal benefits payable as the result of death of retired participants; alphabetizing definitions; defining service credit for certain employees; increasing look-back period in definition of final average salary; adding definitions of “accumulated net benefit” and “employer error”; providing guidance on correcting employer errors; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §5-10-2, §5-10-17, §5-10-21, §5-10-23, §5-10-26, §5-10-27 and §5-10-44 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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) "Accumulated contributions" means the sum of all
5 amounts deducted from the compensation of a member
6 and credited to his or her individual account in the mem-
7 bers' deposit fund, together with regular interest on the
8 contributions;

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

12 (3) "Actuarial equivalent" means a benefit of equal value
13 computed upon the basis of a mortality table and regular
14 interest adopted by the board of trustees from time to
15 time;

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

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

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

29 (7) "Board of trustees" or "board" means the board of
30 trustees of the West Virginia public employees retirement
31 system;

32 (8) "Compensation" means the remuneration paid a
33 member by a participating public employer for personal
34 services rendered by him or her to the participating public
35 employer. In the event a member's remuneration is not all
36 paid in money, his or her participating public employer
37 shall fix the value of the portion of his or her remuneration
38 which is not paid in money;

39 (9) "Contributing service" means service rendered by a
40 member within this state and for which the member made
41 contributions to a public retirement system account of this
42 state to the extent credited him or her as provided by this
43 article. This revised definition is retroactive and applica-
44 ble to the first day of April, one thousand nine hundred
45 eighty-eight, and thereafter;

46 (10) "Credited service" means the sum of a member's
47 prior service credit, military service credit and contribut-
48 ing service credit standing to his or her credit as provided
49 in this article;

50 (11) "Employee" means any person who serves regularly
51 as an officer or employee, full time, on a salary basis,
52 whose tenure is not restricted as to temporary or provi-
53 sional appointment, in the service of, and whose compen-
54 sation is payable, in whole or in part, by any political
55 subdivision or an officer or employee whose compensation
56 is calculated on a daily basis and paid monthly or on
57 completion of assignment, including technicians and other
58 personnel employed by the West Virginia national guard
59 whose compensation, in whole or in part, is paid by the
60 federal government: *Provided*, That members of the
61 Legislature, the clerk of the House of Delegates, the clerk
62 of the Senate, employees of the Legislature whose term of
63 employment is otherwise classified as temporary and who
64 are employed to perform services required by the Legisla-
65 ture for its regular sessions or during the interim between
66 regular sessions and who have been or are employed
67 during regular sessions or during the interim between
68 regular sessions in seven consecutive calendar years, as

69 certified by the clerk of the house in which the employee
70 served, members of the legislative body of any political
71 subdivision and judges of the state court of claims are
72 considered to be employees receiving one year of service
73 credit for each one year term served and prorated service
74 credit for any partial term served, anything contained in
75 this article to the contrary notwithstanding. In any case of
76 doubt as to who is an employee within the meaning of this
77 article, the board of trustees shall decide the question;

78 (12) "Employer error" means an omission, misrepresen-
79 tation or violation of relevant provisions of the West
80 Virginia code and/or West Virginia code of state regula-
81 tions by the participating public employer that has
82 resulted in an underpayment or overpayment of contribu-
83 tions required. A deliberate act contrary to the provisions
84 of this section by a participating public employer shall not
85 constitute employer error;

86 (13) "Final average salary" means either:

87 (A) The average of the highest annual compensation
88 received by a member (including a member of the Legisla-
89 ture who participates in the retirement system in the year
90 one thousand nine hundred seventy-one or thereafter)
91 during any period of three consecutive years of the mem-
92 ber's credited service contained within his or her fifteen
93 years of credited service immediately preceding the date of
94 last termination of employment with a participating
95 public employer; or

96 (B) If the member has less than five years of credited
97 service, the average of the annual rate of compensation
98 received by him or her during the member's total years of
99 credited service; and in determining the annual compensa-
100 tion, under either this paragraph or paragraph (A) of this
101 subdivision, of a member of the Legislature who partici-
102 pates in the retirement system as a member of the Legisla-
103 ture in the year one thousand nine hundred seventy-one or
104 in any year thereafter, his or her actual legislative com-
105 pensation (the total of all compensation paid under

