

SB 4003

WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
FOURTH EXTRAORDINARY SESSION, 2009

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ENROLLED

Senate Bill No. 4003

(BY SENATORS TOMBLIN (MR. PRESIDENT)
AND CARUTH, BY REQUEST OF THE EXECUTIVE)

[Passed November 19, 2009; in effect from passage.]

OFFICE OF THE CLERK
WEST VIRGINIA
SECRETARY OF STATE

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Senate Bill No. 4003

(BY SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH,

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[Passed November 19, 2009; in effect from passage.]

AN ACT to amend and reenact §5-10-2, §5-10-22, §5-10-22f, §5-10-27a, §5-10-27b, §5-10-27c, §5-10-27d and §5-10-29 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-2, §7-14D-3, §7-14D-9, §7-14D-9a, §7-14D-9b, §7-14D-9c, §7-14D-9d and §7-14D-11 of said code; to amend and reenact §15-2-25b, §15-2-26, §15-2-27, §15-2-37, §15-2-44, §15-2-45 and §15-2-46 of said code; to amend and reenact §15-2A-2, §15-2A-3, §15-2A-6, §15-2A-6a, §15-2A-6b, §15-2A-6c, §15-2A-6d and §15-2A-8 of said code; to amend and reenact §16-5V-2, §16-5V-4, §16-5V-12, §16-5V-13, §16-5V-14, §16-5V-14a, §16-5V-16 and §16-5V-18 of said code; to amend and reenact §18-7A-3, §18-7A-14, §18-7A-26, §18-7A-26r, §18-7A-28a, §18-7A-28b, §18-7A-28c and §18-7A-28d of said code; to amend and reenact §18-7B-2, §18-7B-12a, §18-7B-13 and §18-7B-13b of said code; and to amend and reenact §51-9-1a, §51-9-12a, §51-9-12b and §51-9-12c of said code, all relating to

the retirement systems administered by the West Virginia Consolidated Public Retirement Board and ensuring the plans' qualification under federal tax laws; clarifying the definitions of the Public Employees Retirement System (PERS); revising the PERS retirement annuity provisions and the minimum benefits provisions to comport with the Internal Revenue Service regulations on maximum benefits; clarifying the PERS federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the PERS rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16); adding clarifying language to ensure that forfeitures under PERS may not be applied to increase a member's benefits; clarifying the definitions of the Deputy Sheriff Retirement System (DSRS) and adding the definition of "qualified public safety employee" to comply with Treasury Regulation §1.401(a)-1(b)(2)(v); revising the DSRS retirement annuity commencement of benefits provisions; clarifying the DSRS federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the DSRS rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16); providing that the DSRS plan will operate under the safe harbor available for plans relating to the "normal retirement age" require-

ments when applicable to governmental plans; clarifying the definitions of the Death, Disability and Retirement System (State Police Plan A) and adding the definition of “qualified public safety employee” to comply with Treasury Regulation §1.401(a)-1(b)(2)(v); revising the State Police Plan A deferred and regular retirement annuity to make subject to Section 415 limitations; clarifying the State Police Plan A federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the State Police Plan A rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16); providing that the State Police Plan A plan will operate under the safe harbor available for plans relating to the “normal retirement age” requirements when applicable to governmental plans; clarifying the definitions of the West Virginia State Police Retirement System (State Police Plan B) and adding the definition of “qualified public safety employee” to comply with Treasury Regulation §1.401(a)-1(b)(2)(v); revising the State Police Plan B deferred and regular retirement annuity to make subject to Section 415 limitations; clarifying the State Police Plan B federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the State Police Plan B rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief

Reconciliation Act of 2001 (P.L. 107-16); providing that the State Police Plan B plan will operate under the safe harbor available for plans relating to the “normal retirement age” requirements when applicable to governmental plans; clarifying the definitions of the Emergency Medical Services Retirement System (EMSRS) and adding the definition of “qualified public safety employee” to comply with Treasury Regulation §1.401(a)-1(b)(2)(v); revising the EMSRS regular retirement annuity to make subject to Section 415 limitations; clarifying the EMSRS federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the EMSRS rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16); providing that the EMSRS plan will operate under the safe harbor available for plans relating to the “normal retirement age” requirements when applicable to governmental plans; clarifying the definitions of the Teachers Retirement System (TRS); adding clarifying language to ensure that forfeitures under TRS may not be applied to increase a member’s benefits; revising the TRS retirement annuity provisions and the minimum benefits provisions to comport with the Internal Revenue Service regulations on maximum benefits; clarifying the TRS federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the TRS rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protec-

tion Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16); clarifying the definitions of the Teachers Defined Contribution Retirement System (TDC); revising the TDC retirement annuity provisions and the minimum benefits provisions to comport with the Internal Revenue Service regulations on maximum benefits; clarifying the TDC federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; revising the TDC rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16); clarifying the definitions of the Judges' Retirement System (JRS); clarifying the JRS federal law maximum benefit limitations and federal law minimum required distributions provisions to comply with the Internal Revenue Service regulations on maximum benefits; and revising the JRS rollover provisions to comport with the direct rollover requirements, including those made by Section 108(f) of the Worker, Retiree and Employer Recovery Act of 2008 (P.L. 110-458), Sections 822, 824 and 829 of the Pension Protection Act of 2006 (P.L. 109-280) and Section 641(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16).

Be it enacted by the Legislature of West Virginia:

That §5-10-2, §5-10-22, §5-10-22f, §5-10-27a, §5-10-27b, §5-10-27c, §5-10-27d and §5-10-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §7-14D-2, §7-14D-3, §7-14D-9, §7-14D-9a, §7-14D-9b, §7-14D-9c, §7-14D-9d and §7-14D-11 of said code be amended and reenacted; that §15-2-25b, §15-2-26, §15-2-27, §15-2-37, §15-2-

44, §15-2-45 and §15-2-46 of said code be amended and reenacted; that §15-2A-2, §15-2A-3, §15-2A-6, §15-2A-6a, §15-2A-6b, §15-2A-6c, §15-2A-6d and §15-2A-8 of said code be amended and reenacted; that §16-5V-2, §16-5V-4, §16-5V-12, §16-5V-13, §16-5V-14, §16-5V-14a, §16-5V-16 and §16-5V-18 of said code be amended and reenacted; that §18-7A-3, §18-7A-14, §18-7A-26, §18-7A-26r, §18-7A-28a, §18-7A-28b, §18-7A-28c and §18-7A-28d of said code be amended and reenacted; that §18-7B-2, §18-7B-12a, §18-7B-13 and §18-7B-13b of said code be amended and reenacted; and that §51-9-1a, §51-9-12a, §51-9-12b and §51-9-12c of said code be amended and reenacted, 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) "Accumulated contributions" means the sum of all
5 amounts deducted from the compensations of a member
6 and credited to his or her individual account in the
7 members' deposit fund, together with regular interest on
8 the 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
13 value computed upon the basis of a mortality table and
14 regular interest adopted by the Board of Trustees from

15 time to time: *Provided*, That when used in the context of
16 compliance with the federal maximum benefit require-
17 ments of Section 415 of the Internal Revenue Code,
18 “actuarial equivalent” shall be computed using the
19 mortality tables and interest rates required to comply with
20 those requirements;

21 (4) “Annuity” means an annual amount payable by the
22 retirement system throughout the life of a person. All
23 annuities shall be paid in equal monthly installments,
24 rounding to the upper cent for any fraction of a cent;

25 (5) “Annuity reserve” means the present value of all
26 payments to be made to a retirant or beneficiary of a
27 retirant on account of any annuity, computed upon the
28 basis of mortality and other tables of experience, and
29 regular interest, adopted by the Board of Trustees from
30 time to time;

31 (6) “Beneficiary” means any person, except a retirant,
32 who is entitled to, or will be entitled to, an annuity or
33 other benefit payable by the retirement system;

34 (7) “Board of Trustees” or “board” means the Board of
35 Trustees of the West Virginia Consolidated Public Retire-
36 ment System;

37 (8) “Compensation” means the remuneration paid a
38 member by a participating public employer for personal
39 services rendered by the member to the participating
40 public employer. In the event a member’s remuneration is
41 not all paid in money, his or her participating public
42 employer shall fix the value of the portion of the remuner-
43 ation which is not paid in money;

44 (9) “Contributing service” means service rendered by a
45 member within this state and for which the member made
46 contributions to a public retirement system account of this
47 state, to the extent credited him or her as provided by this
48 article;

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

54 (11) "Employee" means any person who serves regularly
55 as an officer or employee, full time, on a salary basis,
56 whose tenure is not restricted as to temporary or provi-
57 sional appointment, in the service of, and whose compen-
58 sation is payable, in whole or in part, by any political
59 subdivision, or an officer or employee whose compensation
60 is calculated on a daily basis and paid monthly or on
61 completion of assignment, including technicians and other
62 personnel employed by the West Virginia National Guard
63 whose compensation, in whole or in part, is paid by the
64 federal government: *Provided*, That an employee of the
65 Legislature whose term of employment is otherwise
66 classified as temporary and who is employed to perform
67 services required by the Legislature for its regular sessions
68 or during the interim between regular sessions and who
69 has been or is employed during regular sessions or during
70 the interim between regular sessions in seven or more
71 consecutive calendar years, as certified by the Clerk of the
72 House in which the employee served, is an employee, any
73 provision to the contrary in this article notwithstanding,
74 and is entitled to credited service in accordance with
75 provisions of section fourteen, article ten, chapter five of
76 this code and: *Provided, however*, That members of the
77 legislative body of any political subdivision and judges of
78 the State Court of Claims are employees receiving one year
79 of service credit for each one-year term served and pro
80 rated service credit for any partial term served, anything
81 contained in this article to the contrary notwithstanding.
82 In any case of doubt as to who is an employee within the
83 meaning of this article, the board of trustees shall decide
84 the question;

85 (12) "Employer error" means an omission, misrepresen-
86 tation, or violation of relevant provisions of the West
87 Virginia Code or of the West Virginia Code of State
88 Regulations or the relevant provisions of both the West
89 Virginia Code and of the West Virginia Code of State
90 Regulations by the participating public employer that has
91 resulted in an underpayment or overpayment of contribu-
92 tions required. A deliberate act contrary to the provisions
93 of this section by a participating public employer does not
94 constitute employer error.

95 (13) "Final average salary" means either of the follow-
96 ing: *Provided*, That salaries for determining benefits
97 during any determination period may not exceed the
98 maximum compensation allowed as adjusted for cost of
99 living in accordance with section seven, article ten-d,
100 chapter five of this code and Section 401(a)(17) of the
101 Internal Revenue Code:

102 (A) The average of the highest annual compensation
103 received by a member (including a member of the Legisla-
104 ture who participates in the retirement system in the year
105 1971 or thereafter), during any period of three consecutive
106 years of credited service contained within the member's
107 ten years of credited service immediately preceding the
108 date his or her employment with a participating public
109 employer last terminated; or

110 (B) If the member has less than five years of credited
111 service, the average of the annual rate of compensation
112 received by the member during his or her total years of
113 credited service; and in determining the annual compensa-
114 tion, under either paragraph (A) or (B) of this subdivision,
115 of a member of the Legislature who participates in the
116 retirement system as a member of the Legislature in the
117 year 1971, or in any year thereafter, his or her actual
118 legislative compensation (the total of all compensation
119 paid under sections two, three, four and five, article two-a,

120 chapter four of this code), in the year 1971, or in any year
121 thereafter, plus any other compensation he or she receives
122 in any year from any other participating public employer
123 including the State of West Virginia, without any multiple
124 in excess of one times his or her actual legislative compen-
125 sation and other compensation, shall be used: *Provided,*
126 That "final average salary" for any former member of the
127 Legislature or for any member of the Legislature in the
128 year 1971, who, in either event, was a member of the
129 Legislature on November 30, 1968, or November 30, 1969,
130 or November 30, 1970, or on November 30 in any one or
131 more of those three years and who participated in the
132 retirement system as a member of the Legislature in any
133 one or more of those years means: (i) Either (notwithstand-
134 ing the provisions of this subdivision preceding this
135 proviso) \$1,500 multiplied by eight, plus the highest other
136 compensation the former member or member received in
137 any one of the three years from any other participating
138 public employer including the State of West Virginia; or
139 (ii) "final average salary" determined in accordance with
140 paragraph (A) or (B) of this subdivision, whichever
141 computation produces the higher final average salary (and
142 in determining the annual compensation under subpara-
143 graph (ii) of this proviso, the legislative compensation of
144 the former member shall be computed on the basis of
145 \$1,500 multiplied by eight, and the legislative compensa-
146 tion of the member shall be computed on the basis set
147 forth in the provisions of this subdivision immediately
148 preceding this proviso or on the basis of \$1,500 multiplied
149 by eight, whichever computation as to the member pro-
150 duces the higher annual compensation);

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

154 (15) "Limited credited service" means service by em-
155 ployees of the West Virginia Educational Broadcasting

156 Authority, in the employment of West Virginia University,
157 during a period when the employee made contributions to
158 another retirement system, as required by West Virginia
159 University, and did not make contributions to the Public
160 Employees Retirement System: *Provided*, That while
161 limited credited service can be used for the formula set
162 forth in subsection (e), section twenty-one of this article,
163 it may not be used to increase benefits calculated under
164 section twenty-two of this article;

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

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

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

179 (19) "Political subdivision" means the State of West
180 Virginia, a county, city or town in the state; a school
181 corporation or corporate unit; any separate corporation or
182 instrumentality established by one or more counties, cities
183 or towns, as permitted by law; any corporation or instru-
184 mentality supported in most part by counties, cities or
185 towns; and any public corporation charged by law with
186 the performance of a governmental function and whose
187 jurisdiction is coextensive with one or more counties, cities
188 or towns: *Provided*, That any mental health agency
189 participating in the Public Employees Retirement System
190 before July 1, 1997, is considered a political subdivision

191 solely for the purpose of permitting those employees who
192 are members of the Public Employees Retirement System
193 to remain members and continue to participate in the
194 retirement system at their option after July 1, 1997:
195 *Provided, however,* That the Regional Community Policing
196 Institute which participated in the Public Employees
197 Retirement System before July 1, 2000, is considered a
198 political subdivision solely for the purpose of permitting
199 those employees who are members of the Public Employ-
200 ees Retirement System to remain members and continue to
201 participate in the Public Employees Retirement System
202 after July 1, 2000;

203 (20) "Prior service" means service rendered prior to July
204 1, 1961, to the extent credited a member as provided in
205 this article;

206 (21) "Regular interest" means the rate or rates of interest
207 per annum, compounded annually, as the Board of Trust-
208 ees adopts from time to time;

209 (22) "Required beginning date" means April 1 of the
210 calendar year following the later of: (A) The calendar year
211 in which the member attains age seventy and one-half
212 years of age; or (B) the calendar year in which a member
213 who has attained the age seventy and one-half years of age
214 and who ceases providing service covered under this
215 system to a participating employer;

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

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

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

224 (26) "Retroactive service" means: (1) Service between
225 July 1, 1961, and the date an employer decides to become
226 a participating member of the Public Employees Retire-
227 ment System; (2) service prior to July 1, 1961, for which
228 the employee is not entitled to prior service at no cost in
229 accordance with 162 CSR 5.13; and (3) service of any
230 member of a legislative body or employees of the State
231 Legislature whose term of employment is otherwise
232 classified as temporary for which the employee is eligible,
233 but for which the employee did not elect to participate at
234 that time;

235 (27) "Service" means personal service rendered to a
236 participating public employer by an employee of a partici-
237 pating public employer; and

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

§5-10-22. Retirement annuity.

1 (a) Upon a member's retirement, as provided in this
2 article, he or she shall receive a straight life annuity equal
3 to one and five-tenths percent of his or her final average
4 salary multiplied by the number of years, and fraction of
5 a year, of his or her credited service in force at the time of
6 his or her retirement, subject to reduction if necessary to
7 comply with the maximum benefit provisions of Section
8 415 of the Internal Revenue Code and section twenty-
9 seven-a of this article: *Provided*, That the final average
10 salary used in this calculation does not include any lump
11 sum payment for unused, accrued leave of any kind or
12 character. The credited service used for this calculation
13 may not include any period of limited credited service:
14 *Provided, however*, That after March 1, 1970, all members
15 retired and all members retiring shall receive a straight
16 life annuity equal to two percent of his or her final average
17 salary multiplied by the number of years, and fraction of
18 a year, of his or her credited service, exclusive of limited
19 credited service in force at the time of his or her retire-

20 ment, subject to reduction if necessary to comply with the
21 maximum benefit provisions of Section 415 of the Internal
22 Revenue Code and section twenty-seven-a of this article.
23 In either event, upon his or her retirement he or she has
24 the right to elect an option provided in section twenty-four
25 of this article. All annuity payments shall commence
26 effective the first day of the month following the month in
27 which a member retires or a member dies leaving a
28 beneficiary entitled to benefits and shall continue to the
29 end of the month in which the retirant or beneficiary dies,
30 and the annuity payments may not be prorated for any
31 portion of a month in which a member retires or retirant
32 or beneficiary dies. Any member receiving an annuity
33 based in part upon limited credited service is not eligible
34 for the supplements provided in sections twenty-two-a
35 through twenty-two-d, inclusive, of this article.

36 (b) The annuity of any member of the Legislature who
37 participates in the retirement system as a member of the
38 Legislature and who retires under this article or of any
39 former member of the Legislature who has retired under
40 this article (including any former member of the Legisla-
41 ture who has retired under this article and whose annuity
42 was readjusted as of March 1, 1970, under the former
43 provisions of this section) shall be increased from time to
44 time during the period of his or her retirement when and
45 if the legislative compensation paid under section two,
46 article two-a, chapter four of this code, to a member of the
47 Legislature shall be increased to the point where a higher
48 annuity would be payable to the retirant if he or she were
49 retiring as of the effective date of the latest increase in
50 legislative compensation, but on the basis of his or her
51 years of credited service to the date of his or her actual
52 retirement.

**§5-10-22f. Minimum benefit for certain retirants; legislative
declaration; state interest and public purpose.**

1 The Legislature hereby finds and declares that an
2 important state interest exists in providing a minimum
3 retirement annuity for certain retirants (or their beneficia-
4 ries) who are credited with twenty or more years of
5 credited service; that such program constitutes a public
6 purpose; and that the exclusions of credited service while
7 an elected public official or while a temporary legislative
8 employee are reasonable and equitable exclusions for
9 purposes of determining eligibility for such minimum
10 benefits. For purposes of this section:

11 (1) "Elected public official" means any member of the
12 Legislature or any member of the legislative body of any
13 political subdivision; and

14 (2) "Temporary legislative employee" means any em-
15 ployee of the Clerk of the House of Delegates, the Clerk of
16 the Senate, the Legislature or a committee thereof whose
17 employment is classified as temporary and who is em-
18 ployed to perform services required by the Clerk of the
19 House of Delegates, the Clerk of the Senate, the Legisla-
20 ture or a committee thereof, as the case may be, for regular
21 sessions, extraordinary sessions and/or interim meetings
22 of the Legislature.

23 If the retirement annuity of a retirant (or, if applicable,
24 his or her beneficiary) with at least twenty years of
25 credited service as of the effective date of this section is
26 less than \$500 per month (including any supplemental
27 benefits or incentives provided by this article), then the
28 monthly retirement benefit for any such retired member
29 (or if applicable, his or her beneficiary) shall be increased
30 to \$500 per month: *Provided*, That any year of credited
31 service while an elected public official or a temporary
32 legislative employee shall not be taken into account for
33 purposes of this section.

34 The payment of any minimum benefit under this section
35 shall be in lieu of, and not in addition to, the payments of

36 any retirement benefit or supplemental benefit or incen-
37 tives otherwise provided by law: *Provided*, That the
38 minimum benefit provided herein shall be subject to any
39 limitations thereon under Section 415 of the Internal
40 Revenue Code of 1986, as amended, and section twenty-
41 seven-a of this article.

42 Any minimum benefit conferred herein shall not be
43 retroactive to the time of retirement and shall apply only
44 to members who have retired prior to the effective date of
45 this section, or, if applicable, to beneficiaries receiving
46 benefits under the retirement system prior to the effective
47 date.