106 sections two, three, four and five, article two-a, chapter
107 four of this code) in the year one thousand nine hundred
108 seventy-one or in any year thereafter, plus any other
109 compensation he or she receives in any year from any other
110 participating public employer, including the state of West
111 Virginia, without any multiple in excess of one times his or
112 her actual legislative compensation and other compensa-
113 tion, shall be used: *Provided*, That “final average salary”
114 for any former member of the Legislature or for any
115 member of the Legislature in the year one thousand nine
116 hundred seventy-one who, in either event, was a member
117 of the Legislature on the thirtieth day of November, one
118 thousand nine hundred sixty-eight, or the thirtieth day of
119 November, one thousand nine hundred sixty-nine, or the
120 thirtieth day of November, one thousand nine hundred
121 seventy, or on the thirtieth day of November in any one or
122 more of those three years and who participated in the
123 retirement system as a member of the Legislature in any
124 one or more of those years means: (i) Either (notwithstand-
125 ing the provisions of this subdivision preceding this
126 proviso) one thousand five hundred dollars multiplied by
127 eight, plus the highest other compensation the former
128 member or member received in any one of the three years
129 from any other participating public employer including
130 the state of West Virginia; or (ii) “final average salary”
131 determined in accordance with this paragraph or para-
132 graph (A) of this subdivision, whichever computation
133 produces the higher final average salary (and in determin-
134 ing the annual compensation under subparagraph (ii) of
135 this paragraph, the legislative compensation of the former
136 member shall be computed on the basis of one thousand
137 five hundred dollars multiplied by eight and the legislative
138 compensation of the member shall be computed on the
139 basis set forth in the provisions of this subdivision imme-
140 diately preceding this proviso or on the basis of one
141 thousand five hundred dollars multiplied by eight, which-
142 ever computation as to the member produces the higher
143 annual compensation);

144 (14) "Internal Revenue Code" means the Internal Reve-
145 nue Code of 1986, as amended;

146 (15) "Limited credited service" means service by em-
147 ployees of the West Virginia educational broadcasting
148 authority, in the employment of West Virginia university,
149 during a period when the employee made contributions to
150 another retirement system, as required by West Virginia
151 university, and did not make contributions to the public
152 employeesretirementsystem: *Provided*, That while limited
153 credited service can be used for the formula set forth in
154 subsection (e), section twenty-one of this article, it may not
155 be used to increase benefits calculated under section
156 twenty-two of this article;

157 (16) "Member" means any person who is included in the
158 membership of the retirement system;

159 (17) "Participating public employer" means the state of
160 West Virginia, any board, commission, department,
161 institution or spending unit and includes any agency
162 created by rule of the supreme court of appeals having
163 full-time employees, which for the purposes of this article
164 is considered a department of state government; and any
165 political subdivision in the state which has elected to cover
166 its employees, as defined in this article, under the West
167 Virginia public employees retirement system;

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

170 (19) "Political subdivision" means the state of West
171 Virginia, a county, city or town in the state; a school
172 corporation or corporate unit; any separate corporation or
173 instrumentality established by one or more counties, cities
174 or towns as permitted by law; any corporation or instru-
175 mentality supported in most part by counties, cities or
176 towns; and any public corporation charged by law with the
177 performance of a governmental function and whose
178 jurisdiction is coextensive with one or more counties, cities

179 or towns: *Provided*, That any mental health agency
180 participating in the public employees retirement system
181 before the first day of July, one thousand nine hundred
182 ninety-seven, is considered a political subdivision solely
183 for the purpose of permitting those employees who are
184 members of the public employees retirement system to
185 remain members and continue to participate in the retire-
186 ment system at their option after the first day of July, one
187 thousand nine hundred ninety-seven: *Provided, however*,
188 That the regional community policing institute which
189 participated in the public employees retirement system
190 before the first day of July, two thousand, is considered a
191 political subdivision solely for the purpose of permitting
192 those employees who are members of the public employees
193 retirement system to remain members and continue to
194 participate in the public employees retirement system after
195 the first day of July, two thousand;

196 (20) "Prior service" means service rendered prior to the
197 first day of July, one thousand nine hundred sixty-one, to
198 the extent credited a member as provided in this article;

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

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

208 (23) "Retirant" means any member who retires with an
209 annuity payable by the retirement system;

210 (24) "Retirement" means a member's withdrawal from
211 the employ of a participating public employer with an
212 annuity payable by the retirement system;

213 (25) "Retirement system" or "system" means the West
214 Virginia public employees retirement system created and
215 established by this article;

216 (26) "Retroactive service" means: (A) Service from the
217 first day of July, one thousand nine hundred sixty-one, and
218 the date an employer decides to become a participating
219 member of the public employees retirement system; or (B)
220 service prior to the first day of July, one thousand nine
221 hundred sixty-one, for which the employee is not entitled
222 to prior service at no cost in accordance with 162 CSR
223 5.13; or (C) service of any member of a legislative body or
224 employees of the state Legislature whose term of employ-
225 ment is otherwise classified as temporary for which the
226 employee is eligible, but which the employee did not elect
227 to participate at that time;

228 (27) "Service" means personal service rendered to a
229 participating public employer by an employee, as defined
230 in this article, of a participating public employer; and

231 (28) "State" means the state of West Virginia.

§5-10-17. Retirement system membership.

1 The membership of the retirement system consists of the
2 following persons:

3 (a) All employees, as defined in section two of this
4 article, who are in the employ of a political subdivision the
5 day preceding the date it becomes a participating public
6 employer and who continue in the employ of the partici-
7 pating public employer on and after that date shall become
8 members of the retirement system; and all persons who
9 become employees of a participating public employer on or
10 after that date shall thereupon become members of the
11 system; except as provided in subdivisions (b) and (c) of
12 this section.

13 (b) The membership of the retirement system may not
14 include any person who is an active contributing member

15 of, or who has been retired by, any of the state teachers
16 retirement systems, the judges retirement system, the West
17 Virginia state police death, disability and retirement fund,
18 the West Virginia state police retirement system, the
19 deputy sheriff retirement system or any municipal retire-
20 ment system for either, or both, policemen or firemen; and
21 the bureau of employment programs, by the commissioner
22 of the bureau, may elect whether its employees will accept
23 coverage under this article or be covered under the autho-
24 rization of a separate enactment: *Provided*, That the
25 exclusions of membership may not apply to any member of
26 the state Legislature, the clerk of the House of Delegates,
27 the clerk of the state Senate or to any member of the
28 legislative body of any political subdivision provided he or
29 she once becomes a contributing member of the retirement
30 system: *Provided, however*, That any retired member of
31 the West Virginia state police death, disability and retire-
32 ment fund, the West Virginia state police retirement
33 system, the deputy sheriff retirement system and any
34 retired member of any municipal retirement system for
35 either, or both, policemen or firemen may on and after the
36 effective date of this section become a member of the
37 retirement system as provided in this article, without
38 receiving credit for prior service as a municipal policeman
39 or fireman or as a member of the West Virginia state police
40 death, disability and retirement fund, the West Virginia
41 state police retirement system or the deputy sheriff
42 retirement system: *Provided further*, That the membership
43 of the retirement system does not include any person who
44 becomes employed by the Prestera center for mental health
45 services, valley comprehensive mental health center,
46 Westbrook health services or eastern panhandle mental
47 health center on or after the first day of July, one thousand
48 nine hundred ninety-seven: *And provided further*, That
49 membership of the retirement system does not include any
50 person who becomes a member of the federal railroad
51 retirement act on or after the first day of July, two thou-
52 sand.

53 (c) Any member of the state Legislature, the clerk of the
54 House of Delegates, the clerk of the state Senate and any
55 employee of the state Legislature whose employment is
56 otherwise classified as temporary and who is employed to
57 perform services required by the Legislature for its regular
58 sessions or during the interim between regular sessions
59 and who has been or is so employed during regular ses-
60 sions or during the interim between sessions in seven
61 consecutive calendar years, as certified by the clerk of the
62 house in which the employee served, or any member of the
63 legislative body of any other political subdivision shall
64 become a member of the retirement system provided he or
65 she notifies the retirement system in writing of his or her
66 intention to be a member of the system and files a mem-
67 bership enrollment form as prescribed by the board of
68 trustees and each person, upon filing his or her written
69 notice to participate in the retirement system, shall by that
70 act authorize the clerk of the House of Delegates or the
71 clerk of the state Senate or such person or legislative
72 agency as the legislative body of any other political
73 subdivision shall designate to deduct the member's
74 contribution, as provided in subsection (b), section
75 twenty-nine of this article, and after the deductions have
76 been made from the member's compensation, the deduc-
77 tions shall be forwarded to the retirement system.

78 (d) If question arises regarding the membership status of
79 any employee, the board of trustees has the final power to
80 decide the question.

81 (e) Any individual who is a leased employee is not
82 eligible to participate in the system. For the purposes of
83 this article, the term "leased employee" means any indi-
84 vidual who performs services as an independent contractor
85 or pursuant to an agreement with an employee leasing
86 organization or other similar organization. If a question
87 arises regarding the status of an individual as a leased
88 employee, the board has final authority to decide the
89 question.

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

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

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

32 (c) Any member who qualifies for deferred retirement
33 benefits in accordance with subsection (a) of this section
34 and has twenty or more years of credited service in force
35 may elect to receive the actuarial equivalent of his or her
36 deferred retirement annuity as a reduced annuity com-

37 mencing on the first day of any calendar month between
38 his or her fifty-fifth birthday and his or her attainment of
39 age sixty-two years and payable throughout his or her life.