§5-10-27a. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or
2 state law, the board shall administer the retirement system
3 in compliance with the limitations of Section 415 of the
4 Internal Revenue Code and regulations promulgated
5 thereunder to the extent applicable to governmental plans
6 (hereafter sometimes referred to as the “415 limitation(s)”
7 or “415 dollar limitation(s)”), so that the annual benefit
8 payable under this system to a member shall not exceed
9 those limitations. Any annual benefit payable under this
10 system shall be reduced or limited if necessary to an
11 amount which does not exceed those limitations. The
12 extent to which any annuity or other annual benefit
13 payable under this retirement system shall be reduced, as
14 compared to the extent to which an annuity, contributions
15 or other benefits under any other defined benefit plans or
16 defined contribution plans required to be taken into
17 consideration under Section 415 of the Internal Revenue
18 Code shall be reduced, shall be proportional on a percent-
19 age basis to the reductions made in such other plans
20 administered by the board and required to be so taken into
21 consideration under Section 415, unless a disproportionate
22 reduction is determined by the board to maximize the

23 aggregate benefits payable to the member. If the reduc-
24 tion is under this retirement system, the board shall advise
25 affected members of any additional limitation on the
26 annuities or other annual benefit required by this section.
27 For purposes of the 415 limitations, the "limitation year"
28 shall be the calendar year. The 415 limitations are incor-
29 porated herein by reference, except to the extent the
30 following provisions may modify the default provisions
31 thereunder:

32 (a) The annual adjustment to the 415 dollar limitations
33 made by Section 415(d) of the Internal Revenue Code and
34 the regulations thereunder shall apply for each limitation
35 year. The annual adjustments to the dollar limitations
36 under Section 415(d) of the Internal Revenue Code which
37 become effective: (i) After a retirant's severance from
38 employment with the employer; or (ii) after the annuity
39 starting date in the case of a retirant who has already
40 commenced receiving benefits, will apply with respect to
41 a retirant's annual benefit in any limitation year. A
42 retirant's annual benefit payable in any limitation year
43 from this retirement system shall in no event be greater
44 than the limit applicable at the annuity starting date, as
45 increased in subsequent years pursuant to Section 415(d)
46 of the Internal Revenue Code and the regulations thereun-
47 der.

48 (b) For purposes of this section, the "annual benefit"
49 means a benefit that is payable annually in the form of a
50 straight life annuity. Except as provided below, where a
51 benefit is payable in a form other than a straight life
52 annuity, the benefit shall be adjusted to an actuarially
53 equivalent straight life annuity that begins at the same
54 time as such other form of benefit, using factors prescribed
55 in the 415 limitation regulations, before applying the 415
56 limitations. No actuarial adjustment to the benefit shall
57 be made for: (1) Survivor benefits payable to a surviving
58 spouse under a qualified joint and survivor annuity to the

59 extent such benefits would not be payable if the member's
60 benefit were paid in another form; (2) benefits that are not
61 directly related to retirement benefits (such as a qualified
62 disability benefit, preretirement incidental death benefits,
63 and post-retirement medical benefits); or (3) the inclusion
64 in the form of benefit of an automatic benefit increase
65 feature, provided the form of benefit is not subject to
66 Section 417(e)(3) of the Internal Revenue Code and would
67 otherwise satisfy the limitations of this article, and the
68 plan provides that the amount payable under the form of
69 benefit in any limitation year shall not exceed the limits of
70 this article applicable at the annuity starting date, as
71 increased in subsequent years pursuant to Section 415(d)
72 of the Internal Revenue Code. For this purpose an auto-
73 matic benefit increase feature is included in a form of
74 benefit if the form of benefit provides for automatic,
75 periodic increases to the benefits paid in that form.

76 (c) *Adjustment for benefit forms not subject to Section*
77 *417(e)(3).* – The straight life annuity that is actuarially
78 equivalent to the member's form of benefit shall be
79 determined under this subsection if the form of the
80 member's benefit is either: (1) A nondecreasing annuity
81 (other than a straight life annuity) payable for a period of
82 not less than the life of the member (or, in the case of a
83 qualified preretirement survivor annuity, the life of the
84 surviving spouse); or (2) an annuity that decreases during
85 the life of the member merely because of: (i) The death of
86 the survivor annuitant (but only if the reduction is not
87 below fifty percent of the benefit payable before the death
88 of the survivor annuitant); or (ii) the cessation or reduction
89 of Social Security supplements or qualified disability
90 payments (as defined in Section 411(a)(9) of the Internal
91 Revenue Code). The actuarially equivalent straight life
92 annuity is equal to the greater of: (I) The annual amount of
93 the straight life annuity (if any) payable to the member
94 under the plan commencing at the same annuity starting

95 date as the member's form of benefit; and (II) the annual
96 amount of the straight life annuity commencing at the
97 same annuity starting date that has the same actuarial
98 present value as the member's form of benefit, computed
99 using a five percent interest rate assumption and the
100 applicable mortality table defined in Treasury Regulation
101 §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subse-
102 quent Revenue Ruling modifying the applicable provisions
103 of Revenue Ruling 2001-62) for that annuity starting date.

104 (d) *Adjustment for benefit forms subject to Section*
105 *417(e)(3).* – The straight life annuity that is actuarially
106 equivalent to the member's form of benefit shall be
107 determined under this subsection if the form of the
108 member's benefit is other than a benefit form described in
109 subsection (c) of this section. In this case, the actuarially
110 equivalent straight life annuity shall be determined as
111 follows: The actuarially equivalent straight life annuity is
112 equal to the greatest of: (1) The annual amount of the
113 straight life annuity commencing at the same annuity
114 starting date that has the same actuarial present value as
115 the member's form of benefit, computed using the interest
116 rate specified in this retirement system and the mortality
117 table (or other tabular factor) specified in this retirement
118 system for adjusting benefits in the same form; (2) the
119 annual amount of the straight life annuity commencing at
120 the same annuity starting date that has the same actuarial
121 present value as the member's form of benefit, computed
122 using a five and a half percent interest rate assumption
123 and the applicable mortality table defined in Treasury
124 Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or
125 any subsequent Revenue Ruling modifying the applicable
126 provisions of Revenue Ruling 2001-62) for that annuity
127 starting date; and (3) the annual amount of the straight
128 life annuity commencing at the same annuity starting date
129 that has the same actuarial present value as the member's
130 form of benefit, computed using the applicable interest
131 rate defined in Treasury Regulation §1.417(e)-1(d)(3) and

132 the applicable mortality table defined in Treasury Regula-
133 tion §1.417(e)-1(d)(2) (the mortality table specified in
134 Revenue Ruling 2001-62 or any subsequent Revenue
135 Ruling modifying the applicable provisions of Revenue
136 Ruling 2001-62), divided by 1.05.

137 (e) *Benefits payable prior to age sixty-two.* –

138 (1) Except as provided in subdivisions (2) and (3) of this
139 subsection, if the member's retirement benefits become
140 payable before age sixty-two, the 415 dollar limitation
141 prescribed by this section shall be reduced in accordance
142 with regulations issued by the Secretary of the Treasury
143 pursuant to the provisions of Section 415(b) of the Internal
144 Revenue Code, so that the limitation (as so reduced) equals
145 an annual straight life benefit (when the retirement
146 income benefit begins) which is equivalent to an annual
147 benefit in the amount of the applicable dollar limitation of
148 Section 415(b)(1)(A) of the Internal Revenue Code (as
149 adjusted pursuant to Section 415(d) of the Internal
150 Revenue Code) beginning at age sixty-two.

151 (2) The limitation reduction provided in subdivision (1)
152 of this subsection shall not apply if the member commenc-
153 ing retirement benefits before age sixty-two is a qualified
154 participant. A qualified participant for this purpose is a
155 participant in a defined benefit plan maintained by a
156 state, or any political subdivision of a state, with respect
157 to whom the service taken into account in determining the
158 amount of the benefit under the defined benefit plan
159 includes at least fifteen years of service: (i) As a full-time
160 employee of any police or fire department organized and
161 operated by the state or political subdivision maintaining
162 the defined benefit plan to provide police protection, fire-
163 fighting services or emergency medical services for any
164 area within the jurisdiction of such state or political
165 subdivision; or (ii) as a member of the armed forces of the
166 United States.

167 (3) The limitation reduction provided in subdivision (1)
168 of this subsection shall not be applicable to preretirement
169 disability benefits or preretirement death benefits.

170 (4) For purposes of adjusting the 415 dollar limitation
171 for benefit commencement before age sixty-two or after
172 age sixty-five (if the plan provides for such adjustment),
173 no adjustment is made to reflect the probability of a
174 member's death: (i) After the annuity starting date and
175 before age sixty-two; or (ii) after age sixty-five and before
176 the annuity starting date.

177 (f) *Adjustment when member has less than ten years of*
178 *participation.* – In the case of a member who has less than
179 ten years of participation in the retirement system (within
180 the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)),
181 the 415 dollar limitation (as adjusted pursuant to Section
182 415(d) of the Internal Revenue Code and subsection (e) of
183 this section) shall be reduced by multiplying the otherwise
184 applicable limitation by a fraction, the numerator of
185 which is the number of years of participation in the plan
186 (or one, if greater), and the denominator of which is ten.
187 This adjustment shall not be applicable to preretirement
188 disability benefits or preretirement death benefits.

189 (g) The application of the provisions of this section shall
190 not cause the maximum annual benefit provided to a
191 member to be less than the member's accrued benefit as of
192 December 31, 2008 (the end of the limitation year that is
193 immediately prior to the effective date of the final regula-
194 tions for this retirement system as defined in Treasury
195 Regulation §1.415(a)-1(g)(2)), under provisions of the
196 retirement system that were both adopted and in effect
197 before April 5, 2007, provided that such provisions satis-
198 fied the applicable requirements of statutory provisions,
199 regulations, and other published guidance relating to
200 Section 415 of the Internal Revenue Code in effect as of
201 the end of December 31, 2008, as described in Treasury

202 Regulation §1.415(a)-1(g)(4). If additional benefits are
203 accrued for a member under this retirement system after
204 January 1, 2009, then the sum of the benefits described
205 under the first sentence of this subsection and benefits
206 accrued for a member after January 1, 2009, must satisfy
207 the requirements of Section 415, taking into account all
208 applicable requirements of the final 415 Treasury Regula-
209 tions.

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

1 The requirements of this section apply to any distribu-
2 tion of a member's or beneficiary's interest and take
3 precedence over any inconsistent provisions of this code.
4 This provision applies to plan years beginning after
5 December 31, 1986. Notwithstanding anything in this
6 code to the contrary, the payment of benefits under this
7 article shall be determined and made in accordance with
8 Section 401(a)(9) of the Internal Revenue Code and the
9 federal regulations promulgated thereunder. For this
10 purpose, the following provisions apply:

11 (a) The payment of benefits under the retirement system
12 to any member shall be distributed to him or her not later
13 than the required beginning date, or be distributed to him
14 or her commencing not later than the required beginning
15 date, in accordance with regulations prescribed under
16 Section 401(a)(9) of the Internal Revenue Code, over the
17 life of the member or over the lives of the member and his
18 or her beneficiary or over a period not extending beyond
19 the life expectancy of the member and his or her benefi-
20 ciary. Benefit payments under this section shall not be
21 delayed pending, or contingent upon, receipt of an appli-
22 cation for retirement from the member.

23 (b) If a member dies after distribution to him or her has
24 commenced pursuant to this section but before his or her
25 entire interest in the retirement system has been distrib-

26 uted, then the remaining portion of that interest shall be
27 distributed at least as rapidly as under the method of
28 distribution being used at the date of his or her death.

29 (c) If a member dies before distribution to him or her has
30 commenced, then his or her entire interest in the retire-
31 ment system will be distributed by December 31 of the
32 calendar year containing the fifth anniversary of the
33 member's death, except as follows:

34 (1) If a member's interest is payable to a beneficiary,
35 distributions may be made over the life of that beneficiary
36 or over a period certain not greater than the life expect-
37 tancy of that beneficiary, commencing on or before
38 December 31 of the calendar year immediately following
39 the calendar year in which the member died; or

40 (2) If the member's beneficiary is the surviving spouse,
41 the date distributions are required to begin shall be no
42 later than the later of:

43 (A) December 31 of the calendar year in which the
44 member would have attained age seventy and one-half; or

45 (B) The earlier of: (i) December 31 of the calendar year
46 following the calendar year in which the member died; or
47 (ii) December 31 of the calendar year following the
48 calendar year in which the spouse died.

§5-10-27c. Direct rollovers.

1 (a) Except where otherwise stated, this section applies to
2 distributions made on or after January 1, 1993. Notwith-
3 standing any provision of this article to the contrary that
4 would otherwise limit a distributee's election under this
5 system, a distributee may elect, at the time and in the
6 manner prescribed by the board, to have any portion of an
7 eligible rollover distribution paid directly to an eligible
8 retirement plan specified by the distributee in a direct

9 rollover. For purposes of this section, the following
10 definitions apply:

11 (1) "Eligible rollover distribution" means any distribu-
12 tion of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution
14 does not include any of the following: (i) Any distribution
15 that is one of a series of substantially equal periodic
16 payments not less frequently than annually made for the
17 life or life expectancy of the distributee or the joint lives
18 or the joint life expectancies of the distributee and the
19 distributee's designated beneficiary, or for a specified
20 period of ten years or more; (ii) any distribution to the
21 extent the distribution is required under Section 401(a)(9)
22 of the Internal Revenue Code; (iii) the portion of any
23 distribution that is not includable in gross income deter-
24 mined without regard to the exclusion for net unrealized
25 appreciation with respect to employer securities; and (iv)
26 any hardship distribution described in Section
27 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. For
28 distributions after December 31, 2001, a portion of a
29 distribution shall not fail to be an eligible rollover distri-
30 bution merely because the portion consists of after-tax
31 employee contributions which are not includable in gross
32 income. However, this portion may be paid only to an
33 individual retirement account or annuity described in
34 Section 408(a) or (b) of the Internal Revenue Code, or (for
35 taxable years beginning before January 1, 2007) to a
36 qualified trust which is part of a defined contribution plan
37 described in Section 401(a) or (for taxable years beginning
38 after December 31, 2006) to a qualified trust or to an
39 annuity contract described in Section 403(a) or (b) of the
40 Internal Revenue Code that agrees to separately account
41 for amounts transferred (including interest or earnings
42 thereon), including separately accounting for the portion
43 of the distribution which is includable in gross income and
44 the portion of the distribution which is not so includable,

45 or (for taxable years beginning after December 31, 2007)
46 to a Roth IRA described in Section 408(a) of the Internal
47 Revenue Code.

48 (2) "Eligible retirement plan" means an individual
49 retirement account described in Section 408(a) of the
50 Internal Revenue Code, an individual retirement annuity
51 described in Section 408(b) of the Internal Revenue Code,
52 an annuity plan described in Section 403(a) of the Internal
53 Revenue Code or a qualified plan described in Section
54 401(a) of the Internal Revenue Code that accepts the
55 distributee's eligible rollover distribution: *Provided*, That
56 in the case of an eligible rollover distribution prior to
57 January 1, 2002, to the surviving spouse, an eligible
58 retirement plan is limited to an individual retirement
59 account or individual retirement annuity. For distribu-
60 tions after December 1, 2001, an eligible retirement plan
61 also means an annuity contract described in Section 403(b)
62 of the Internal Revenue Code and an eligible plan under
63 Section 457(b) of the Internal Revenue Code which is
64 maintained by a state, political subdivision of a state, or
65 any agency or instrumentality of a state or political
66 subdivision of a state and which agrees to separately
67 account for amounts transferred into the plan from this
68 system. For distributions after December 31, 2007, an
69 eligible retirement plan also means a Roth IRA described
70 in Section 408(a) of the Internal Revenue Code: *Provided*,
71 That in the case of an eligible rollover distribution after
72 December 31, 2007, to a designated beneficiary (other than
73 a surviving spouse) as such term is defined in Section
74 402(c)(11) of the Internal Revenue Code, an eligible
75 retirement plan is limited to an individual retirement
76 account or individual retirement annuity which meets the
77 conditions of Section 402(c)(11) of the Internal Revenue
78 Code.

79 (3) "Distributee" means an employee or former em-
80 ployee. In addition, the employee's or former employee's

81 surviving spouse and the employee's or former employee's
82 spouse or former spouse who is the alternate payee under
83 a qualified domestic relations order, as defined in Section
84 414(p) of the Internal Revenue Code with respect to
85 governmental plans, are distributees with regard to the
86 interest of the spouse or former spouse. For distributions
87 after December 31, 2007, "distributee" also includes a
88 designated beneficiary (other than a surviving spouse) as
89 such term is defined in Section 402(c)(11) of the Internal
90 Revenue Code.

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

93 (b) Nothing in this section may be construed as permit-
94 ting rollovers into this system or any other system admin-
95 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 January 1, 2002.
3 Notwithstanding any provision of this article to the
4 contrary that would otherwise prohibit or limit rollovers
5 and plan transfers to this system, the retirement system
6 shall accept the following rollovers and plan transfers on
7 behalf of a member solely for the purpose of purchasing
8 permissive service credit, in whole or in part, as otherwise
9 provided in this article or for the repayment of withdrawn
10 or refunded contributions, in whole or in part, with respect
11 to a previous forfeiture of service credit as otherwise
12 provided in this article: (i) One or more rollovers within
13 the meaning of Section 408(d)(3) of the Internal Revenue
14 Code from an individual retirement account described in
15 Section 408(a) of the Internal Revenue Code or from an
16 individual retirement annuity described in Section 408(b)
17 of the Internal Revenue Code; (ii) one or more rollovers
18 described in Section 402(c) of the Internal Revenue Code

19 from a retirement plan that is qualified under Section
20 401(a) of the Internal Revenue Code or from a plan
21 described in Section 403(b) of the Internal Revenue Code;
22 (iii) one or more rollovers described in Section 457(e)(16)
23 of the Internal Revenue Code from a governmental plan
24 described in Section 457 of the Internal Revenue Code; or
25 (iv) direct trustee-to-trustee transfers or rollovers from a
26 plan that is qualified under Section 401(a) of the Internal
27 Revenue Code, from a plan described in Section 403(b) of
28 the Internal Revenue Code or from a governmental plan
29 described in Section 457 of the Internal Revenue Code:
30 *Provided*, That any rollovers or transfers pursuant to this
31 section shall be accepted by the system only if made in
32 cash or other asset permitted by the board and only in
33 accordance with policies, practices and procedures
34 established by the board from time to time. For purposes
35 of this article, the following definitions and limitations
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 *Provided*, That no more than five years of "nonqualified
45 service credit", as defined in Section 415(n)(3)(C) of the
46 Internal Revenue Code, may be included in the permissive
47 service credit allowed to be purchased (other than by
48 means of a rollover or plan transfer), and no nonqualified
49 service credit may be included in any such purchase (other
50 than by means of a rollover or plan transfer) before the
51 member has at least five years of participation in the
52 retirement system.

53 (2) "Repayment of withdrawn or refunded contribu-
54 tions" means the payment into the retirement system of

55 the funds required pursuant to this article for the rein-
56 statement of service credit previously forfeited on account
57 of any refund or withdrawal of contributions permitted in
58 this article, as set forth in Section 415(k)(3) of the Internal
59 Revenue Code.

60 (3) Any contribution (other than by means of a rollover
61 or plan transfer) to purchase permissive service credit
62 under any provision of this article must satisfy the special
63 limitation rules described in Section 415(n) of the Internal
64 Revenue Code and shall be automatically reduced, limited
65 or required to be paid over multiple years if necessary to
66 ensure such compliance. To the extent any such purchased
67 permissive service credit is qualified military service
68 within the meaning of Section 414(u) of the Internal
69 Revenue Code, the limitations of Section 415 of the
70 Internal Revenue Code shall be applied to such purchase
71 as described in Section 414(u)(1)(B) of the Internal Reve-
72 nue Code.

73 (4) For purposes of Section 415(b) of the Internal Reve-
74 nue Code, the annual benefit attributable to any rollover
75 contribution accepted pursuant to this section shall be
76 determined in accordance with Treasury Regulation
77 §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity
78 payments attributable to any rollover contribution
79 provided under the retirement system over the annual
80 benefit so determined shall be taken into account when
81 applying the accrued benefit limitations of Section 415(b)
82 of the Internal Revenue Code and section twenty-seven-a
83 of this article.

84 (b) Nothing in this section shall be construed as permit-
85 ting rollovers or transfers into this system or any other
86 system administered by the retirement board other than as
87 specified in this section and no rollover or transfer shall be
88 accepted into the system in an amount greater than the
89 amount required for the purchase of permissive service

90 credit or repayment of withdrawn or refunded contribu-
91 tions.

92 (c) Nothing in this section shall be construed as permit-
93 ting the purchase of service credit or repayment of with-
94 drawn or refunded contributions except as otherwise
95 permitted in this article.

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

1 (a) The members' deposit fund is hereby created. It shall
2 be the fund in which shall be accumulated, at regular
3 interest, the contributions deducted from the compensa-
4 tion of members, and from which refunds of accumulated
5 contributions shall be paid and transfers made as provided
6 in this section.

7 (b) The contributions of a member to the retirement
8 system (including any member of the Legislature, except
9 as otherwise provided in subsection (g) of this section)
10 shall be a sum of not less than three and five-tenths
11 percent of his or her annual compensations but not more
12 than four and five-tenths percent of his or her annual
13 compensations, as determined by the board of trustees.
14 The said contributions shall be made notwithstanding that
15 the minimum salary or wages provided by law for any
16 member shall be thereby changed. Each member shall be
17 deemed to consent and agree to the deductions made and
18 provided for herein. Payment of a member's compensation
19 less said deductions shall be a full and complete discharge
20 and acquittance of all claims and demands whatsoever for
21 services rendered by him or her to a participating public
22 employer, except as to benefits provided by this article.

23 (c) The officer or officers responsible for making up the
24 payrolls for payroll units of the state government and for
25 each of the other participating public employers shall
26 cause the contributions, provided in subsection (b) of this

27 section, to be deducted from the compensations of each
28 member in the employ of the participating public em-
29 ployer, on each and every payroll, for each and every
30 payroll period, from the date the member enters the
31 retirement system to the date his or her membership
32 terminates. When deducted, each of said amounts shall be
33 paid by the participating public employer to the retire-
34 ment system; said payments to be made in such manner
35 and form, and in such frequency, and shall be accompa-
36 nied by such supporting data, as the board of trustees shall
37 from time to time prescribe. When paid to the retirement
38 system, each of said amounts shall be credited to the
39 members' deposit fund account of the member from whose
40 compensations said contributions were deducted.

41 (d) In addition to the contributions deducted from the
42 compensations of a member, as heretofore provided, a
43 member shall deposit in the members' deposit fund, by a
44 single contribution or by an increased rate of contribution
45 as approved by the board of trustees, the amounts he or
46 she may have withdrawn therefrom and not repaid
47 thereto, together with regular interest from the date of
48 withdrawal to the date of repayment. In no case shall a
49 member be given credit for service rendered prior to the
50 date he or she withdrew his or her contributions or
51 accumulated contributions, as the case may be, until he or
52 she returns to the members' deposit fund all amounts due
53 the said fund by him or her.

54 (e) Upon the retirement of a member, or if a survivor
55 annuity becomes payable on account of his or her death, in
56 either event his or her accumulated contributions standing
57 to his or her credit in the members' deposit fund shall be
58 transferred to the retirement reserve fund.

59 (f) In the event an employee's membership in the retire-
60 ment system terminates and no annuity becomes or will
61 become payable on his or her account, any accumulated

62 contributions standing to his or her credit in the members'
63 deposit fund, unclaimed by the said employee, or his or her
64 legal representative, within three years from and after the
65 date his or her membership terminated, shall be trans-
66 ferred to the income fund.

67 (g) Any member of the Legislature who is a member of
68 the retirement system and with respect to whom the term
69 "final average salary" includes a multiple of eight, pursu-
70 ant to the provisions of subdivision (15), section two of this
71 article, shall contribute to the retirement system on the
72 basis of his or her legislative compensation the sum of
73 \$540 each year he or she participates in the retirement
74 system as a member of the Legislature.

75 (h) Notwithstanding any other provisions of this article,
76 forfeitures under the system shall not be applied to
77 increase the benefits any member would otherwise receive
78 under the system.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.

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

3 (a) "Accrued benefit" means on behalf of any member
4 two and one-quarter percent of the member's final average
5 salary multiplied by the member's years of credited
6 service. A member's accrued benefit may not exceed the
7 limits of Section 415 of the Internal Revenue Code and is
8 subject to the provisions of section nine-a of this article.

9 (b) "Accumulated contributions" means the sum of all
10 amounts deducted from the compensation of a member, or
11 paid on his or her behalf pursuant to article ten-c, chapter
12 five of this code, either pursuant to section seven of this

13 article or section twenty-nine, article ten, chapter five of
14 this code as a result of covered employment together with
15 regular interest on the deducted amounts.

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

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

25 (e) "Actuarial equivalent" means a benefit of equal value
26 computed upon the basis of the mortality table and
27 interest rates as set and adopted by the retirement board
28 in accordance with the provisions of this article: *Provided*,
29 That when used in the context of compliance with the
30 federal maximum benefit requirements of Section 415 of
31 the Internal Revenue Code, "actuarial equivalent" shall be
32 computed using the mortality tables and interest rates
33 required to comply with those requirements.

34 (f) "Annual compensation" means the wages paid to the
35 member during covered employment within the meaning
36 of Section 3401(a) of the Internal Revenue Code, but
37 determined without regard to any rules that limit the
38 remuneration included in wages based upon the nature or
39 location of employment or services performed during the
40 plan year plus amounts excluded under Section 414(h)(2)
41 of the Internal Revenue Code and less reimbursements or
42 other expense allowances, cash or noncash fringe benefits
43 or both, deferred compensation and welfare benefits.
44 Annual compensation for determining benefits during any
45 determination period may not exceed the maximum
46 compensation allowed as adjusted for cost of living in
47 accordance with section seven, article ten-d, chapter five

48 of this code and Section 401(a)(17) of the Internal Revenue
49 Code.

50 (g) "Annual leave service" means accrued annual leave.

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

56 (i) "Base salary" means a member's cash compensation
57 exclusive of overtime from covered employment during the
58 last twelve months of employment. Until a member has
59 worked twelve months, annualized base salary is used as
60 base salary.

61 (j) "Board" means the Consolidated Public Retirement
62 Board created pursuant to article ten-d, chapter five of
63 this code.

64 (k) "County commission" has the meaning ascribed to it
65 in section one, article one, chapter seven of this code.

66 (l) "Covered employment" means either: (1) Employment
67 as a deputy sheriff and the active performance of the
68 duties required of a deputy sheriff; or (2) the period of
69 time which active duties are not performed but disability
70 benefits are received under section fourteen or fifteen of
71 this article; or (3) concurrent employment by a deputy
72 sheriff in a job or jobs in addition to his or her employ-
73 ment as a deputy sheriff where the secondary employment
74 requires the deputy sheriff to be a member of another
75 retirement system which is administered by the Consoli-
76 dated Public Retirement Board pursuant to article ten-d,
77 chapter five of this code: *Provided*, That the deputy sheriff
78 contributes to the fund created in section six of this article
79 the amount specified as the deputy sheriff's contribution
80 in section seven of this article.

81 (m) "Credited service" means the sum of a member's
82 years of service, active military duty, disability service and
83 annual leave service.

84 (n) "Deputy sheriff" means an individual employed as a
85 county law-enforcement deputy sheriff in this state and as
86 defined by section two, article fourteen of this chapter.

87 (o) "Dependent child" means either:

88 (1) An unmarried person under age eighteen who is:

89 (A) A natural child of the member;

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

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

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

96 (2) Any unmarried child under age twenty-three:

97 (A) Who is enrolled as a full-time student in an accred-
98 ited college or university;

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

102 (C) Whose relationship with the member is described in
103 subparagraph (A), (B) or (C), paragraph (1) of this subdivi-
104 sion.

105 (p) "Dependent parent" means the father or mother of
106 the member who was claimed as a dependent by the
107 member for federal income tax purposes at the time of the
108 member's death.

109 (q) "Disability service" means service credit received by
110 a member, expressed in whole years, fractions thereof or

111 both, equal to one half of the whole years, fractions
112 thereof or both, during which time a member receives
113 disability benefits under section fourteen or fifteen of this
114 article.

115 (r) "Early retirement age" means age forty or over and
116 completion of twenty years of service.

117 (s) "Employer error" means an omission, misrepresenta-
118 tion, or violation of relevant provisions of the West
119 Virginia Code or of the West Virginia Code of State
120 Regulations or the relevant provisions of both the West
121 Virginia Code and of the West Virginia Code of State
122 Regulations by the participating public employer that has
123 resulted in an underpayment or overpayment of contribu-
124 tions required. A deliberate act contrary to the provisions
125 of this section by a participating public employer does not
126 constitute employer error.

127 (t) "Effective date" means July 1, 1998.

128 (u) "Final average salary" means the average of the
129 highest annual compensation received for covered employ-
130 ment by the member during any five consecutive plan
131 years within the member's last ten years of service. If the
132 member did not have annual compensation for the five full
133 plan years preceding the member's attainment of normal
134 retirement age and during that period the member re-
135 ceived disability benefits under section fourteen or fifteen
136 of this article then "final average salary" means the
137 average of the monthly salary determined paid to the
138 member during that period as determined under section
139 seventeen of this article multiplied by twelve.

140 (v) "Fund" means the West Virginia Deputy Sheriff
141 Retirement Fund created pursuant to section six of this
142 article.

143 (w) "Hour of service" means:

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

149 (2) Each hour for which a member is paid or entitled to
150 payment for covered employment during a plan year but
151 where no duties are performed due to vacation, holiday,
152 illness, incapacity including disability, layoff, jury duty,
153 military duty, leave of absence or any combination thereof
154 and without regard to whether the employment relation-
155 ship has terminated. Hours under this paragraph shall be
156 calculated and credited pursuant to West Virginia Division
157 of Labor rules. A member will not be credited with any
158 hours of service for any period of time he or she is receiv-
159 ing benefits under section fourteen or fifteen of this
160 article; and

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

170 (x) "Member" means a person first hired as a deputy
171 sheriff after the effective date of this article, as defined in
172 subsection (r) of this section, or a deputy sheriff first hired
173 prior to the effective date and who elects to become a
174 member pursuant to section five or seventeen of this
175 article. A member shall remain a member until the
176 benefits to which he or she is entitled under this article are
177 paid or forfeited or until cessation of membership pursu-
178 ant to section five of this article.

179 (y) "Monthly salary" means the portion of a member's
180 annual compensation which is paid to him or her per
181 month.

182 (z) "Normal form" means a monthly annuity which is
183 one twelfth of the amount of the member's accrued benefit
184 which is payable for the member's life. If the member dies
185 before the sum of the payments he or she receives equals
186 his or her accumulated contributions on the annuity
187 starting date, the named beneficiary shall receive in one
188 lump sum the difference between the accumulated contri-
189 butions at the annuity starting date and the total of the
190 retirement income payments made to the member.

191 (aa) "Normal retirement age" means the first to occur of
192 the following: (1) Attainment of age fifty years and the
193 completion of twenty or more years of service; (2) while
194 still in covered employment, attainment of at least age
195 fifty years and when the sum of current age plus years of
196 service equals or exceeds seventy years; (3) while still in
197 covered employment, attainment of at least age sixty years
198 and completion of five years of service; or (4) attainment
199 of age sixty-two years and completion of five or more
200 years of service.

201 (bb) "Partially disabled" means a member's inability to
202 engage in the duties of deputy sheriff by reason of any
203 medically determinable physical or mental impairment
204 that can be expected to result in death or that has lasted
205 or can be expected to last for a continuous period of not
206 less than twelve months. A member may be determined
207 partially disabled for the purposes of this article and
208 maintain the ability to engage in other gainful employ-
209 ment which exists within the state but which ability would
210 not enable him or her to earn an amount at least equal to
211 two thirds of the average annual compensation earned by
212 all active members of this plan during the plan year
213 ending as of the most recent June 30, as of which plan data

214 has been assembled and used for the actuarial valuation of
215 the plan.

216 (cc) "Public Employees Retirement System" means the
217 West Virginia Public Employees Retirement System
218 created by article ten, chapter five of this code.

219 (dd) "Plan" means the West Virginia Deputy Sheriff
220 Death, Disability and Retirement Plan established by this
221 article.

222 (ee) "Plan year" means the twelve-month period com-
223 mencing on July 1 of any designated year and ending the
224 following June 30.

225 (ff) "Qualified public safety employee" means any
226 employee of a participating state or political subdivision
227 who provides police protection, fire-fighting services or
228 emergency medical services for any area within the
229 jurisdiction of the state or political subdivision, or such
230 other meaning given to the term by Section 72(t)(10)(B) of
231 the Internal Revenue Code or by Treasury Regulation
232 §1.401(a)-1(b)(2)(v) as they may be amended from time to
233 time.

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

237 (hh) "Required beginning date" means April 1 of the
238 calendar year following the later of: (i) The calendar year
239 in which the member attains age seventy and one-half; or
240 (ii) the calendar year in which he or she retires or other-
241 wise separates from covered employment.

242 (ii) "Retirement income payments" means the annual
243 retirement income payments payable under the plan.

244 (jj) "Spouse" means the person to whom the member is
245 legally married on the annuity starting date.

246 (kk) "Surviving spouse" means the person to whom the
247 member was legally married at the time of the member's
248 death and who survived the member.

249 (ll) "Totally disabled" means a member's inability to
250 engage in substantial gainful activity by reason of any
251 medically determined physical or mental impairment that
252 can be expected to result in death or that has lasted or can
253 be expected to last for a continuous period of not less than
254 twelve months. For purposes of this subdivision:

255 (1) A member is totally disabled only if his or her
256 physical or mental impairment or impairments are so
257 severe that he or she is not only unable to perform his or
258 her previous work as a deputy sheriff but also cannot,
259 considering his or her age, education and work experience,
260 engage in any other kind of substantial gainful employ-
261 ment which exists in the state regardless of whether: (A)
262 The work exists in the immediate area in which the
263 member lives; (B) a specific job vacancy exists; or (C) the
264 member would be hired if he or she applied for work.

265 (2) "Physical or mental impairment" is an impairment
266 that results from an anatomical, physiological or psycho-
267 logical abnormality that is demonstrated by medically
268 accepted clinical and laboratory diagnostic techniques. A
269 member's receipt of Social Security disability benefits
270 creates a rebuttable presumption that the member is
271 totally disabled for purposes of this plan. Substantial
272 gainful employment rebuts the presumption of total
273 disability.

274 (mm) "*Year of service*". – A member shall, except in his
275 or her first and last years of covered employment, be
276 credited with year of service credit based upon the hours
277 of service performed as covered employment and credited
278 to the member during the plan year based upon the
279 following schedule:

	Hours of Service	Years of Service Credited
280	Hours of Service	Years of Service Credited
281	Less than 500	0
282	500 to 999	1/3
283	1,000 to 1,499	2/3
284	1,500 or more	1

285 During a member's first and last years of covered
 286 employment, the member shall be credited with one
 287 twelfth of a year of service for each month during the plan
 288 year in which the member is credited with an hour of
 289 service. A member is not entitled to credit for years of
 290 service for any time period during which he or she re-
 291 ceived disability payments under section fourteen or
 292 fifteen of this article. Except as specifically excluded,
 293 years of service include covered employment prior to the
 294 effective date. Years of service which are credited to a
 295 member prior to his or her receipt of accumulated contri-
 296 butions upon termination of employment pursuant to
 297 section thirteen of this article or section thirty, article ten,
 298 chapter five of this code, shall be disregarded for all
 299 purposes under this plan unless the member repays the
 300 accumulated contributions with interest pursuant to
 301 section thirteen of this article or had prior to the effective
 302 date made the repayment pursuant to section eighteen,
 303 article ten, chapter five of this code.

§7-14D-3. Creation and administration of West Virginia Deputy Sheriff Retirement System; specification of actuarial assumptions.

1 There is hereby created the West Virginia Deputy Sheriff
 2 Retirement System. The purpose of this system is to
 3 provide for the orderly retirement of deputy sheriffs who
 4 become superannuated because of age or permanent
 5 disability and to provide certain survivor death benefits,
 6 and it is contemplated that substantially all of the mem-
 7 bers of the retirement system shall be qualified public
 8 safety employees as defined in section two of this article.

9 The retirement system constitutes a body corporate. All
10 business of the system shall be transacted in the name of
11 the West Virginia Deputy Sheriff Retirement System. The
12 board shall specify and adopt all actuarial assumptions for
13 the plan at its first meeting of every calendar year or as
14 soon thereafter as may be practicable, which assumptions
15 shall become part of the plan.

§7-14D-9. Retirement; commencement of benefits.

1 A member may retire and commence to receive retire-
2 ment income payments on the first day of the calendar
3 month following the board's receipt of the member's
4 voluntary written application for retirement or the
5 required beginning date, if earlier. Before receiving
6 retirement income payments, the member shall have
7 ceased covered employment and reached early or normal
8 retirement age. The retirement income payments shall be
9 in an amount as provided under section eleven of this
10 article: *Provided*, That retirement income payments under
11 this plan shall be subject to the provisions of this article.
12 Upon receipt of the application, the board shall promptly
13 provide the member with an explanation of his or her
14 optional forms of retirement benefits and upon receipt of
15 properly executed forms from the member, the board shall
16 process the member's request and commence payments as
17 soon as administratively feasible.

§7-14D-9a. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or
2 state law, the board shall administer the retirement system
3 in compliance with the limitations of Section 415 of the
4 Internal Revenue Code and regulations under that section,
5 to the extent applicable to governmental plans (hereafter
6 sometimes referred to as the "415 limitation(s)" or "415
7 dollar limitation(s)"), so that the annual benefit payable
8 under this system to a member shall not exceed those

9 limitations. Any annual benefit payable under this system
10 shall be reduced or limited if necessary to an amount
11 which does not exceed those limitations. The extent to
12 which any annuity or other annual benefit payable under
13 this retirement system shall be reduced, as compared to
14 the extent to which an annuity, contributions or other
15 benefits under any other defined benefit plans or defined
16 contribution plans required to be taken into consideration
17 under Section 415 of the Internal Revenue Code shall be
18 reduced, shall be proportional on a percentage basis to the
19 reductions made in such other plans administered by the
20 board and required to be so taken into consideration under
21 Section 415, unless a disproportionate reduction is deter-
22 mined by the board to maximize the aggregate benefits
23 payable to the member. If the reduction is under this
24 retirement system, the board shall advise affected mem-
25 bers of any additional limitation on the annuities or other
26 annual benefit required by this section. For purposes of
27 the 415 limitations, the "limitation year" shall be the
28 calendar year. The 415 limitations are incorporated herein
29 by reference, except to the extent the following provisions
30 may modify the default provisions thereunder:

31 (a) The annual adjustment to the 415 dollar limitations
32 made by Section 415(d) of the Internal Revenue Code and
33 the regulations thereunder shall apply for each limitation
34 year. The annual adjustments to the dollar limitations
35 under Section 415(d) of the Internal Revenue Code which
36 become effective: (i) After a retirant's severance from
37 employment with the employer; or (ii) after the annuity
38 starting date in the case of a retirant who has already
39 commenced receiving benefits, will apply with respect to
40 a retirant's annual benefit in any limitation year. A
41 retirant's annual benefit payable in any limitation year
42 from this retirement system shall in no event be greater
43 than the limit applicable at the annuity starting date, as
44 increased in subsequent years pursuant to Section 415(d)

45 of the Internal Revenue Code and the regulations thereun-
46 der.

47 (b) For purposes of this section, the “annual benefit”
48 means a benefit that is payable annually in the form of a
49 straight life annuity. Except as provided below, where a
50 benefit is payable in a form other than a straight life
51 annuity, the benefit shall be adjusted to an actuarially
52 equivalent straight life annuity that begins at the same
53 time as such other form of benefit, using factors prescribed
54 in the 415 limitation regulations, before applying the 415
55 limitations. No actuarial adjustment to the benefit shall
56 be made for: (1) Survivor benefits payable to a surviving
57 spouse under a qualified joint and survivor annuity to the
58 extent such benefits would not be payable if the member’s
59 benefit were paid in another form; (2) benefits that are not
60 directly related to retirement benefits (such as a qualified
61 disability benefit, preretirement incidental death benefits,
62 and post-retirement medical benefits); or (3) the inclusion
63 in the form of benefit of an automatic benefit increase
64 feature, provided the form of benefit is not subject to
65 Section 417(e)(3) of the Internal Revenue Code and would
66 otherwise satisfy the limitations of this article, and the
67 plan provides that the amount payable under the form of
68 benefit in any limitation year shall not exceed the limits of
69 this article applicable at the annuity starting date, as
70 increased in subsequent years pursuant to Section 415(d)
71 of the Internal Revenue Code. For this purpose an auto-
72 matic benefit increase feature is included in a form of
73 benefit if the form of benefit provides for automatic,
74 periodic increases to the benefits paid in that form.

75 (c) *Adjustment for benefit forms not subject to Section*
76 *417(e)(3).* – The straight life annuity that is actuarially
77 equivalent to the member’s form of benefit shall be
78 determined under this subsection if the form of the
79 member’s benefit is either: (1) A nondecreasing annuity
80 (other than a straight life annuity) payable for a period of

81 not less than the life of the member (or, in the case of a
82 qualified preretirement survivor annuity, the life of the
83 surviving spouse); or (2) an annuity that decreases during
84 the life of the member merely because of: (i) The death of
85 the survivor annuitant (but only if the reduction is not
86 below fifty percent of the benefit payable before the death
87 of the survivor annuitant); or (ii) the cessation or reduction
88 of Social Security supplements or qualified disability
89 payments (as defined in Section 411(a)(9) of the Internal
90 Revenue Code). The actuarially equivalent straight life
91 annuity is equal to the greater of: (I) The annual amount of
92 the straight life annuity (if any) payable to the member
93 under the plan commencing at the same annuity starting
94 date as the member's form of benefit; and (II) the annual
95 amount of the straight life annuity commencing at the
96 same annuity starting date that has the same actuarial
97 present value as the member's form of benefit, computed
98 using a five percent interest rate assumption and the
99 applicable mortality table defined in Treasury Regulation
100 §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subse-
101 quent Revenue Ruling modifying the applicable provisions
102 of Revenue Ruling 2001-62) for that annuity starting date.