40 (d) Notwithstanding any of the other provisions of this
41 section or of this article, except sections twenty-seven-a
42 and twenty-seven-b of this article, and pursuant to rules
43 promulgated by the board, any member who has thirty or
44 more years of credited service in force, at least three of
45 which are contributing service, and who elects to take
46 early retirement, which for the purposes of this subsection
47 means retirement prior to age sixty, whether an active
48 employee or a separated employee at the time of applica-
49 tion, shall be entitled to the full computation of annuity
50 according to section twenty-two of this article, as that
51 section was in force as of the date of retirement applica-
52 tion, but with the reduced actuarial equivalent of the
53 annuity the member would have received if his or her
54 benefit had commenced at age sixty when he or she would
55 have been entitled to full computation of benefit without
56 any reduction.

57 (e) Notwithstanding any of the other provisions of this
58 section or of this article, except sections twenty-seven-a
59 and twenty-seven-b of this article, any member of the
60 retirement system may retire with full pension rights,
61 without reduction of benefits, if he or she is at least
62 fifty-five years of age and the sum of his or her age plus
63 years of contributing service and limited credited service,
64 as defined in section two of this article, equals or exceeds
65 eighty. An annuity shall begin the first day of the calendar
66 month next following the month in which application for
67 the annuity is filed with the board of trustees.

§5-10-23. Terminal payment following retirement.

1 (a) This section provides for the payment of the balance
2 in a retired member's account in the event that all claims
3 to benefits payable to, or on behalf of, a member expire
4 before his or her member account has been fully ex-

5 hausted. The expiration of rights to benefits would be on
6 the later of either the death of the retired member drawing
7 benefits under a straight life annuity or the death of a
8 survivor annuitant drawing benefits under any optional
9 form of benefit selected by the retired member.

10 (b) In the event that all claims to benefits payable to, or
11 on behalf of, a retired member expire and the accumulated
12 contributions exceed the accumulated net benefit paid to
13 or on behalf of the retired member, the balance in the
14 retired member's account shall be paid to the person or
15 persons nominated by the retired member by written
16 designation duly executed and filed with the board of
17 trustees. If there is no designated person or persons
18 surviving the retired member following the expiration of
19 claims, the excess of the accumulated contributions over
20 the accumulated net benefit, if any, shall be paid to the
21 retired member's estate: *Provided*, That the provisions of
22 this section shall be retroactive for all members who
23 entered retirement status on or after the ninth day of June,
24 two thousand.

**§5-10-26. Reexamination of disability retirants; reemployment;
adjustment of annuity for earnings.**

1 (a) At least once each year during the first five years
2 following the retirement of a member on account of
3 disability, as provided in section twenty-five hereof, and
4 at least once in each three-year period thereafter, the
5 board of trustees shall require a disability retirant, who
6 has not attained age sixty years, to submit a statement
7 from the disability retirant's physician certifying contin-
8 ued disability and to submit a copy of the disability
9 retirant's income tax return from the previous tax year.
10 Should the retirant refuse to submit required documenta-
11 tion in any period, the retirant's disability annuity may be
12 discontinued by the board until the board receives the
13 required documentation. Should refusal continue for one
14 year, all the retirant's rights in and to the annuity may be
15 revoked by the board. If, upon medical examination of a

16 disability retirant, a physician reports to the board that
17 the retirant is physically able and capable of resuming
18 employment with a participating public employer, the
19 retirant shall be returned to the employ of the participat-
20 ing public employer from whose employment he or she
21 retired and his or her disability annuity shall terminate:
22 *Provided*, That the board concurs with the physician's
23 report.

24 (b) A disability retirant who is returned to the employ of
25 a participating public employer shall again become a
26 member of the retirement system and his or her credited
27 service in force at the time of retirement shall be restored
28 to his or her credit.

§5-10-27. Preretirement death annuities.

1 (a) In the event any member who has ten or more years
2 of credited service, or any former member with ten or more
3 years of credited service and who is entitled to a deferred
4 annuity, pursuant to section twenty-one of this article: (1)
5 Dies without leaving surviving him or her a spouse; but (2)
6 leaves surviving him or her a child who is financially
7 dependent on the member by virtue of a permanent mental
8 or physical disability upon evidence satisfactory to the
9 board; and (3) has named such disabled child as sole
10 beneficiary, the disabled child shall immediately receive
11 an annuity computed in the same manner in all respects as
12 if the said member had: (i) Retired the day preceding the
13 date of his or her death, notwithstanding that he or she
14 might not have attained age sixty or sixty-two years, as
15 the case may be; (ii) elected option A provided in section
16 twenty-four of this article; and (iii) nominated his or her
17 disabled child as beneficiary. A member or former mem-
18 ber with ten or more years of credited service who does not
19 leave surviving him or her a spouse or a disabled child may
20 elect to have the preretirement death benefit paid as a
21 return of accumulated contributions in a lump sum
22 amount to any beneficiary or beneficiaries he or she
23 chooses.