103 (d) *Adjustment for benefit forms subject to Section*
104 *417(e)(3).* – The straight life annuity that is actuarially
105 equivalent to the member's form of benefit shall be
106 determined under this subsection if the form of the
107 member's benefit is other than a benefit form described in
108 subdivision (c) of this section. The actuarially equivalent
109 straight life annuity shall be determined as follows: The
110 actuarially equivalent straight life annuity is equal to the
111 greatest of: (1) The annual amount of the straight life
112 annuity commencing at the same annuity starting date
113 that has the same actuarial present value as the member's
114 form of benefit, computed using the interest rate specified
115 in this retirement system and the mortality table (or other
116 tabular factor) specified in this retirement system for

117 adjusting benefits in the same form; (2) the annual amount
118 of the straight life annuity commencing at the same
119 annuity starting date that has the same actuarial present
120 value as the member's form of benefit, computed using a
121 five and a half percent interest rate assumption and the
122 applicable mortality table defined in Treasury Regulation
123 §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subse-
124 quent Revenue Ruling modifying the applicable provisions
125 of Revenue Ruling 2001-62) for that annuity starting date;
126 and (3) the annual amount of the straight life annuity
127 commencing at the same annuity starting date that has the
128 same actuarial present value as the member's form of
129 benefit, computed using the applicable interest rate
130 defined in Treasury Regulation §1.417(e)-1(d)(3) and the
131 applicable mortality table defined in Treasury Regulation
132 §1.417(e)-1(d)(2) (the mortality table specified in Revenue
133 Ruling 2001-62 or any subsequent Revenue Ruling modify-
134 ing the applicable provisions of Revenue Ruling 2001-62),
135 divided by 1.05.

136 (e) *Benefits payable prior to age sixty-two.* —

137 (1) Except as provided in paragraphs (2) and (3) of this
138 subdivision, if the member's retirement benefits become
139 payable before age sixty-two, the 415 dollar limitation
140 prescribed by this section shall be reduced in accordance
141 with regulations issued by the Secretary of the Treasury
142 pursuant to the provisions of Section 415(b) of the Internal
143 Revenue Code, so that the limitation (as so reduced) equals
144 an annual straight life benefit (when the retirement
145 income benefit begins) which is equivalent to an annual
146 benefit in the amount of the applicable dollar limitation of
147 Section 415(b)(1)(A) of the Internal Revenue Code (as
148 adjusted pursuant to Section 415(d) of the Internal
149 Revenue Code) beginning at age sixty-two.

150 (2) The limitation reduction provided in paragraph (1) of
151 this subdivision shall not apply if the member commencing

152 retirement benefits before age sixty-two is a qualified
153 participant. A qualified participant for this purpose is a
154 participant in a defined benefit plan maintained by a
155 state, or any political subdivision of a state, with respect
156 to whom the service taken into account in determining the
157 amount of the benefit under the defined benefit plan
158 includes at least fifteen years of service: (i) As a full-time
159 employee of any police or fire department organized and
160 operated by the state or political subdivision maintaining
161 the defined benefit plan to provide police protection, fire-
162 fighting services or emergency medical services for any
163 area within the jurisdiction of such state or political
164 subdivision; or (ii) as a member of the armed forces of the
165 United States.

166 (3) The limitation reduction provided in paragraph
167 (1) of this subdivision shall not be applicable to
168 preretirement disability benefits or preretirement death
169 benefits.

170 (4) For purposes of adjusting the 415 dollar limitation
171 for benefit commencement before age sixty-two or after
172 age sixty-five (if the plan provides for such adjustment),
173 no adjustment is made to reflect the probability of a
174 member's death: (i) After the annuity starting date and
175 before age sixty-two; or (ii) after age sixty-five and before
176 the annuity starting date.

177 (f) *Adjustment when member has less than ten years of*
178 *participation.* – In the case of a member who has less than
179 ten years of participation in the retirement system (within
180 the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)),
181 the 415 dollar limitation (as adjusted pursuant to Section
182 415(d) of the Internal Revenue Code and subdivision (e) of
183 this section) shall be reduced by multiplying the otherwise
184 applicable limitation by a fraction, the numerator of
185 which is the number of years of participation in the plan
186 (or one, if greater), and the denominator of which is ten.

187 This adjustment shall not be applicable to preretirement
188 disability benefits or preretirement death benefits.

189 (g) The application of the provisions of this section shall
190 not cause the maximum annual benefit provided to a
191 member to be less than the member's accrued benefit as of
192 December 31, 2008 (the end of the limitation year that is
193 immediately prior to the effective date of the final regula-
194 tions for this retirement system as defined in Treasury
195 Regulation §1.415(a)-1(g)(2)), under provisions of the
196 retirement system that were both adopted and in effect
197 before April 5, 2007, provided that such provisions satis-
198 fied the applicable requirements of statutory provisions,
199 regulations, and other published guidance relating to
200 Section 415 of the Internal Revenue Code in effect as of
201 December 31, 2008, as described in Treasury Regulation
202 §1.415(a)-1(g)(4). If additional benefits are accrued for a
203 member under this retirement system after January 1,
204 2009, then the sum of the benefits described under the first
205 sentence of this subsection and benefits accrued for a
206 member after January 1, 2009, must satisfy the require-
207 ments of Section 415, taking into account all applicable
208 requirements of the final 415 Treasury Regulations.

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

1 The requirements of this section apply to any distribu-
2 tion of a member's or beneficiary's interest and take
3 precedence over any inconsistent provisions of this plan.
4 This section applies to plan years beginning after Decem-
5 ber 31, 1986. Notwithstanding anything in the plan to the
6 contrary, the payment of benefits under this article shall
7 be determined and made in accordance with Section
8 401(a)(9) of the Internal Revenue Code and the regulations
9 thereunder. For this purpose, the following provisions
10 apply:

11 (a) The payment of benefits under the plan to any
12 member shall be distributed to him or her not later than
13 the required beginning date, or be distributed to him or
14 her commencing not later than the required beginning
15 date, in accordance with regulations prescribed under
16 Section 401(a)(9) of the Internal Revenue Code, over the
17 life of the member or over the lives of the member and his
18 or her beneficiary or over a period not extending beyond
19 the life expectancy of the member and his or her benefi-
20 ciary. Benefit payments under this section shall not be
21 delayed pending, or contingent upon, receipt of an appli-
22 cation for retirement from the member.

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

29 (c) If a member dies before distribution to him or her has
30 commenced, then his or her entire interest in the plan shall
31 be distributed by December 31 of the calendar year
32 containing the fifth anniversary of the member's death,
33 except as follows:

34 (1) If a member's interest is payable to a beneficiary,
35 distributions may be made over the life of that beneficiary
36 or over a period certain not greater than the life expect-
37 tancy of the beneficiary, commencing on or before Decem-
38 ber 31 of the calendar year immediately following the
39 calendar year in which the member died; or

40 (2) If the member's beneficiary is the surviving spouse,
41 the date distributions are required to begin shall be no
42 later than the later of:

43 (A) December 31 of the calendar year in which the
44 member would have attained age seventy and one-half; or

45 (B) The earlier of: (i) December 31 of the calendar year
46 following the calendar year in which the member died; or
47 (ii) December 31 of the calendar year following the
48 calendar year in which the spouse died.

§7-14D-9c. Direct rollovers.

1 Except where otherwise stated, this section applies to
2 distributions made on or after January 1, 1993. Notwith-
3 standing any provision of this article to the contrary that
4 would otherwise limit a distributee's election under this
5 plan, a distributee may elect, at the time and in the
6 manner prescribed by the board, to have any portion of an
7 eligible rollover distribution paid directly to an eligible
8 retirement plan specified by the distributee in a direct
9 rollover. For purposes of this section, the following
10 definitions apply:

11 (1) "Eligible rollover distribution" means any distribu-
12 tion of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution
14 does not include any of the following: (A) Any distribution
15 that is one of a series of substantially equal periodic
16 payments not less frequently than annually made for the
17 life or life expectancy of the distributee or the joint lives
18 or the joint life expectancies of the distributee and the
19 distributee's designated beneficiary, or for a specified
20 period of ten years or more; (B) any distribution to the
21 extent the distribution is required under Section 401(a)(9)
22 of the Internal Revenue Code; (C) the portion of any
23 distribution that is not includable in gross income deter-
24 mined without regard to the exclusion for net unrealized
25 appreciation with respect to employer securities; (D) any
26 hardship distribution described in Section
27 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. For
28 distributions after December 31, 2001, a portion of a
29 distribution shall not fail to be an eligible rollover distri-
30 bution merely because the portion consists of after-tax

31 employee contributions which are not includable in gross
32 income. However, this portion may be paid only to an
33 individual retirement account or annuity described in
34 Section 408(a) or (b) of the Internal Revenue Code, or (for
35 taxable years beginning before January 1, 2007) to a
36 qualified trust which is part of a defined contribution plan
37 described in Section 401(a) or (for taxable years beginning
38 after December 31, 2006) to a qualified trust or to an
39 annuity contract described in Section 403(a) or (b) of the
40 Internal Revenue Code that agrees to separately account
41 for amounts transferred (including interest or earnings
42 thereon), including separately accounting for the portion
43 of the distribution which is includable in gross income and
44 the portion of the distribution which is not so includable,
45 or (for taxable years beginning after December 31, 2007)
46 to a Roth IRA described in Section 408(a) of the Internal
47 Revenue Code.

48 (2) "Eligible retirement plan" means an individual
49 retirement account described in Section 408(a) of the
50 Internal Revenue Code, an individual retirement annuity
51 described in Section 408(b) of the Internal Revenue Code,
52 an annuity plan described in Section 403(a) of the Internal
53 Revenue Code or a qualified plan described in Section
54 401(a) of the Internal Revenue Code that accepts the
55 distributee's eligible rollover distribution: *Provided*, That
56 in the case of an eligible rollover distribution prior to
57 January 1, 2002, to the surviving spouse, an eligible
58 retirement plan is limited to an individual retirement
59 account or individual retirement annuity. For distribu-
60 tions after December 31, 2001, an eligible retirement plan
61 also means an annuity contract described in Section 403(b)
62 of the Internal Revenue Code and an eligible plan under
63 Section 457(b) of the Internal Revenue Code which is
64 maintained by a state, political subdivision of a state, or
65 any agency or instrumentality of a state or political
66 subdivision of a state and which agrees to separately

67 account for amounts transferred into the plan from this
68 system. For distributions after December 31, 2007, an
69 eligible retirement plan also means a Roth IRA described
70 in Section 408(a) of the Internal Revenue Code: *Provided,*
71 That in the case of an eligible rollover distribution after
72 December 31, 2007, to a designated beneficiary (other than
73 a surviving spouse) as such term is defined in Section
74 402(c)(11) of the Internal Revenue Code, an eligible
75 retirement plan is limited to an individual retirement
76 account or individual retirement annuity which meets the
77 conditions of Section 402(c)(11) of the Internal Revenue
78 Code.

79 (3) "Distributee" means an employee or former em-
80 ployee. In addition, the employee's or former employee's
81 surviving spouse and the employee's or former employee's
82 spouse or former spouse who is the alternate payee under
83 a qualified domestic relations order, as defined in Section
84 414(p) of the Internal Revenue Code with respect to
85 governmental plans, are distributees with regard to the
86 interest of the spouse or former spouse. For distributions
87 after December 31, 2007, "distributee" also includes a
88 designated beneficiary (other than a surviving spouse) as
89 such term is defined in Section 402(c)(11) of the Internal
90 Revenue Code.

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

**§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 January 1, 2002.
3 Notwithstanding any provision of this article to the
4 contrary that would otherwise prohibit or limit rollovers
5 and plan transfers to this system, the retirement system
6 shall accept the following rollovers and plan transfers on

7 behalf of a member solely for the purpose of purchasing
8 permissive service credit, in whole or in part, as otherwise
9 provided in this article or for the repayment of withdrawn
10 or refunded contributions, in whole and in part, with
11 respect to a previous forfeiture of service credit as other-
12 wise provided in this article: (i) One or more rollovers
13 within the meaning of Section 408(d)(3) of the Internal
14 Revenue Code from an individual retirement account
15 described in Section 408(a) of the Internal Revenue Code
16 or from an individual retirement annuity described in
17 Section 408(b) of the Internal Revenue Code; (ii) one or
18 more rollovers described in Section 402(c) of the Internal
19 Revenue Code from a retirement plan that is qualified
20 under Section 401(a) of the Internal Revenue Code or from
21 a plan described in Section 403(b) of the Internal Revenue
22 Code; (iii) one or more rollovers described in Section
23 457(e)(16) of the Internal Revenue Code from a govern-
24 mental plan described in Section 457 of the Internal
25 Revenue Code; or (iv) direct trustee-to-trustee transfers or
26 rollovers from a plan that is qualified under Section 401(a)
27 of the Internal Revenue Code, from a plan described in
28 Section 403(b) of the Internal Revenue Code or from a
29 governmental plan described in Section 457 of the Internal
30 Revenue Code: *Provided*, That any rollovers or transfers
31 pursuant to this section shall be accepted by the system
32 only if made in cash or other asset permitted by the board
33 and only in accordance with such policies, practices and
34 procedures established by the board from time to time.
35 For purposes of this article, the following definitions and
36 limitations 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 *Provided*, That no more than five years of “nonqualified
45 service credit”, as defined in Section 415(n)(3)(C) of the
46 Internal Revenue Code, may be included in the permissive
47 service credit allowed to be purchased (other than by
48 means of a rollover or plan transfer), and no nonqualified
49 service credit may be included in any such purchase (other
50 than by means of a rollover or plan transfer) before the
51 member has at least five years of participation in the
52 retirement system.

53 (2) “Repayment of withdrawn or refunded contribu-
54 tions” means the payment into the retirement system of
55 the funds required pursuant to this article for the rein-
56 statement of service credit previously forfeited on account
57 of any refund or withdrawal of contributions permitted in
58 this article, as set forth in Section 415(k)(3) of the Internal
59 Revenue Code.

60 (3) Any contribution (other than by means of a rollover
61 or plan transfer) to purchase permissive service credit
62 under any provision of this article must satisfy the special
63 limitation rules described in Section 415(n) of the Internal
64 Revenue Code, and shall be automatically reduced,
65 limited, or required to be paid over multiple years if
66 necessary to ensure such compliance. To the extent any
67 such purchased permissive service credit is qualified
68 military service within the meaning of Section 414(u) of
69 the Internal Revenue Code, the limitations of Section 415
70 of the Internal Revenue Code shall be applied to such
71 purchase as described in Section 414(u)(1)(B) of the
72 Internal Revenue Code.

73 (4) For purposes of Section 415(b) of the Internal Reve-
74 nue Code, the annual benefit attributable to any rollover
75 contribution accepted pursuant to this section shall be
76 determined in accordance with Treasury Regulation
77 §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity

78 payments attributable to any rollover contribution
79 provided under the retirement system over the annual
80 benefit so determined shall be taken into account when
81 applying the accrued benefit limitations of Section 415(b)
82 of the Internal Revenue Code and section nine-a of this
83 article.

84 (b) Nothing in this section shall be construed as permit-
85 ting rollovers or transfers into this system or any other
86 system administered by the retirement board other than as
87 specified in this section and no rollover or transfer shall be
88 accepted into the system in an amount greater than the
89 amount required for the purchase of permissive service
90 credit or repayment of withdrawn or refunded contribu-
91 tions.

92 (c) Nothing in this section shall be construed as permit-
93 ting the purchase of service credit or repayment of with-
94 drawn or refunded contributions except as otherwise
95 permitted in this article.

§7-14D-11. Retirement benefits.

1 This section provides for a member's accrued benefit
2 payable starting at the member's annuity starting date
3 which follows the completion of a written application for
4 the commencement of benefits. The member shall receive
5 the accrued retirement benefit in the normal form or in an
6 actuarial equivalent amount in an optional form as
7 provided under section twelve of this article, subject to
8 reduction if necessary to comply with the maximum
9 benefit provisions of Section 415 of the Internal Revenue
10 Code and section nine-a of this article. The first day of the
11 calendar month following the calendar month of birth
12 shall be used in lieu of any birth date that does not fall on
13 the first day of a calendar month.

14 (a) *Normal retirement.* – A member whose annuity
15 starting date is the date the member attains normal
16 retirement age or later is entitled to his or her accrued

17 retirement benefit based on years of service and final
18 average salary at termination of employment.

19 (b) *Early retirement.* – A member who ceases covered
20 employment and has attained early retirement age while
21 in covered employment may elect to receive retirement
22 income payments commencing on the first day of the
23 month coincident with or following the date the member
24 ceases covered employment. “Normal retirement age” for
25 such a member is the first day of the calendar month
26 coincident with or next following the month in which the
27 member attains the age of fifty years. If the member’s
28 annuity starting date is prior to the date the member
29 attains normal retirement age, his or her accrued benefit
30 is reduced to the actuarial equivalent benefit amount
31 based on the years and months by which his or her annuity
32 starting date precedes the date he or she attains normal
33 retirement age.

34 (c) Retirement benefits shall be paid monthly in an
35 amount equal to one twelfth of the retirement income
36 payments elected and at those times established by the
37 board. Notwithstanding any other provision of the plan,
38 a member who is married on the annuity starting date will
39 receive his or her retirement income payments in the form
40 of a sixty-six and two-thirds percent joint and survivor
41 annuity with his or her spouse unless prior to the annuity
42 starting date the spouse waives the form of benefit.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-25b. Definitions.

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

3 (a) “Actuarially equivalent” or “of equal actuarial
4 value” means a benefit of equal value computed upon the

5 basis of the mortality table and interest rates as set and
6 adopted by the retirement board in accordance with the
7 provisions of this article: *Provided*, That when used in the
8 context of compliance with the federal maximum benefit
9 requirements of Section 415 of the Internal Revenue Code,
10 “actuarially equivalent” shall be computed using the
11 mortality tables and interest rates required to comply with
12 those requirements.

13 (b) “Agency” means the West Virginia State Police.

14 (c) “Beneficiary” means a surviving spouse or other
15 surviving beneficiary who is entitled to, or will be entitled
16 to, an annuity or other benefit payable by the fund.

17 (d) “Board” means the West Virginia Consolidated
18 Public Retirement Board created pursuant to article ten-d,
19 chapter five of this code.

20 (e) “Dependent child” means any unmarried child or
21 children born to or adopted by a member of the fund who
22 is:

23 (1) Under the age of eighteen;

24 (2) After reaching eighteen years of age, continues as a
25 full-time student in an accredited high school, college,
26 university, business or trade school, until the child or
27 children reaches the age of twenty-three years; or

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

31 (f) “Dependent parent” means the member’s parent or
32 stepparent claimed as a dependent by the member for
33 federal income tax purposes at the time of the member’s
34 death.

35 (g) “Employee” means any person regularly employed in
36 the service of the agency as a law-enforcement officer

37 before March 12, 1994, and who is eligible to participate
38 in the fund.

39 (h) "Fund", "plan" or "system" means the West Virginia
40 State Police Death, Disability and Retirement Fund.

41 (i) "Law-enforcement officer" means an individual
42 employed or otherwise engaged in either a public or
43 private position which involves the rendition of services
44 relating to enforcement of federal, state or local laws for
45 the protection of public or private safety, including, but
46 not limited to, positions as deputy sheriffs, police officers,
47 marshals, bailiffs, court security officers or any other law-
48 enforcement position which requires certification, but
49 excluding positions held by elected sheriffs or appointed
50 chiefs of police whose duties are determined by the board
51 to be purely administrative in nature.

52 (j) "Member" means any person who has contributions
53 standing to his or her credit in the fund and who has not
54 yet entered into retirement status.

55 (k) "Partially disabled" means an employee's inability,
56 on a probable permanent basis, to perform the essential
57 duties of a law-enforcement officer by reason of any
58 medically determinable physical or mental impairment
59 which has lasted or can be expected to last for a continu-
60 ous period of not less than twelve months, but which
61 impairment does not preclude the employee from engaging
62 in other types of nonlaw-enforcement employment.

63 (l) "Physical or mental impairment" means an impair-
64 ment that results from an anatomical, physiological or
65 psychological abnormality that is demonstrated by
66 medically accepted clinical and laboratory diagnostic
67 techniques.

68 (m) "Plan year" means the twelve-month period com-
69 mencing on July 1 of any designated year and ending the
70 following June 30.

71 (n) "Qualified public safety employee" means any
72 employee of a participating state or political subdivision
73 who provides police protection, fire-fighting services or
74 emergency medical services for any area within the
75 jurisdiction of the state or political subdivision, or such
76 other meaning given to the term by Section 72(t)(10)(B) of
77 the Internal Revenue Code or by Treasury Regulation
78 §1.401(a)-1(b)(2)(v) as they may be amended from time to
79 time.

80 (o) "Retirant" or "retiree" means any former member
81 who is receiving an annuity payable by the fund.

82 (p) "Surviving spouse" means the person to whom the
83 member was legally married at the time of the member's
84 death and who survived the member.

85 (q) "Totally disabled" means an employee's probable
86 permanent inability to engage in substantial gainful
87 activity by reason of any medically determined physical or
88 mental impairment that can be expected to result in death
89 or that has lasted or can be expected to last for a continu-
90 ous period of not less than twelve months. For purposes of
91 this subsection, an employee is totally disabled only if his
92 or her physical or mental impairments are so severe that
93 he or she is not only unable to perform his or her previous
94 work as an employee of the agency but also cannot,
95 considering his or her age, education and work experience,
96 engage in any other kind of substantial gainful employ-
97 ment which exists in the state regardless of whether: (1)
98 The work exists in the immediate area in which the
99 employee lives; (2) a specific job vacancy exists; or (3) the
100 employee would be hired if he or she applied for work.

**§15-2-26. Continuation of Death, Disability and Retirement
Fund; designating the Consolidated Public
Retirement Board as administrator of fund.**

1 (a) There is continued the Death, Disability and Retire-
2 ment Fund created for the benefit of members, retirants

3 and any dependents of retirants or deceased members of
4 the fund. It is contemplated that substantially all of the
5 members of the retirement system shall be qualified public
6 safety employees as defined in section twenty-five-b of
7 this article.

8 (b) There shall be deducted from the monthly payroll of
9 each employee and paid into the fund six percent of the
10 amount of his or her salary: *Provided*, That beginning on
11 July 1, 1994, there shall be deducted from the monthly
12 payroll of each employee and paid into the fund seven and
13 one-half percent of the amount of his or her salary:
14 *Provided, however*, That on and after July 1, 1995, there
15 shall be deducted from the monthly payroll of each
16 employee and paid into the fund nine percent of the
17 amount of his or her salary. An additional twelve percent
18 of the monthly salary of each employee shall be paid by
19 the State of West Virginia monthly into the fund out of the
20 annual appropriation for the agency: *Provided further*,
21 That beginning on July 1, 1995, the agency shall pay
22 thirteen percent of the monthly salary of each employee
23 into the fund: *And provided further*, That beginning on
24 July 1, 1996, the agency shall pay fourteen percent of the
25 monthly salary of each employee into the fund: *And*
26 *provided further*, That on and after July 1, 1997, the
27 agency shall pay fifteen percent of the monthly salary of
28 each employee into the fund. There shall also be paid into
29 the fund amounts that have previously been collected by
30 the superintendent of the agency on account of payments
31 to employees for court attendance and mileage, rewards
32 for apprehending wanted persons, fees for traffic accident
33 reports and photographs, fees for criminal investigation
34 reports and photographs, fees for criminal history record
35 checks, fees for criminal history record reviews and
36 challenges or from any other sources designated by the
37 superintendent. All moneys payable into the fund shall be
38 deposited in the State Treasury and the board shall keep
39 a separate account thereof.

40 (c) Notwithstanding any other provisions of this article,
41 forfeitures under the fund shall not be applied to increase
42 the benefits any member would otherwise receive under
43 the fund.

44 (d) The moneys in this fund, and the right of a member
45 to a retirement allowance, to the return of contributions,
46 or to any benefit under the provisions of this article, are
47 exempt from any state or municipal tax; are not subject to
48 execution, garnishment, attachment or any other process
49 whatsoever, with the exception that the benefits or
50 contributions under the fund are subject to "qualified
51 domestic relations orders" as that term is defined in
52 Section 414(p) of the Internal Revenue Code with respect
53 to governmental plans; and are unassignable except as is
54 provided in this article. The fund shall be administered by
55 the board created pursuant to article ten-d, chapter five of
56 this code.

57 (e) All moneys paid into and accumulated in the fund,
58 except amounts designated or set aside by the awards,
59 shall be invested by the West Virginia Investment Manage-
60 ment Board as provided by law.

§15-2-27. Retirement; awards and benefits; leased employees.

1 (a) The board shall retire any member of the fund who
2 has filed with the board his or her voluntary petition in
3 writing for retirement and:

4 (1) Has or shall have completed twenty-five years of
5 service as a member of the fund (including military service
6 credit granted under the provisions of section twenty-eight
7 of this article);

8 (2) Has or shall have attained the age of fifty years and
9 has or shall have completed twenty years of service as a
10 member of the fund (excluding military service credit
11 granted under section twenty-eight of this article); or

12 (3) Being under the age of fifty years has or shall have
13 completed twenty years of service as a member of the fund
14 (excluding military service credit granted under section
15 twenty-eight of this article).

16 (b) When the board retires any member under any of the
17 provisions of this section, the member is entitled to receive
18 annually and shall be paid from the fund in equal monthly
19 installments during his or her lifetime while in status of
20 retirement, one or the other of two amounts, whichever is
21 the greater, subject to reduction if necessary to comply
22 with the maximum benefit provisions of Section 415 of the
23 Internal Revenue Code and section forty-four of this
24 article:

25 (1) An amount equal to five and one-half percent of the
26 aggregate of salary paid to the employee during the whole
27 period of service as an employee of the agency; or

28 (2) The sum of \$6,000.

29 When a member has or shall have served twenty years or
30 longer but less than twenty-five years as a member of the
31 fund and is retired under any of the provisions of this
32 section before he or she has attained the age of fifty years,
33 payment of monthly installments of the amount of retire-
34 ment award to the member shall commence on the day
35 following the date he or she attains the age of fifty years.
36 Beginning on July 15, 1994, in no event may the provisions
37 of section thirteen, article sixteen, chapter five of this code
38 be applied in determining eligibility to retire with either
39 immediate or deferred commencement of benefit.

40 (c) A member meeting the age and service requirements
41 of this section who terminates employment at two thou-
42 sand four hundred hours may begin to receive retirement
43 annuity payments immediately upon termination of
44 employment. Any member meeting the age and service
45 requirements of this section who terminates employment

46 at a time of day other than two thousand four hundred
47 hours shall receive a pro rata share of a full day's amount
48 for that day. Upon receipt of properly executed forms
49 from the agency and the member, the board shall process
50 the member's retirement petition and commence annuity
51 payments as soon as administratively feasible.

52 (d) Any individual who is a leased employee is not
53 eligible to participate in the fund. For purposes of this
54 fund, a "leased employee" means any individual who
55 performs services as an independent contractor or pursu-
56 ant to an agreement with an employee leasing organiza-
57 tion or other similar organization. If a question arises
58 regarding the status of an individual as a leased employee,
59 the board has final power to decide the question.

**§15-2-37. Refunds to certain employees upon discharge or
resignation; deferred retirement.**

1 (a) Any employee who is discharged by order of the
2 superintendent or otherwise terminates employment with
3 the agency, at the written request of the member to the
4 board, is entitled to receive from the fund a sum equal to
5 the aggregate of the principal amount of moneys deducted
6 from his or her salary and paid into the fund plus four
7 percent interest compounded thereon calculated annually
8 as provided and required by this article.

9 (b) Any member withdrawing contributions who may
10 thereafter be reemployed by the agency shall not receive
11 any prior service credit in the fund on account of former
12 service. The employee may redeposit in the fund estab-
13 lished in article two-a of this chapter the amount of the
14 refund, together with interest thereon at the rate of seven
15 and one-half percent per annum from the date of with-
16 drawal to the date of redeposit, in which case he or she
17 shall receive the same credit on account of his or her
18 former service as if no refund had been made. He or she

19 shall become a member of the retirement system estab-
20 lished in article two-a of this chapter.

21 (c) Every employee who completes ten years of service
22 with the agency is eligible, upon separation of employ-
23 ment, either to withdraw his or her contributions in
24 accordance with subsection (a) of this section or to choose
25 not to withdraw his or her accumulated contributions with
26 interest. Upon attainment of age sixty-two, a member
27 who chooses not to withdraw his or her contributions is
28 eligible to receive a retirement annuity. Any member
29 choosing to receive the deferred annuity under this
30 subsection is not eligible to receive the annual annuity
31 adjustment provided in section twenty-seven-a of this
32 article. When the board retires any member under any of
33 the provisions of this section, the member is entitled to
34 receive annually and shall be paid from the fund in equal
35 monthly installments during the lifetime of the member
36 while in status of retirement one or the other of two
37 amounts, whichever is greater, subject to reduction if
38 necessary to comply with the maximum benefit provisions
39 of Section 415 of the Internal Revenue Code and section
40 forty-four of this article:

41 (1) An amount equal to five and one-half percent of the
42 aggregate of salary paid to the employee during the whole
43 period of service as an employee of the agency; or

44 (2) The sum of \$6,000.

45 (d) A member may choose, in lieu of a life annuity
46 available under the provisions of subsection (c) of this
47 section, an annuity in a reduced amount payable during
48 the member's lifetime, with one half of the reduced
49 monthly amount paid to his or her surviving spouse, for
50 the spouse's remaining lifetime after the death of the
51 retirant. Reduction of this monthly benefit amount shall
52 be calculated to be of equal actuarial value to the life
53 annuity the member could otherwise have chosen.

54 (e) A member retiring under the provisions of this
55 section may receive retirement annuity payments on the
56 day following his or her attaining age sixty-two. Upon
57 receipt of properly executed forms from the agency and
58 the member, the board shall process the member's retire-
59 ment benefit and commence annuity payments as soon as
60 administratively feasible.

§15-2-44. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or
2 state law, the board shall administer the fund in compli-
3 ance with the limitations of Section 415 of the Internal
4 Revenue Code and regulations under that section to the
5 extent applicable to governmental plans (hereafter
6 sometimes referred to as the "415 limitation(s)" or "415
7 dollar limitation(s)"), so that the annual benefit payable
8 under this system to a member shall not exceed those
9 limitations. Any annual benefit payable under this system
10 shall be reduced or limited if necessary to an amount
11 which does not exceed those limitations. The extent to
12 which any annuity or other annual benefit payable under
13 this fund shall be reduced, as compared with the extent to
14 which an annuity, contributions or other benefits under
15 any other defined benefit plans or defined contribution
16 plans required to be taken into consideration under
17 Section 415 of the Internal Revenue Code shall be reduced,
18 shall be proportional on a percentage basis to the reduc-
19 tions made in such other plans administered by the board
20 and required to be so taken into consideration under
21 Section 415, unless a disproportionate reduction is deter-
22 mined by the board to maximize the aggregate benefits
23 payable to the member. If the reduction is under this
24 fund, the board shall advise affected members or retirants
25 of any additional limitation on the annuities or other
26 annual benefit required by this section. For purposes of
27 the 415 limitations, the "limitation year" shall be the
28 calendaryear. The 415 limitations are incorporated herein

29 by reference, except to the extent the following provisions
30 may modify the default provisions thereunder:

31 (a) The annual adjustment to the 415 dollar limitations
32 made by Section 415(d) of the Internal Revenue Code and
33 the regulations thereunder shall apply for each limitation
34 year. The annual adjustments to the dollar limitations
35 under Section 415(d) of the Internal Revenue Code which
36 become effective: (i) After a retirant's severance from
37 employment with the employer; or (ii) after the annuity
38 starting date in the case of a retirant who has already
39 commenced receiving benefits, will apply with respect to
40 a retirant's annual benefit in any limitation year. A
41 retirant's annual benefit payable in any limitation year
42 from this retirement fund shall in no event be greater than
43 the limit applicable at the annuity starting date, as
44 increased in subsequent years pursuant to Section 415(d)
45 of the Internal Revenue Code and the regulations thereun-
46 der.

47 (b) For purposes of this section, the "annual benefit"
48 means a benefit that is payable annually in the form of a
49 straight life annuity. Except as provided below, where a
50 benefit is payable in a form other than a straight life
51 annuity, the benefit shall be adjusted to an actuarially
52 equivalent straight life annuity that begins at the same
53 time as such other form of benefit, using factors prescribed
54 in the 415 limitation regulations, before applying the 415
55 limitations. No actuarial adjustment to the benefit shall
56 be made for: (1) Survivor benefits payable to a surviving
57 spouse under a qualified joint and survivor annuity to the
58 extent such benefits would not be payable if the member's
59 benefit were paid in another form; (2) benefits that are not
60 directly related to retirement benefits (such as a qualified
61 disability benefit, preretirement incidental death benefits,
62 and post-retirement medical benefits); or (3) the inclusion
63 in the form of benefit of an automatic benefit increase
64 feature, provided the form of benefit is not subject to

65 Section 417(e)(3) of the Internal Revenue Code and would
66 otherwise satisfy the limitations of this article, and the
67 plan provides that the amount payable under the form of
68 benefit in any limitation year shall not exceed the limits of
69 this article applicable at the annuity starting date, as
70 increased in subsequent years pursuant to Section 415(d)
71 of the Internal Revenue Code. For this purpose an auto-
72 matic benefit increase feature is included in a form of
73 benefit if the form of benefit provides for automatic,
74 periodic increases to the benefits paid in that form.

75 (c) *Adjustment for benefit forms not subject to Section*
76 *417(e)(3).* – The straight life annuity that is actuarially
77 equivalent to the member's form of benefit shall be
78 determined under this subsection if the form of the
79 member's benefit is either: (1) A nondecreasing annuity
80 (other than a straight life annuity) payable for a period of
81 not less than the life of the member (or, in the case of a
82 qualified preretirement survivor annuity, the life of the
83 surviving spouse); or (2) an annuity that decreases during
84 the life of the member merely because of: (i) The death of
85 the survivor annuitant (but only if the reduction is not
86 below fifty percent of the benefit payable before the death
87 of the survivor annuitant); or (ii) the cessation or reduction
88 of Social Security supplements or qualified disability
89 payments (as defined in Section 411(a)(9) of the Internal
90 Revenue Code). The actuarially equivalent straight life
91 annuity is equal to the greater of: (I) The annual amount of
92 the straight life annuity (if any) payable to the member
93 under the plan commencing at the same annuity starting
94 date as the member's form of benefit; and (II) the annual
95 amount of the straight life annuity commencing at the
96 same annuity starting date that has the same actuarial
97 present value as the member's form of benefit, computed
98 using a five percent interest rate assumption and the
99 applicable mortality table defined in Treasury Regulation
100 §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subse-

101 quent Revenue Ruling modifying the applicable provisions
102 of Revenue Ruling 2001-62) for that annuity starting date.

103 (d) *Adjustment for benefit forms subject to Section*
104 *417(e)(3).* – The straight life annuity that is actuarially
105 equivalent to the member’s form of benefit shall be
106 determined under this subsection if the form of the
107 member’s benefit is other than a benefit form described in
108 subdivision (c) of this section. In this case, the actuarially
109 equivalent straight life annuity shall be determined as
110 follows: The actuarially equivalent straight life annuity is
111 equal to the greatest of: (1) The annual amount of the
112 straight life annuity commencing at the same annuity
113 starting date that has the same actuarial present value as
114 the member’s form of benefit, computed using the interest
115 rate specified in this retirement fund and the mortality
116 table (or other tabular factor) specified in this retirement
117 fund for adjusting benefits in the same form; (2) the
118 annual amount of the straight life annuity commencing at
119 the same annuity starting date that has the same actuarial
120 present value as the member’s form of benefit, computed
121 using a five and a half percent interest rate assumption
122 and the applicable mortality table defined in Treasury
123 Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or
124 any subsequent Revenue Ruling modifying the applicable
125 provisions of Revenue Ruling 2001-62) for that annuity
126 starting date; and (3) the annual amount of the straight
127 life annuity commencing at the same annuity starting date
128 that has the same actuarial present value as the member’s
129 form of benefit, computed using the applicable interest
130 rate defined in Treasury Regulation §1.417(e)-1(d)(3) and
131 the applicable mortality table defined in Treasury Regula-
132 tion §1.417(e)-1(d)(2) (the mortality table specified in
133 Revenue Ruling 2001-62 or any subsequent Revenue
134 Ruling modifying the applicable provisions of Revenue
135 Ruling 2001-62), divided by 1.05.

136 (e) *Benefits payable prior to age sixty-two.* –

137 (1) Except as provided in paragraphs (2) and (3) of this
138 subdivision, if the member's retirement benefits become
139 payable before age sixty-two, the 415 dollar limitation
140 prescribed by this section shall be reduced in accordance
141 with regulations issued by the Secretary of the Treasury
142 pursuant to the provisions of Section 415(b) of the Internal
143 Revenue Code, so that the limitation (as so reduced) equals
144 an annual straight life benefit (when the retirement
145 income benefit begins) which is equivalent to an annual
146 benefit in the amount of the applicable dollar limitation of
147 Section 415(b)(1)(A) of the Internal Revenue Code (as
148 adjusted pursuant to Section 415(d) of the Internal
149 Revenue Code) beginning at age sixty-two.

150 (2) The limitation reduction provided in paragraph (1) of
151 this subdivision shall not apply if the member commencing
152 retirement benefits before age sixty-two is a qualified
153 participant. A qualified participant for this purpose is a
154 participant in a defined benefit plan maintained by a
155 state, or any political subdivision of a state, with respect
156 to whom the service taken into account in determining the
157 amount of the benefit under the defined benefit plan
158 includes at least fifteen years of service: (i) As a full-time
159 employee of any police or fire department organized and
160 operated by the state or political subdivision maintaining
161 the defined benefit plan to provide police protection, fire-
162 fighting services or emergency medical services for any
163 area within the jurisdiction of such state or political
164 subdivision; or (ii) as a member of the armed forces of the
165 United States.

166 (3) The limitation reduction provided in paragraph (1) of
167 this subdivision shall not be applicable to preretirement
168 disability benefits or preretirement death benefits.

169 (4) For purposes of adjusting the 415 dollar limitation
170 for benefit commencement before age sixty-two or after
171 age sixty-five (if the plan provides for such adjustment),

172 no adjustment is made to reflect the probability of a
173 member's death: (i) After the annuity starting date and
174 before age sixty-two; or (ii) after age sixty-five and before
175 the annuity starting date.

176 (f) *Adjustment when member has less than ten years of*
177 *participation.* – In the case of a member who has less than
178 ten years of participation in the retirement fund (within
179 the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii),
180 the 415 dollar limitation (as adjusted pursuant to Section
181 415(d) of the Internal Revenue Code and subsection (e) of ² *division*
182 this section) shall be reduced by multiplying the otherwise *CD*
183 applicable limitation by a fraction, the numerator of
184 which is the number of years of participation in the plan
185 (or one, if greater), and the denominator of which is ten.
186 This adjustment shall not be applicable to preretirement
187 disability benefits or preretirement death benefits.

188 (g) The application of the provisions of this section shall
189 not cause the maximum annual benefit provided to a
190 member to be less than the member's accrued benefit as of
191 December 31, 2008 (the end of the limitation year that is
192 immediately prior to the effective date of the final regula-
193 tions for this retirement system as defined in Treasury
194 Regulation §1.415(a)-1(g)(2)), under provisions of the
195 retirement system that were both adopted and in effect
196 before April 5, 2007, provided that such provisions satis-
197 fied the applicable requirements of statutory provisions,
198 regulations, and other published guidance relating to
199 Section 415 of the Internal Revenue Code in effect as of
200 December 31, 2008, as described in Treasury Regulation
201 §1.415(a)-1(g)(4). If additional benefits are accrued for a
202 member under this retirement system after January 1,
203 2009, then the sum of the benefits described under the first
204 sentence of this subsection and benefits accrued for a
205 member after January 1, 2009, must satisfy the require-
206 ments of Section 415, taking into account all applicable
207 requirements of the final 415 Treasury Regulations.