24 (b) In the event any member who has ten or more years
25 of credited service, or any former member with ten or more
26 years of credited service and who is entitled to a deferred
27 annuity, pursuant to section twenty-one of this article: (1)
28 Dies; and (2) leaves a surviving spouse, the surviving
29 spouse shall immediately receive an annuity computed in
30 the same manner in all respects as if the said member had:
31 (1) Retired the day preceding the date of his or her death,
32 notwithstanding that he or she might not have attained
33 age sixty or sixty-two years, as the case may be; (2) elected
34 option A provided in section twenty-four of this article;
35 and (3) nominated his or her surviving spouse as benefi-
36 ciary. However, the surviving spouse shall have the right
37 to waive the annuity provided in this section: *Provided,*
38 That he or she executes a valid and notarized waiver on a
39 form provided by the retirement board and that the
40 member or former member attests to the waiver. If the
41 waiver is presented to and accepted by the retirement
42 board, the member or former member may nominate, upon
43 evidence satisfactory to the board, a child who is finan-
44 cially dependent on the member by virtue of a permanent
45 mental or physical disability under annuity option A. As
46 an alternative to annuity option A, the member or former
47 member may elect to have the preretirement death benefit
48 paid as a return of accumulated contributions in a lump
49 sum amount to any beneficiary or beneficiaries he or she
50 chooses in the event a waiver, as provided in this section,
51 has been presented to and accepted by the retirement
52 board.

53 (c) In the event any member who has ten or more years
54 of credited service, or any former member with ten or more
55 years of credited service and who is entitled to a deferred
56 annuity, pursuant to section twenty-one of this article: (1)
57 Dies without leaving surviving him or her a spouse; but (2)
58 leaves surviving him or her an infant child or children; and
59 (3) does not have a beneficiary nominated as provided in
60 subsection (a) of this section, the infant child or children
61 shall be entitled to an annuity to be calculated as follows:

62 The annuity reserve shall be calculated as though the
63 member had retired as of the date of his or her decease and
64 elected a straight life annuity and the amount of the
65 annuity reserve shall be paid in equal monthly install-
66 ments to said member's infant child or children until the
67 child or children attain age twenty-one or sooner marry or
68 become emancipated; however, in no event shall any child
69 or children receive more than two hundred fifty dollars per
70 month each. The annuity payments shall be computed as
71 of the date of the death of the member and the amount of
72 the annuity shall remain constant during the period of
73 payment. The annual amount of the annuities payable by
74 this section shall not exceed sixty percent of the deceased
75 member's final average salary.

76 (d) In the event any member or former member does not
77 have ten or more years of credited service, no
78 preretirement death annuity may be authorized, owed or
79 awarded under this section.

§5-10-44. Correction of errors.

1 Should any change or employer error in the records of
2 any participating public employer or the retirement system
3 result in any person receiving from the system more or less
4 than the person would have been entitled to receive had
5 the records been correct, the board of trustees shall correct
6 the records and, as far as is practicable, shall adjust the
7 payment of the benefit in such manner that the actuarial
8 equivalent of the benefit to which the person was correctly
9 entitled shall be paid. Any employer error resulting in an
10 underpayment to the retirement system may be corrected
11 by the employee remitting the required employee contribu-
12 tion and the participating public employer remitting the
13 required employer contribution. Interest shall accumulate
14 in accordance with 162 CSR 7.4.1.2 and any interest owed
15 on the employee and employer contributions resulting
16 from employer error shall be the responsibility of the
17 participating public employer. The participating public
18 employer may remit total payment and the employee

19 reimburse the participating public employer through
20 payroll deduction over a period equivalent to the time
21 period during which the employer error occurred not to
22 exceed two thousand dollars. The participating public
23 employer shall submit proof that employer error was not
24 willful, wanton or reckless.

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

Carly Fiorino
.....
Chairman Senate Committee

Sharon Spencer
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Parsell Elshur
.....
Clerk of the Senate

Gregory M. Boy
.....
Clerk of the House of Delegates

Carl Bay Tomblin
.....
President of the Senate

Robert Spiss
.....
Speaker House of Delegates

The within *is disapproved* this the *27th*
Day of *March*, 2004.

Bob Wise
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/18/04

Time 10:00 am