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

1 The requirements of this section apply to any distribu-
2 tion of a member's or beneficiary's interest and take
3 precedence over any inconsistent provisions of this code.
4 This section applies to plan years beginning after Decem-
5 ber 31, 1998. Notwithstanding anything in the retirement
6 system to the contrary, the payment of benefits under this
7 article shall be determined and made in accordance with
8 Section 401(a)(9) of the Internal Revenue Code and the
9 regulations thereunder. For this purpose, the following
10 provisions apply:

11 (a) The payment of benefits under the fund to any
12 member shall be distributed to him or her not later than
13 the required beginning date, or be distributed to him or
14 her commencing not later than the required beginning
15 date, in accordance with regulations prescribed under
16 Section 401(a)(9) of the Internal Revenue Code, over the
17 life of the member or over the lives of the member and his
18 or her beneficiary, or over a period not extending beyond
19 the life expectancy of the member and his or her benefi-
20 ciary. For purposes of this section, the term "required
21 beginning date" means April 1 of the calendar year
22 following the later of: (i) The calendar year in which the
23 member attains age seventy and one-half; or (ii) the
24 calendar year in which the member retires or otherwise
25 ceases providing covered service under this fund. Benefit
26 payments under this section shall not be delayed pending,
27 or contingent upon, receipt of an application for retire-
28 ment from the member.

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

35 (c) If a member dies before distribution to him or her has
36 commenced, then his or her entire interest in the fund shall
37 be distributed by December 31 of the calendar year
38 containing the fifth anniversary of the member's death,
39 except as follows:

40 (1) If a member's interest is payable to a beneficiary,
41 distributions may be made over the life of that beneficiary
42 or over a period certain not greater than the life expect-
43 tancy of the beneficiary commencing on or before Decem-
44 ber 31 of the calendar year immediately following the
45 calendar year in which the participant died; or

46 (2) If the member's beneficiary is the surviving spouse,
47 the date distributions are required to begin shall be no
48 later than the later of:

49 (A) December 31 of the calendar year in which the
50 member would have attained age seventy and one-half; or

51 (B) The earlier of: (i) December 31 of the calendar year
52 following the calendar year in which the member died; or
53 (ii) December 31 of the calendar year following the
54 calendar year in which the spouse died.

§15-2-46. Direct rollovers.

1 (a) Except where otherwise stated, this section applies to
2 distributions made on or after January 1, 1993. Notwith-
3 standing any provision of this article to the contrary that
4 would otherwise limit a distributee's election under this
5 fund, a distributee may elect, at the time and in the
6 manner prescribed by the board, to have any portion of an
7 eligible rollover distribution that is equal to at least \$500
8 paid directly to an eligible retirement plan specified by the
9 distributee in a direct rollover. For purposes of this
10 section, the following definitions apply:

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

13 distributee, except that an eligible rollover distribution
14 does not include any of the following: (i) Any distribution
15 that is one of a series of substantially equal periodic
16 payments not less frequently than annually made for the
17 life or life expectancy of the distributee or the joint lives
18 or the joint life expectancies of the distributee and the
19 distributee's designated beneficiary, or for a specified
20 period of ten years or more; (ii) any distribution to the
21 extent the distribution is required under Section 401(a)(9)
22 of the Internal Revenue Code; (iii) the portion of any
23 distribution that is not includable in gross income deter-
24 mined without regard to the exclusion for net unrealized
25 appreciation with respect to employer securities; (iv) any
26 hardship distribution described in Section
27 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v)
28 any other distribution or distributions that are reasonably
29 expected to total less than \$200 during a year. For
30 distributions after December 31, 2001, a portion of a
31 distribution shall not fail to be an eligible rollover distri-
32 bution merely because the portion consists of after-tax
33 employee contributions which are not includable in gross
34 income. However, this portion may be paid only to an
35 individual retirement account or annuity described in
36 Section 408(a) or (b) of the Internal Revenue Code, or (for
37 taxable years beginning before January 1, 2007) to a
38 qualified trust which is part of a defined contribution plan
39 described in Section 401(a) or (for taxable years beginning
40 after December 31, 2006) to a qualified trust or to an
41 annuity contract described in Section 403(a) or (b) of the
42 Internal Revenue Code that agrees to separately account
43 for amounts transferred (including interest or earnings
44 thereon), including separately accounting for the portion
45 of the distribution which is includable in gross income and
46 the portion of the distribution which is not so includable,
47 or (for taxable years beginning after December 31, 2007)
48 to a Roth IRA described in Section 408(a) of the Internal
49 Revenue Code.

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50 (2) "Eligible retirement plan" means an individual
51 retirement account described in Section 408(a) of the
52 Internal Revenue Code, an individual retirement annuity
53 described in Section 408(b) of the Internal Revenue Code,
54 an annuity plan described in Section 403(a) of the Internal
55 Revenue Code, or a qualified plan described in Section
56 401(a) of the Internal Revenue Code, that accepts the
57 distributee's eligible rollover distribution: *Provided*, That
58 in the case of an eligible rollover distribution prior to
59 January 1, 2002, to the surviving spouse, an eligible
60 retirement plan is limited to an individual retirement
61 account or individual retirement annuity. For distribu-
62 tions after December 31, 2001, an eligible retirement plan
63 also means an annuity contract described in Section 403(b)
64 of the Internal Revenue Code and an eligible plan under
65 Section 457(b) of the Internal Revenue Code which is
66 maintained by a state, political subdivision of a state, or
67 any agency or instrumentality of a state or political
68 subdivision of a state and which agrees to separately
69 account for amounts transferred into the plan from this
70 system. For distributions after December 31, 2007, an
71 eligible retirement plan also means a Roth IRA described
72 in Section 408(a) of the Internal Revenue Code: *Provided*,
73 That in the case of an eligible rollover distribution after
74 December 31, 2007, to a designated beneficiary (other than
75 a surviving spouse) as such term is defined in Section
76 402(c)(11) of the Internal Revenue Code, an eligible
77 retirement plan is limited to an individual retirement
78 account or individual retirement annuity which meets the
79 conditions of Section 402(c)(11) of the Internal Revenue
80 Code.

81 (3) "Distributee" means a member. In addition, the
82 member's surviving spouse and the member's spouse or
83 former spouse who is the alternate payee under a qualified
84 domestic relations order, as defined in Section 414(p) of
85 the Internal Revenue Code with respect to governmental

86 plans, are distributees with regard to the interest of the
87 spouse or former spouse. For distributions after December
88 31, 2007, "distributee" also includes a designated benefi-
89 ciary (other than a surviving spouse) as such term is
90 defined in Section 402(c)(11) of the Internal Revenue Code.

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

93 (b) Nothing in this section may be construed as permit-
94 ting rollovers into this fund or any other retirement system
95 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) "Accumulated contributions" means the sum of all
4 amounts deducted from base salary, together with four
5 percent interest compounded annually.

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

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

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

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

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

28 (7) "Board" means the Consolidated Public Retirement
29 Board created pursuant to article ten-d, chapter five of
30 this code.

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

34 (A) Is under the age of eighteen;

35 (B) After reaching eighteen years of age, continues as a
36 full-time student in an accredited high school, college,
37 university, business or trade school until the child or
38 children reaches the age of twenty-three years; or

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

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

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

50 (11) "Final average salary" means the average of the
51 highest annual compensation received for employment
52 with the agency, including compensation paid for overtime
53 service, received by the employee during any five calendar

54 years within the employee's last ten years of service:
55 *Provided*, That annual compensation for determining
56 benefits during any determination period may not exceed
57 the maximum compensation allowed as adjusted for cost
58 of living in accordance with section seven, article ten-d,
59 chapter five of this code and Section 401(a)(17) of the
60 Internal Revenue Code.

61 (12) "Fund", "plan", "system" or "retirement system"
62 means the West Virginia State Police Retirement Fund
63 created and established by this article.

64 (13) "Internal Revenue Code" means the Internal
65 Revenue Code of 1986, as amended.

66 (14) "Law-enforcement officer" means an individual
67 employed or otherwise engaged in either a public or
68 private position which involves the rendition of services
69 relating to enforcement of federal, state or local laws for
70 the protection of public or private safety, including, but
71 not limited to, positions as deputy sheriffs, police officers,
72 marshals, bailiffs, court security officers or any other law-
73 enforcement position which requires certification, but
74 excluding positions held by elected sheriffs or appointed
75 chiefs of police whose duties are purely administrative in
76 nature.

77 (15) "Member" means any person who has contributions
78 standing to his or her credit in the fund and who has not
79 yet entered into retirement status.

80 (16) "Month of service" means each month for which an
81 employee is paid or entitled to payment for at least one
82 hour of service for which contributions were remitted to
83 the fund. These months shall be credited to the member
84 for the calendar year in which the duties are performed.

85 (17) "Partially disabled" means an employee's inability,
86 on a probable permanent basis, to perform the essential
87 duties of a law-enforcement officer by reason of any

88 medically determinable physical or mental impairment
89 which has lasted or can be expected to last for a continu-
90 ous period of not less than twelve months, but which
91 impairment does not preclude the employee from engaging
92 in other types of nonlaw-enforcement employment.

93 (18) "Physical or mental impairment" means an impair-
94 ment that results from an anatomical, physiological or
95 psychological abnormality that is demonstrated by
96 medically accepted clinical and laboratory diagnostic
97 techniques.

98 (19) "Plan year" means the twelve-month period com-
99 mencing on July 1 of any designated year and ending the
100 following June 30.

101 (20) "Qualified public safety employee" means any
102 employee of a participating state or political subdivision
103 who provides police protection, fire-fighting services or
104 emergency medical services for any area within the
105 jurisdiction of the state or political subdivision, or such
106 other meaning given to the term by Section 72(t)(10)(B) of
107 the Internal Revenue Code or by Treasury Regulation
108 §1.401(a)-1(b)(2)(v) as they may be amended from time to
109 time.

110 (21) "Required beginning date" means April 1 of the
111 calendar year following the later of: (a) The calendar year
112 in which the member attains age seventy and one-half
113 years; or (b) the calendar year in which he or she retires or
114 otherwise separates from service with the agency after
115 having attained the age of seventy and one-half years.

116 (22) "Retirant" or "retiree" means any member who
117 commences an annuity payable by the retirement system.

118 (23) "Salary" means the compensation of an employee,
119 excluding any overtime payments.

120 (24) "Surviving spouse" means the person to whom the
121 member or retirant was legally married at the time of the
122 member's or retirant's death and who survived the mem-
123 ber or retirant.

124 (25) "Totally disabled" means an employee's probable
125 permanent inability to engage in substantial gainful
126 activity by reason of any medically determined physical or
127 mental impairment that can be expected to result in death
128 or that has lasted or can be expected to last for a continu-
129 ous period of not less than twelve months. For purposes of
130 this subdivision, an employee is totally disabled only if his
131 or her physical or mental impairments are so severe that
132 he or she is not only unable to perform his or her previous
133 work as an employee of the agency, but also cannot,
134 considering his or her age, education and work experience,
135 engage in any other kind of substantial gainful employ-
136 ment which exists in the state regardless of whether: (A)
137 The work exists in the immediate area in which the
138 employee lives; (B) a specific job vacancy exists; or (C) the
139 employee would be hired if he or she applied for work.

140 (26) "Years of service" means the months of service
141 acquired by a member while in active employment with
142 the agency divided by twelve. Years of service shall be
143 calculated in years and fraction of a year from the date of
144 active employment of the member with the agency through
145 the date of termination of employment or retirement from
146 the agency. If a member returns to active employment
147 with the agency following a previous termination of
148 employment with the agency and the member has not
149 received a refund of contributions plus interest for the
150 previous employment under section eight of this article,
151 service shall be calculated separately for each period of
152 continuous employment and years of service shall be the
153 total service for all periods of employment. Years of
154 service shall exclude any periods of employment with the
155 agency for which a refund of contributions plus interest

156 has been paid to the member unless the employee repays
157 the previous withdrawal, as provided in section eight of
158 this article, to reinstate the years of service.

**§15-2A-3. Continuation and administration of West Virginia
State Police Retirement System; leased employ-
ees; federal qualification requirements.**

1 (a) The West Virginia State Police Retirement System is
2 continued. It is contemplated that substantially all of the
3 members of the retirement system shall be qualified public
4 safety employees as defined in section two of this article.
5 Any West Virginia state trooper employed by the agency
6 on or after the effective date of this article shall be a
7 member of this retirement system and may not qualify for
8 membership in any other retirement system administered
9 by the board so long as he or she remains employed by the
10 State Police.

11 (b) Any individual who is a leased employee shall not be
12 eligible to participate in the system. For purposes of this
13 system, a "leased employee" means any individual who
14 performs services as an independent contractor or pursu-
15 ant to an agreement with an employee leasing organiza-
16 tion or other similar organization. If a question arises
17 regarding the status of an individual as a leased employee,
18 the board has final power to decide the question.

19 (c) The board created pursuant to article ten-d, chapter
20 five of this code shall administer the retirement system.
21 The board may sue and be sued, contract and be con-
22 tracted with and conduct all the business of the system in
23 the name of the West Virginia State Police Retirement
24 System.

25 (d) This fund is intended to meet the federal qualifica-
26 tion requirements of Section 401(a) and related sections of
27 the Internal Revenue Code as applicable to governmental
28 plans. Notwithstanding any other provision of state law,

29 the board shall administer the retirement system to fulfill
30 this intent for the exclusive benefit of the employees,
31 members, retirants and their beneficiaries. Any provision
32 of this article referencing or relating to these federal
33 qualification requirements shall be effective as of the date
34 required by federal law. The board may promulgate rules
35 and amend or repeal conflicting rules in accordance with
36 the authority granted to the board pursuant to section one,
37 article ten-d, chapter five of this code to assure compli-
38 ance with this section.

§15-2A-6. Retirement; commencement of benefits.

1 (a) A member may retire with full benefits upon attain-
2 ing the age of fifty and completing twenty-five or more
3 years of service or attaining the age of fifty-two and
4 completing twenty years or more of service by filing with
5 the board his or her voluntary application in writing for
6 retirement. A member who is less than age fifty-two may
7 retire upon completing twenty years or more of service:
8 *Provided*, That he or she will receive a reduced benefit
9 that is of equal actuarial value to the benefit the member
10 would have received if the member deferred commence-
11 ment of his or her accrued retirement benefit to the age of
12 fifty-two.

13 (b) When the board retires a member with full benefits
14 under the provisions of this section, the board, by order in
15 writing, shall make a determination that the member is
16 entitled to receive an annuity equal to two and three-
17 fourths percent of his or her final average salary multi-
18 plied by the number of years, and fraction of a year, of his
19 or her service at the time of retirement, subject to reduc-
20 tion if necessary to comply with the maximum benefit
21 provisions of Section 415 of the Internal Revenue Code
22 and section six-a of this article. The retirant's annuity
23 shall begin the first day of the calendar month following
24 the month in which the member's application for the

25 annuity is filed with the board on or after his or her
26 attaining age and service requirements and termination of
27 employment.

28 (c) In no event may the provisions of section thirteen,
29 article sixteen, chapter five of this code be applied in
30 determining eligibility to retire with either a deferred or
31 immediate commencement of benefit.

§15-2A-6a. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or
2 state law, the board shall administer the retirement system
3 in compliance with the limitations of Section 415 of the
4 Internal Revenue Code and Treasury Regulations under
5 that section to the extent applicable to governmental plans
6 (hereafter sometimes referred to as the "415 limitation(s)"
7 or "415 dollar limitation(s)"), so that the annual benefit
8 payable under this system to a member shall not exceed
9 those limitations. Any annual benefit payable under this
10 system shall be reduced or limited if necessary to an
11 amount which does not exceed those limitations. The
12 extent to which any annuity or other annual benefit
13 payable under this retirement system shall be reduced, as
14 compared with the extent to which an annuity, contribu-
15 tions or other benefits under any other defined benefit
16 plans or defined contribution plans required to be taken
17 into consideration under Section 415 of the Internal
18 Revenue Code shall be reduced, shall be proportional on a
19 percentage basis to the reductions made in such other
20 plans administered by the board and required to be so
21 taken into consideration under Section 415, unless a
22 disproportionate reduction is determined by the board to
23 maximize the aggregate benefits payable to the member.
24 If the reduction is under this retirement system, the board
25 shall advise affected members or retirants of any addi-
26 tional limitation on the annuities or other annual benefit
27 required by this section. For purposes of the 415 limita-

28 tions, the "limitation year" shall be the calendar year. The
29 415 limitations are incorporated herein by reference,
30 except to the extent the following provisions may modify
31 the default provisions thereunder:

32 (a) The annual adjustment to the 415 dollar limitations
33 made by Section 415(d) of the Internal Revenue Code and
34 the regulations thereunder shall apply for each limitation
35 year. The annual adjustments to the dollar limitations
36 under Section 415(d) of the Internal Revenue Code which
37 become effective: (i) After a retirant's severance from
38 employment with the employer; or (ii) after the annuity
39 starting date in the case of a retirant who has already
40 commenced receiving benefits, will apply with respect to
41 a retirant's annual benefit in any limitation year. A
42 retirant's annual benefit payable in any limitation year
43 from this retirement system shall in no event be greater
44 than the limit applicable at the annuity starting date, as
45 increased in subsequent years pursuant to Section 415(d)
46 of the Internal Revenue Code and the regulations thereun-
47 der.

48 (b) For purposes of this section, the "annual benefit"
49 means a benefit that is payable annually in the form of a
50 straight life annuity. Except as provided below, where a
51 benefit is payable in a form other than a straight life
52 annuity, the benefit shall be adjusted to an actuarially
53 equivalent straight life annuity that begins at the same
54 time as such other form of benefit, using factors prescribed
55 in the 415 limitation regulations, before applying the 415
56 limitations. No actuarial adjustment to the benefit shall
57 be made for: (1) Survivor benefits payable to a surviving
58 spouse under a qualified joint and survivor annuity to the
59 extent such benefits would not be payable if the member's
60 benefit were paid in another form; (2) benefits that are not
61 directly related to retirement benefits (such as a qualified
62 disability benefit, preretirement incidental death benefits,
63 and post-retirement medical benefits); or (3) the inclusion

64 in the form of benefit of an automatic benefit increase
65 feature, provided the form of benefit is not subject to
66 Section 417(e)(3) of the Internal Revenue Code and would
67 otherwise satisfy the limitations of this article, and the
68 plan provides that the amount payable under the form of
69 benefit in any limitation year shall not exceed the limits of
70 this article applicable at the annuity starting date, as
71 increased in subsequent years pursuant to Section 415(d)
72 of the Internal Revenue Code. For this purpose an auto-
73 matic benefit increase feature is included in a form of
74 benefit if the form of benefit provides for automatic,
75 periodic increases to the benefits paid in that form.

76 (c) *Adjustment for benefit forms not subject to Section*
77 *417(e)(3).* – The straight life annuity that is actuarially
78 equivalent to the member's form of benefit shall be
79 determined under this subsection if the form of the
80 member's benefit is either: (1) A nondecreasing annuity
81 (other than a straight life annuity) payable for a period of
82 not less than the life of the member (or, in the case of a
83 qualified preretirement survivor annuity, the life of the
84 surviving spouse); or (2) an annuity that decreases during
85 the life of the member merely because of: (i) The death of
86 the survivor annuitant (but only if the reduction is not
87 below fifty percent of the benefit payable before the death
88 of the survivor annuitant); or (ii) the cessation or reduction
89 of Social Security supplements or qualified disability
90 payments (as defined in Section 411(a)(9) of the Internal
91 Revenue Code). The actuarially equivalent straight life
92 annuity is equal to the greater of: (I) The annual amount of
93 the straight life annuity (if any) payable to the member
94 under the plan commencing at the same annuity starting
95 date as the member's form of benefit; and (II) the annual
96 amount of the straight life annuity commencing at the
97 same annuity starting date that has the same actuarial
98 present value as the member's form of benefit, computed
99 using a five percent interest rate assumption and the

100 applicable mortality table defined in Treasury Regulation
101 §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subse-
102 quent Revenue Ruling modifying the applicable provisions
103 of Revenue Ruling 2001-62) for that annuity starting date.

104 (d) *Adjustment for benefit forms subject to Section*
105 *417(e)(3).* – The straight life annuity that is actuarially
106 equivalent to the member's form of benefit shall be
107 determined under this subsection if the form of the
108 member's benefit is other than a benefit form described in
109 ~~subsection (c) of this section.~~ In this case, the actuarially
110 equivalent straight life annuity shall be determined as
111 follows: The actuarially equivalent straight life annuity is
112 equal to the greatest of: (1) The annual amount of the
113 straight life annuity commencing at the same annuity
114 starting date that has the same actuarial present value as
115 the member's form of benefit, computed using the interest
116 rate specified in this retirement system and the mortality
117 table (or other tabular factor) specified in this retirement
118 system for adjusting benefits in the same form; (2) the
119 annual amount of the straight life annuity commencing at
120 the same annuity starting date that has the same actuarial
121 present value as the member's form of benefit, computed
122 using a five and a half percent interest rate assumption
123 and the applicable mortality table defined in Treasury
124 Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or
125 any subsequent Revenue Ruling modifying the applicable
126 provisions of Revenue Ruling 2001-62) for that annuity
127 starting date; and (3) the annual amount of the straight
128 life annuity commencing at the same annuity starting date
129 that has the same actuarial present value as the member's
130 form of benefit, computed using the applicable interest
131 rate defined in Treasury Regulation §1.417(e)-1(d)(3) and
132 the applicable mortality table defined in Treasury Regula-
133 tion §1.417(e)-1(d)(2) (the mortality table specified in
134 Revenue Ruling 2001-62 or any subsequent Revenue
135 Ruling modifying the applicable provisions of Revenue
136 Ruling 2001-62), divided by 1.05.

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137 (e) *Benefits payable prior to age sixty-two.* -

138 (1) Except as provided in ~~subdivisions~~ (2) and (3) of this
 139 subsection, if the member's retirement benefits become
 140 payable before age sixty-two, the 415 dollar limitation
 141 prescribed by this section shall be reduced in accordance
 142 with regulations issued by the Secretary of the Treasury
 143 pursuant to the provisions of Section 415(b) of the Internal
 144 Revenue Code, so that the limitation (as so reduced) equals
 145 an annual straight life benefit (when the retirement
 146 income benefit begins) which is equivalent to an annual
 147 benefit in the amount of the applicable dollar limitation of
 148 Section 415(b)(1)(A) of the Internal Revenue Code (as
 149 adjusted pursuant to Section 415(d) of the Internal
 150 Revenue Code) beginning at age sixty-two.

151 (2) The limitation reduction provided in ~~subdivision~~ (1)
 152 of this subsection shall not apply if the member commencing
 153 retirement benefits before age sixty-two is a qualified
 154 participant. A qualified participant for this purpose is a
 155 participant in a defined benefit plan maintained by a
 156 state, or any political subdivision of a state, with respect
 157 to whom the service taken into account in determining the
 158 amount of the benefit under the defined benefit plan
 159 includes at least fifteen years of service: (i) As a full-time
 160 employee of any police or fire department organized and
 161 operated by the state or political subdivision maintaining
 162 the defined benefit plan to provide police protection, fire-
 163 fighting services or emergency medical services for any
 164 area within the jurisdiction of such state or political
 165 subdivision; or (ii) as a member of the armed forces of the
 166 United States.

167 (3) The limitation reduction provided in ~~subdivision~~ (1)
 168 of this subsection shall not be applicable to preretirement
 169 disability benefits or preretirement death benefits.

170 (4) For purposes of adjusting the 415 dollar limitation
 171 for benefit commencement before age sixty-two or after

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172 age sixty-five (if the plan provides for such adjustment),
173 no adjustment is made to reflect the probability of a
174 member's death: (i) After the annuity starting date and
175 before age sixty-two; or (ii) after age sixty-five and before
176 the annuity starting date.

177 (f) *Adjustment when member has less than ten years of*
178 *participation.* – In the case of a member who has less than
179 ten years of participation in the retirement system (within
180 the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)),
181 the 415 dollar limitation (as adjusted pursuant to Section
182 415(d) of the Internal Revenue Code and subsection (e) of
183 this section) shall be reduced by multiplying the otherwise
184 applicable limitation by a fraction, the numerator of
185 which is the number of years of participation in the plan
186 (or one, if greater), and the denominator of which is ten.
187 This adjustment shall not be applicable to preretirement
188 disability benefits or preretirement death benefits.

189 (g) The application of the provisions of this section shall
190 not cause the maximum annual benefit provided to a
191 member to be less than the member's accrued benefit as of
192 December 31, 2008 (the end of the limitation year that is
193 immediately prior to the effective date of the final regula-
194 tions for this retirement system as defined in Treasury
195 Regulation §1.415(a)-1(g)(2)), under provisions of the
196 retirement system that were both adopted and in effect
197 before April 5, 2007, provided that such provisions satis-
198 fied the applicable requirements of statutory provisions,
199 regulations and other published guidance relating to
200 Section 415 of the Internal Revenue Code in effect as of
201 the end of December 31, 2008, as described in Treasury
202 Regulation §1.415(a)-1(g)(4). If additional benefits are
203 accrued for a member under this retirement system after
204 January 1, 2009, then the sum of the benefits described
205 under the first sentence of this subsection and benefits
206 accrued for a member after January 1, 2009, must satisfy
207 the requirements of Section 415, taking into account all

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208 applicable requirements of the final 415 Treasury Regula-
209 tions.

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

1 The requirements of this section apply to any distribu-
2 tion of a member's interest and take precedence over any
3 inconsistent provisions of this retirement system. This
4 section applies to plan years beginning after December 31,
5 1986. Notwithstanding anything in the retirement system
6 to the contrary, the payment of benefits under this article
7 shall be determined and made in accordance with Section
8 401(a)(9) of the Internal Revenue Code and the regulations
9 thereunder. For this purpose, the following provisions
10 apply:

11 (a) The payment of benefits under the retirement system
12 to any member shall be distributed to him or her not later
13 than the required beginning date, or be distributed to him
14 or her commencing not later than the required beginning
15 date, in accordance with regulations prescribed under
16 Section 401(a)(9) of the Internal Revenue Code, over the
17 life of the member or over the lives of the member and his
18 or her beneficiary or over a period not extending beyond
19 the life expectancy of the member and his or her benefi-
20 ciary. Benefit payments under this section shall not be
21 delayed pending, or contingent upon, receipt of an appli-
22 cation for retirement from the member.

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

29 (c) If a member dies before distribution to him or her has
30 commenced, then his or her entire interest in the retire-
31 ment system shall be distributed by December 31 of the

32 calendar year containing the fifth anniversary of the
33 member's death, except as follows:

34 (1) If a member's interest is payable to a beneficiary,
35 distributions may be made over the life of that beneficiary
36 or over a period certain not greater than the life expect-
37 tancy of the beneficiary commencing on or before Decem-
38 ber 31 of the calendar year immediately following the
39 calendar year in which the member died; or

40 (2) If the member's beneficiary is the surviving spouse,
41 the date distributions are required to begin shall be no
42 later than the later of:

43 (A) December 31 of the calendar year in which the
44 member would have attained age seventy and one-half; or

45 (B) The earlier of: (i) December 31 of the calendar year
46 following the calendar year in which the member died; or
47 (ii) December 31 of the calendar year following the
48 calendar year in which the spouse died.

§15-2A-6c. Direct rollovers.

1 (a) Except where otherwise stated, this section applies to
2 distributions made on or after January 1, 1993. Notwith-
3 standing any provision of this article to the contrary that
4 would otherwise limit a distributee's election under this
5 system, a distributee may elect, at the time and in the
6 manner prescribed by the board, to have any portion of an
7 eligible rollover distribution paid directly to an eligible
8 retirement plan specified by the distributee in a direct
9 rollover. For purposes of this section, the following
10 definitions apply:

11 (1) "Eligible rollover distribution" means any distribu-
12 tion of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution
14 does not include any of the following: (i) Any distribution
15 that is one of a series of substantially equal periodic

16 payments not less frequently than annually made for the
17 life or life expectancy of the distributee or the joint lives
18 or the joint life expectancies of the distributee and the
19 distributee's designated beneficiary or for a specified
20 period of ten years or more; (ii) any distribution to the
21 extent the distribution is required under Section 401(a)(9)
22 of the Internal Revenue Code; (iii) the portion of any
23 distribution that is not includable in gross income deter-
24 mined without regard to the exclusion for net unrealized
25 appreciation with respect to employer securities; and (iv)
26 any hardship distribution described in Section
27 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. For
28 distributions after December 31, 2001, a portion of a
29 distribution shall not fail to be an eligible rollover distri-
30 bution merely because the portion consists of after-tax
31 employee contributions which are not includable in gross
32 income. However, this portion may be paid only to an
33 individual retirement account or annuity described in
34 Section 408(a) or (b) of the Internal Revenue Code or (for
35 taxable years beginning before January 1, 2007) to a
36 qualified trust which is part of a defined contribution plan
37 described in Section 401(a) or (for taxable years beginning
38 after December 31, 2006) to a qualified trust or to an
39 annuity contract described in Section 403(a) or (b) of the
40 Internal Revenue Code that agrees to separately account
41 for amounts transferred (including interest or earnings
42 thereon), including separately accounting for the portion
43 of the distribution which is includable in gross income and
44 the portion of the distribution which is not so includable,
45 or (for taxable years beginning after December 31, 2007)
46 to a Roth IRA described in Section 408(a) of the Internal
47 Revenue Code.

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

52 an annuity plan described in Section 403(a) of the Internal
53 Revenue Code or a qualified plan described in Section
54 401(a) of the Internal Revenue Code that accepts the
55 distributee's eligible rollover distribution: *Provided*, That
56 in the case of an eligible rollover distribution prior to
57 January 1, 2002, to the surviving spouse, an eligible
58 retirement plan is limited to an individual retirement
59 account or individual retirement annuity. For distribu-
60 tions after December 31, 2001, an eligible retirement plan
61 also means an annuity contract described in Section 403(b)
62 of the Internal Revenue Code and an eligible plan under
63 Section 457(b) of the Internal Revenue Code which is
64 maintained by a state, political subdivision of a state or
65 any agency or instrumentality of a state or political
66 subdivision of a state and which agrees to separately
67 account for amounts transferred into the plan from this
68 system. For distributions after December 31, 2007, an
69 eligible retirement plan also means a Roth IRA described
70 in Section 408(a) of the Internal Revenue Code: *Provided*,
71 *however*, That in the case of an eligible rollover distribu-
72 tion after December 31, 2007, to a designated beneficiary
73 (other than a surviving spouse) as such term is defined in
74 Section 402(c)(11) of the Internal Revenue Code, an
75 eligible retirement plan is limited to an individual retire-
76 ment account or individual retirement annuity which
77 meets the conditions of Section 402(c)(11) of the Internal
78 Revenue Code.

79 (3) "Distributee" means an employee or former em-
80 ployee. In addition, the employee's or former employee's
81 surviving spouse and the employee's or former employee's
82 spouse or former spouse who is the alternate payee under
83 a qualified domestic relations order, as defined in Section
84 414(p) of the Internal Revenue Code with respect to
85 governmental plans, are distributees with regard to the
86 interest of the spouse or former spouse. For distributions
87 after December 31, 2007, "distributee" also includes a

88 designated beneficiary (other than a surviving spouse) as
89 such term is defined in Section 402(c)(11) of the Internal
90 Revenue Code.

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

93 (b) Nothing in this section may be construed as permit-
94 ting rollovers into this system or any other retirement
95 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 January 1, 2002.
3 Notwithstanding any provision of this article to the
4 contrary that would otherwise prohibit or limit rollovers
5 and plan transfers to this system, the retirement system
6 shall accept the following rollovers and plan transfers on
7 behalf of an employee solely for the purpose of purchasing
8 permissive service credit, in whole and in part, as other-
9 wise provided in this article or for the repayment of
10 withdrawn or refunded contributions, in whole and in
11 part, with respect to a previous forfeiture of service credit
12 as otherwise provided in this article: (i) One or more
13 rollovers within the meaning of Section 408(d)(3) of the
14 Internal Revenue Code from an individual retirement
15 account described in Section 408(a) of the Internal Reve-
16 nue 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
31 or transfers pursuant to this section shall be accepted by
32 the system only if made in cash or other asset permitted by
33 the board and only in accordance with the policies,
34 practices and procedures established by the board from
35 time to time. For purposes of this article, the following
36 definitions and limitations 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 *Provided*, That no more than five years of "nonqualified
45 service credit", as defined in Section 415(n)(3)(C) of the
46 Internal Revenue Code, may be included in the permissive
47 service credit allowed to be purchased (other than by
48 means of a rollover or plan transfer), and no nonqualified
49 service credit may be included in any such purchase (other
50 than by means of a rollover or plan transfer) before the
51 member has at least five years of participation in the
52 retirement system.

53 (2) "Repayment of withdrawn or refunded contribu-
54 tions" means the payment into the retirement system of
55 the funds required pursuant to this article for the rein-
56 statement of service credit previously forfeited on account
57 of any refund or withdrawal of contributions permitted in
58 this article, as set forth in Section 415(k)(3) of the Internal
59 Revenue Code.

60 (3) Any contribution (other than by means of a rollover
61 or plan transfer) to purchase permissive service credit

62 under any provision of this article must satisfy the special
63 limitation rules described in Section 415(n) of the Internal
64 Revenue Code, and shall be automatically reduced, limited
65 or required to be paid over multiple years if necessary to
66 ensure such compliance. To the extent any such purchased
67 permissive service credit is qualified military service
68 within the meaning of Section 414(u) of the Internal
69 Revenue Code, the limitations of Section 415 of the
70 Internal Revenue Code shall be applied to such purchase
71 as described in Section 414(u)(1)(B) of the Internal Reve-
72 nue Code.

73 (4) For purposes of Section 415(b) of the Internal Reve-
74 nue Code, the annual benefit attributable to any rollover
75 contribution accepted pursuant to this section shall be
76 determined in accordance with Treasury Regulation
77 §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity
78 payments attributable to any rollover contribution
79 provided under the retirement system over the annual
80 benefit so determined shall be taken into account when
81 applying the accrued benefit limitations of Section 415(b)
82 of the Internal Revenue Code and section six-a of this
83 article.

84 (b) Nothing in this section shall be construed as permit-
85 ting rollovers or transfers into this system or any other
86 system administered by the board other than as specified
87 in this section and no rollover or transfer shall be accepted
88 into the system in an amount greater than the amount
89 required for the purchase of permissive service credit or
90 repayment of withdrawn or refunded contributions.

91 (c) Nothing in this section shall be construed as permit-
92 ting the purchase of service credit or repayment of with-
93 drawn or refunded contributions except as otherwise
94 permitted in this chapter.

**§15-2A-8. Refunds to certain members upon discharge of
resignation; deferred retirement.**

1 (a) Any employee who is discharged by order of the
2 superintendent or otherwise terminates employment with
3 the agency is, at the written request of the member to the
4 board, entitled to receive from the fund a sum equal to the
5 aggregate of the principal amount of moneys deducted
6 from his or her base salary and paid into the fund plus
7 four percent interest compounded thereon calculated
8 annually as provided and required by this article.

9 (b) Any member withdrawing contributions who may
10 thereafter be reemployed by the agency shall not receive
11 any prior service credit in the fund on account of former
12 service. The employee may redeposit in the fund estab-
13 lished by this article the amount of the refund, together
14 with interest thereon at the rate of seven and one-half
15 percent per annum from the date of withdrawal to the date
16 of redeposit, in which case he or she shall receive the same
17 credit on account of his or her former service as if no
18 refund had been made.

19 (c) Every employee who completes ten years of service
20 with the agency is eligible, upon separation of employ-
21 ment, to either withdraw his or her contributions in
22 accordance with subsection (a) of this section or to choose
23 not to withdraw his or her accumulated contributions.
24 Upon attainment of age sixty-two, a member who chooses
25 not to withdraw his or her contributions is eligible to
26 receive a retirement annuity. The annuity shall be payable
27 during the lifetime of the retirant and shall be in the
28 amount of his or her accrued retirement benefit as deter-
29 mined under section six of this article, subject to reduction
30 if necessary to comply with the maximum benefit provi-
31 sions of Section 415 of the Internal Revenue Code and
32 section six-a of this article. The retirant may choose, in
33 lieu of a life annuity, an annuity in a reduced amount
34 payable during the retirant's lifetime, with one half of the
35 reduced monthly amount paid to his or her surviving
36 spouse for the spouse's remaining lifetime after the death

37 of the retirant. Reduction of the monthly benefit amount
38 shall be calculated to be of equal actuarial value to the life
39 annuity the retirant could otherwise have chosen. Any
40 retirant choosing to receive the deferred annuity under
41 this subsection is not eligible to receive the annual annuity
42 adjustment provided in section seven of this article. A
43 retiring member under the provisions of this section may
44 receive retirement annuity payments on the first day of the
45 month following his or her attaining age sixty-two and
46 upon receipt of the application for retirement. The board
47 shall promptly provide the member with an explanation of
48 his or her optional forms of retirement benefits and, upon
49 receipt of properly executed forms from the agency and
50 member, the board shall process the member's request for
51 and commence payments as soon as administratively
52 feasible.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-2. Definitions.

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

3 (a) "Accrued benefit" means on behalf of any member
4 two and six-tenths percent per year of the member's final
5 average salary for the first twenty years of credited
6 service. Additionally, two percent per year for twenty-one
7 through twenty-five years and one percent per year for
8 twenty-six through thirty years will be credited with a
9 maximum benefit of sixty-seven percent. A member's
10 accrued benefit may not exceed the limits of Section 415
11 of the Internal Revenue Code and is subject to the provi-
12 sions of section twelve of this article.

13 (1) The board may upon the recommendation of the
14 board's actuary increase the employees' contribution rate

15 to ten and five-tenths percent should the funding of the
16 plan not reach seventy percent funded by July 1, 2012.
17 The board shall decrease the contribution rate to eight and
18 one-half percent once the plan funding reaches the seventy
19 percent support objective as of any later actuarial valua-
20 tion date.

21 (2) Upon reaching the seventy-five percent actuarial
22 funded level, as of an actuarial valuation date, the board
23 shall increase the two and six-tenths percent to two and
24 three-quarter percent for the first twenty years of credited
25 service. The maximum benefit will also be increased from
26 sixty-seven percent to seventy percent.

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

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

39 (d) "Actuarial equivalent" means a benefit of equal
40 value computed upon the basis of the mortality table and
41 interest rates as set and adopted by the board in accor-
42 dance with the provisions of this article: *Provided*, That
43 when used in the context of compliance with the federal
44 maximum benefit requirements of Section 415 of the
45 Internal Revenue Code, "actuarial equivalent" shall be
46 computed using the mortality tables and interest rates
47 required to comply with those requirements.

48 (e) "Annual compensation" means the wages paid to the
49 member during covered employment within the meaning

50 of Section 3401(a) of the Internal Revenue Code, but
51 determined without regard to any rules that limit the
52 remuneration included in wages based upon the nature or
53 location of employment or services performed during the
54 plan year plus amounts excluded under Section 414(h)(2)
55 of the Internal Revenue Code and less reimbursements or
56 other expense allowances, cash or noncash fringe benefits
57 or both, deferred compensation and welfare benefits.
58 Annual compensation for determining benefits during any
59 determination period may not exceed the maximum
60 compensation allowed as adjusted for cost-of-living in
61 accordance with section seven, article ten-d, chapter five
62 of this code and Section 401(a)(17) of the Internal Revenue
63 Code.

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

65 (g) "Annuity starting date" means the first day of the
66 month for which an annuity is payable after submission of
67 a retirement application or the required beginning date, if
68 earlier. For purposes of this subsection, if retirement
69 income payments commence after the normal retirement
70 age, "retirement" means the first day of the month follow-
71 ing or coincident with the latter of the last day the mem-
72 ber worked in covered employment or the member's
73 normal retirement age and after completing proper
74 written application for "retirement" on an application
75 supplied by the board.

76 (h) "Board" means the Consolidated Public Retirement
77 Board.

78 (i) "County commission or political subdivision" has the
79 meaning ascribed to it in this code.

80 (j) "Covered employment" means either: (1) Employment
81 as a full-time emergency medical technician, emergency
82 medical technician/paramedic or emergency medical
83 services/registered nurse and the active performance of the

84 duties required of emergency medical services officers; or
85 (2) the period of time during which active duties are not
86 performed but disability benefits are received under this
87 article; or (3) concurrent employment by an emergency
88 medical services officer in a job or jobs in addition to his
89 or her employment as an emergency medical services
90 officer where the secondary employment requires the
91 emergency medical services officer to be a member of
92 another retirement system which is administered by the
93 Consolidated Public Retirement Board pursuant to this
94 code: *Provided*, That the emergency medical services
95 officer contributes to the fund created in this article the
96 amount specified as the member's contribution in section
97 eight of this article.

98 (k) "Credited service" means the sum of a member's
99 years of service, active military duty, disability service and
100 accrued annual and sick leave service.

101 (l) "Dependent child" means either:

102 (1) An unmarried person under age eighteen who is:

103 (A) A natural child of the member;

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

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

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

110 (2) Any unmarried child under age twenty-three:

111 (A) Who is enrolled as a full-time student in an accred-
112 ited college or university;

113 (B) Who was claimed as a dependent by the member for
114 federal income tax purposes at the time of member's

115 death; and

116 (C) Whose relationship with the member is described in
117 subparagraph (A), (B) or (C), paragraph (1) of this subdivi-
118 sion.

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

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

128 (o) "Early retirement age" means age forty-five or over
129 and completion of twenty years of regular contributory
130 service.

131 (p) "Effective date" means January 1, 2008.

132 (q) "Emergency medical services officer" means an
133 individual employed by the state, county or other political
134 subdivision as a medical professional who is qualified to
135 respond to medical emergencies, aids the sick and injured
136 and arranges or transports to medical facilities, as defined
137 by the West Virginia Office of Emergency Medical Ser-
138 vices. This definition is construed to include employed
139 ambulance providers and other services such as law
140 enforcement, rescue or fire department personnel who
141 primarily perform these functions and are not provided
142 any other credited service benefits or retirement plans.
143 These persons may hold the rank of emergency medical
144 technician/basic, emergency medical technician/
145 paramedic, emergency medical services/registered
146 nurse, or others as defined by the West Virginia Office of
147 Emergency Medical Services and the Consolidated Public
148 Retirement Board.

149 (r) "Final average salary" means the average of the
150 highest annual compensation received for covered employ-
151 ment by the member during any five consecutive plan
152 years within the member's last ten years of service while
153 employed, prior to any disability payment. If the member
154 did not have annual compensation for the five full plan
155 years preceding the member's attainment of normal
156 retirement age and during that period the member re-
157 ceived disability benefits under this article, then "final
158 average salary" means the average of the monthly salary
159 determined paid to the member during that period as
160 determined under section twenty-two of this article
161 multiplied by twelve. "Final average salary" does not
162 include any lump sum payment for unused, accrued leave
163 of any kind or character.

164 (s) "Full-time employment" means permanent employ-
165 ment of an employee by a participating public employer in
166 a position which normally requires twelve months per year
167 service and requires at least one thousand forty hours per
168 year service in that position.

169 (t) "Fund" means the West Virginia Emergency Medical
170 Services Retirement Fund created by this article.

171 (u) "Hour of service" means:

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

177 (2) Each hour for which a member is paid or entitled to
178 payment for covered employment during a plan year but
179 where no duties are performed due to vacation, holiday,
180 illness, incapacity including disability, layoff, jury duty,
181 military duty, leave of absence or any combination thereof
182 and without regard to whether the employment relation-

183 ship has terminated. Hours under this subdivision shall be
184 calculated and credited pursuant to West Virginia Division
185 of Labor rules. A member will not be credited with any
186 hours of service for any period of time he or she is receiv-
187 ing benefits under section nineteen or twenty of this
188 article; and

189 (3) Each hour for which back pay is either awarded or
190 agreed to be paid by the employing county commission or
191 political subdivision, irrespective of mitigation of dam-
192 ages. The same hours of service shall not be credited both
193 under paragraph (1) or (2) of this subdivision and under
194 this paragraph. Hours under this paragraph shall be
195 credited to the member for the plan year or years to which
196 the award or agreement pertains, rather than the plan year
197 in which the award, agreement or payment is made.

198 (v) "Member" means a person first hired as an emer-
199 gency medical services officer by an employer which is a
200 participating public employer of the Public Employees
201 Retirement System or the Emergency Medical Services
202 Retirement System after the effective date of this article,
203 as defined in subdivision (p) of this section, or an emer-
204 gency medical services officer of an employer which is a
205 participating public employer of the Public Employees
206 Retirement System first hired prior to the effective date
207 and who elects to become a member pursuant to this
208 article. A member shall remain a member until the
209 benefits to which he or she is entitled under this article are
210 paid or forfeited.

211 (w) "Monthly salary" means the W-2 reportable compen-
212 sation received by a member during the month.

213 (x) "Normal form" means a monthly annuity which is
214 one twelfth of the amount of the member's accrued benefit
215 which is payable for the member's life. If the member dies
216 before the sum of the payments he or she receives equals

217 his or her accumulated contributions on the annuity
218 starting date, the named beneficiary shall receive in one
219 lump sum the difference between the accumulated contri-
220 butions at the annuity starting date and the total of the
221 retirement income payments made to the member.

222 (y) "Normal retirement age" means the first to occur of
223 the following:

224 (1) Attainment of age fifty years and the completion of
225 twenty or more years of regular contributory service;

226 (2) While still in covered employment, attainment of at
227 least age fifty years and when the sum of current age plus
228 regular contributory service equals or exceeds seventy
229 years;

230 (3) While still in covered employment, attainment of at
231 least age sixty years and completion of ten years of regular
232 contributory service; or

233 (4) Attainment of age sixty-two years and completion of
234 five or more years of regular contributory service.

235 (z) "Political subdivision" means a county, city or town
236 in the state; any separate corporation or instrumentality
237 established by one or more counties, cities or towns, as
238 permitted by law; any corporation or instrumentality
239 supported in most part by counties, cities or towns; and
240 any public corporation charged by law with the perfor-
241 mance of a governmental function and whose jurisdiction
242 is coextensive with one or more counties, cities or towns:
243 *Provided*, That any public corporation established under
244 section four, article fifteen, chapter seven of this code is
245 considered a political subdivision solely for the purposes
246 of this article.

247 (aa) "Public Employees Retirement System" means the
248 West Virginia Public Employees Retirement System
249 created by West Virginia Code.

250 (bb) "Plan" means the West Virginia Emergency Medical
251 Services Retirement System established by this article.

252 (cc) "Plan year" means the twelve-month period com-
253 mencing on January 1 of any designated year and ending
254 December 31.

255 (dd) "Qualified public safety employee" means any
256 employee of a participating state or political subdivision
257 who provides police protection, fire-fighting services or
258 emergency medical services for any area within the
259 jurisdiction of the state or political subdivision, or such
260 other meaning given to the term by Section 72(t)(10)(B) of
261 the Internal Revenue Code or by Treasury Regulation
262 §1.401(a)-1(b)(2)(v) as they may be amended from time to
263 time.

264 (ee) "Regular contributory service" means a member's
265 credited service excluding active military duty, disability
266 service and accrued annual and sick leave service.

267 (ff) "Regular interest" means the rate or rates of interest
268 per annum, compounded annually, as the board adopts in
269 accordance with the provisions of this article.

270 (gg) "Required beginning date" means April 1 of the
271 calendar year following the later of: (1) The calendar year
272 in which the member attains age seventy and one-half; or
273 (2) the calendar year in which he or she retires or other-
274 wise separates from covered employment; or (3) for
275 members who are covered under the Public Employees
276 Retirement System, their service shall be recognized upon
277 transfer of assets from the Public Employees Retirement
278 System according to the provisions of section nine of this
279 article. Prior service for members not covered under the
280 Public Employees Retirement System shall be recognized
281 only upon repayment of amounts covered under the
282 provisions of section six of this article.

283 (hh) "Retirement income payments" means the monthly
284 retirement income payments payable under the plan.

285 (ii) "Spouse" means the person to whom the member is
286 legally married on the annuity starting date.

287 (jj) "Surviving spouse" means the person to whom the
288 member was legally married at the time of the member's
289 death and who survived the member.

290 (kk) "Totally disabled" means a member's inability to
291 engage in substantial gainful activity by reason of any
292 medically determined physical or mental impairment that
293 can be expected to result in death or that has lasted or can
294 be expected to last for a continuous period of not less than
295 twelve months.

296 For purposes of this subsection:

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

310 (2) "Physical or mental impairment" is an impairment
311 that results from an anatomical, physiological or psycho-
312 logical abnormality that is demonstrated by medically
313 accepted clinical and laboratory diagnostic techniques.
314 The board may require submission of a member's annual
315 tax return for purposes of monitoring the earnings limita-
316 tion.

317 (ll) "Year of service" means a member shall, except in his
 318 or her first and last years of covered employment, be
 319 credited with years of service credit based upon the hours
 320 of service performed as covered employment and credited
 321 to the member during the plan year based upon the
 322 following schedule:

323	Hours of Service	Year of Service
324	Less than 500	0
325	500 to 999	1/3
326	1,000 to 1,499	2/3
327	1,500 or more	1

328 During a member's first and last years of covered
 329 employment, the member shall be credited with one
 330 twelfth of a year of service for each month during the plan
 331 year in which the member is credited with an hour of
 332 service for which contributions were received by the fund.
 333 A member is not entitled to credit for years of service for
 334 any time period during which he or she received disability
 335 payments under section nineteen or twenty of this article.
 336 Except as specifically excluded, years of service include
 337 covered employment prior to the effective date.

338 Years of service which are credited to a member prior to
 339 his or her receipt of accumulated contributions upon
 340 termination of employment pursuant to section eighteen
 341 of this article or section thirty, article ten, chapter five of
 342 this code shall be disregarded for all purposes under this
 343 plan unless the member repays the accumulated contribu-
 344 tions with interest pursuant to section eighteen of this
 345 article or has prior to the effective date made the repay-
 346 ment pursuant to section eighteen, article ten, chapter five
 347 of this code.

**§16-5V-4. Creation and administration of West Virginia Emer-
 gency Medical Services Retirement System;
 specification of actuarial assumptions.**

1 There is hereby created the West Virginia Emergency
2 Medical Services Retirement System. The purpose of this
3 system is to provide for the orderly retirement of emer-
4 gency medical services officers who become superannu-
5 ated because of age or permanent disability and to provide
6 certain survivor death benefits, and it is contemplated that
7 substantially all of the members of the retirement system
8 shall be qualified public safety employees as defined in
9 section two of this article. The retirement system shall
10 come into effect January 1, 2008: *Provided*, That at least
11 seventy percent of all eligible emergency medical services
12 officers and at least eighty-five percent of the eligible
13 emergency medical services officers who are currently
14 active members of the Public Employees Retirement
15 System elect to participate in this plan by December 31,
16 2007. If this level of participation is not reached, then all
17 of the provisions of this article are void and of no force
18 and effect. All business of the system shall be transacted
19 in the name of the West Virginia Emergency Medical
20 Services Retirement System. The board shall specify and
21 adopt all actuarial assumptions for the plan at its first
22 meeting of every calendar year or as soon thereafter as
23 may be practicable, which assumptions shall become part
24 of the plan.

§16-5V-12. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or
2 state law, the board shall administer the retirement system
3 in compliance with the limitations of Section 415 of the
4 Internal Revenue Code and regulations under that section,
5 to the extent applicable to governmental plans (hereafter
6 sometimes referred to as the "415 limitation(s)" or "415
7 dollar limitation(s)"), so that the annual benefit payable
8 under this system to a member shall not exceed those
9 limitations. Any annual benefit payable under this system
10 shall be reduced or limited if necessary to an amount
11 which does not exceed those limitations. The extent to

12 which any annuity or other annual benefit payable under
13 this retirement system shall be reduced as compared with
14 the extent to which an annuity, contributions or other
15 benefits under any other defined benefit plans or defined
16 contribution plans required to be taken into consideration
17 under Section 415 of the Internal Revenue Code shall be
18 reduced, shall be proportional on a percentage basis to the
19 reductions made in such other plans administered by the
20 board and required to be so taken into consideration under
21 Section 415, unless a disproportionate reduction is deter-
22 mined by the board to maximize the aggregate benefits
23 payable to the member. If the reduction is under this
24 retirement system, the board shall advise affected mem-
25 bers of any additional limitation on the annuities or other
26 annual benefit required by this section. For purposes of
27 the 415 limitations, the "limitation year" shall be the
28 calendar year. The 415 limitations are incorporated herein
29 by reference, except to the extent the following provisions
30 may modify the default provisions thereunder:

31 (a) The annual adjustment to the 415 dollar limitations
32 made by Section 415(d) of the Internal Revenue Code and
33 the regulations thereunder shall apply for each limitation
34 year. The annual adjustments to the dollar limitations
35 under Section 415(d) of the Internal Revenue Code which
36 become effective: (i) After a retirant's severance from
37 employment with the employer; or (ii) after the annuity
38 starting date in the case of a retirant who has already
39 commenced receiving benefits, will apply with respect to
40 a retirant's annual benefit in any limitation year. A
41 retirant's annual benefit payable in any limitation year
42 from this retirement system shall in no event be greater
43 than the limit applicable at the annuity starting date, as
44 increased in subsequent years pursuant to Section 415(d)
45 of the Internal Revenue Code and the regulations thereun-
46 der.

47 (b) For purposes of this section, the “annual benefit”
48 means a benefit that is payable annually in the form of a
49 straight life annuity. Except as provided below, where a
50 benefit is payable in a form other than a straight life
51 annuity, the benefit shall be adjusted to an actuarially
52 equivalent straight life annuity that begins at the same
53 time as such other form of benefit, using factors prescribed
54 in the 415 limitation regulations, before applying the 415
55 limitations. No actuarial adjustment to the benefit shall
56 be made for: (1) Survivor benefits payable to a surviving
57 spouse under a qualified joint and survivor annuity to the
58 extent such benefits would not be payable if the member’s
59 benefit were paid in another form; (2) benefits that are not
60 directly related to retirement benefits (such as a qualified
61 disability benefit, preretirement incidental death benefits
62 and post-retirement medical benefits); or (3) the inclusion
63 in the form of benefit of an automatic benefit increase
64 feature, provided the form of benefit is not subject to
65 Section 417(e)(3) of the Internal Revenue Code and would
66 otherwise satisfy the limitations of this article, and the
67 plan provides that the amount payable under the form of
68 benefit in any limitation year shall not exceed the limits of
69 this article applicable at the annuity starting date, as
70 increased in subsequent years pursuant to Section 415(d)
71 of the Internal Revenue Code. For this purpose an auto-
72 matic benefit increase feature is included in a form of
73 benefit if the form of benefit provides for automatic,
74 periodic increases to the benefits paid in that form.

75 (c) *Adjustment for benefit forms not subject to Section*
76 *417(e)(3).* – The straight life annuity that is actuarially
77 equivalent to the member’s form of benefit shall be
78 determined under this subsection if the form of the
79 member’s benefit is either: (1) A nondecreasing annuity
80 (other than a straight life annuity) payable for a period of
81 not less than the life of the member (or, in the case of a
82 qualified preretirement survivor annuity, the life of the

83 surviving spouse); or (2) an annuity that decreases during
84 the life of the member merely because of: (i) The death of
85 the survivor annuitant (but only if the reduction is not
86 below fifty percent of the benefit payable before the death
87 of the survivor annuitant); or (ii) the cessation or reduction
88 of Social Security supplements or qualified disability
89 payments (as defined in Section 411(a)(9) of the Internal
90 Revenue Code). The actuarially equivalent straight life
91 annuity is equal to the greater of: (I) The annual amount of
92 the straight life annuity (if any) payable to the member
93 under the plan commencing at the same annuity starting
94 date as the member's form of benefit; and (II) the annual
95 amount of the straight life annuity commencing at the
96 same annuity starting date that has the same actuarial
97 present value as the member's form of benefit, computed
98 using a five percent interest rate assumption and the
99 applicable mortality table defined in Treasury Regulation
100 §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subse-
101 quent Revenue Ruling modifying the applicable provisions
102 of Revenue Ruling 2001-62) for that annuity starting date.

103 (d) *Adjustment for benefit forms subject to Section*
104 *417(e)(3).* – The straight life annuity that is actuarially
105 equivalent to the member's form of benefit shall be
106 determined under this subsection if the form of the
107 member's benefit is other than a benefit form described in
108 subdivision (c) of this section. In this case, the actuarially
109 equivalent straight life annuity shall be determined as
110 follows: The actuarially equivalent straight life annuity is
111 equal to the greatest of: (1) The annual amount of the
112 straight life annuity commencing at the same annuity
113 starting date that has the same actuarial present value as
114 the member's form of benefit, computed using the interest
115 rate specified in this retirement system and the mortality
116 table (or other tabular factor) specified in this retirement
117 system for adjusting benefits in the same form; (2) the
118 annual amount of the straight life annuity commencing at

119 the same annuity starting date that has the same actuarial
120 present value as the member's form of benefit, computed
121 using a five and a half percent interest rate assumption
122 and the applicable mortality table defined in Treasury
123 Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or
124 any subsequent Revenue Ruling modifying the applicable
125 provisions of Revenue Ruling 2001-62) for that annuity
126 starting date; and (3) the annual amount of the straight
127 life annuity commencing at the same annuity starting date
128 that has the same actuarial present value as the member's
129 form of benefit, computed using the applicable interest
130 rate defined in Treasury Regulation §1.417(e)-1(d)(3) and
131 the applicable mortality table defined in Treasury Regula-
132 tion §1.417(e)-1(d)(2) (the mortality table specified in
133 Revenue Ruling 2001-62 or any subsequent Revenue
134 Ruling modifying the applicable provisions of Revenue
135 Ruling 2001-62), divided by 1.05.

136 (e) *Benefits payable prior to age sixty-two.* —

137 (1) Except as provided in paragraphs (2) and (3) of this
138 subdivision, if the member's retirement benefits become
139 payable before age sixty-two, the 415 dollar limitation
140 prescribed by this section shall be reduced in accordance
141 with regulations issued by the Secretary of the Treasury
142 pursuant to the provisions of Section 415(b) of the Internal
143 Revenue Code, so that the limitation (as so reduced) equals
144 an annual straight life benefit (when the retirement
145 income benefit begins) which is equivalent to an annual
146 benefit in the amount of the applicable dollar limitation of
147 Section 415(b)(1)(A) of the Internal Revenue Code (as
148 adjusted pursuant to Section 415(d) of the Internal
149 Revenue Code) beginning at age sixty-two.

150 (2) The limitation reduction provided in paragraph (1) of
151 this subdivision shall not apply if the member commencing
152 retirement benefits before age sixty-two is a qualified
153 participant. A qualified participant for this purpose is a

154 participant in a defined benefit plan maintained by a
155 state, or any political subdivision of a state, with respect
156 to whom the service taken into account in determining the
157 amount of the benefit under the defined benefit plan
158 includes at least fifteen years of service: (i) As a full-time
159 employee of any police or fire department organized and
160 operated by the state or political subdivision maintaining
161 the defined benefit plan to provide police protection, fire-
162 fighting services or emergency medical services for any
163 area within the jurisdiction of such state or political
164 subdivision; or (ii) as a member of the armed forces of the
165 United States.

166 (3) The limitation reduction provided in paragraph (1) of
167 this subdivision shall not be applicable to preretirement
168 disability benefits or preretirement death benefits.

169 (4) For purposes of adjusting the 415 dollar limitation
170 for benefit commencement before age sixty-two or after
171 age sixty-five (if the plan provides for such adjustment),
172 no adjustment is made to reflect the probability of a
173 member's death: (i) After the annuity starting date and
174 before age sixty-two; or (ii) after age sixty-five and before
175 the annuity starting date.

176 (f) *Adjustment when member has less than ten years of*
177 *participation.* – In the case of a member who has less than
178 ten years of participation in the retirement system (within
179 the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)),
180 the 415 dollar limitation (as adjusted pursuant to Section
181 415(d) of the Internal Revenue Code and subdivision (e) of
182 this section) shall be reduced by multiplying the otherwise
183 applicable limitation by a fraction, the numerator of
184 which is the number of years of participation in the plan
185 (or one, if greater), and the denominator of which is ten.
186 This adjustment shall not be applicable to preretirement
187 disability benefits or preretirement death benefits.

188 (g) The application of the provisions of this section shall
189 not cause the maximum annual benefit provided to a
190 member to be less than the member's accrued benefit as of
191 December 31, 2008 (the end of the limitation year that is
192 immediately prior to the effective date of the final regula-
193 tions for this retirement system as defined in Treasury
194 Regulation §1.415(a)-1(g)(2)), under provisions of the
195 retirement system that were both adopted and in effect
196 before April 5, 2007, provided that such provisions satis-
197 fied the applicable requirements of statutory provisions,
198 regulations and other published guidance relating to
199 Section 415 of the Internal Revenue Code in effect as of
200 December 31, 2008, as described in Treasury Regulation
201 §1.415(a)-1(g)(4). If additional benefits are accrued for a
202 member under this retirement system after January 1,
203 2009, then the sum of the benefits described under the first
204 sentence of this subdivision and benefits accrued for a
205 member after January 1, 2009, must satisfy the require-
206 ments of Section 415, taking into account all applicable
207 requirements of the final 415 Treasury Regulations.

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

1 The requirements of this section apply to any distribu-
2 tion of a member's or beneficiary's interest and take
3 precedence over any inconsistent provisions of this plan.
4 This section applies to plan years beginning after Decem-
5 ber 31, 1986. Notwithstanding anything in the plan to the
6 contrary, the payment of benefits under this article shall
7 be determined and made in accordance with Section
8 401(a)(9) of the Internal Revenue Code and its regulations.
9 For this purpose, the following provisions apply:

10 (a) The payment of benefits under the plan to any
11 member shall be distributed to him or her not later than
12 the required beginning date, or be distributed to him or
13 her commencing not later than the required beginning
14 date, in accordance with regulations prescribed under

15 Section 401(a)(9) of the Internal Revenue Code, over the
16 life of the member or over the lives of the member and his
17 or her beneficiary or over a period not extending beyond
18 the life expectancy of the member and his or her benefi-
19 ciary. Benefit payments under this section shall not be
20 delayed pending, or contingent upon, receipt of an appli-
21 cation for retirement from the member.

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

28 (c) If a member dies before distribution to him or her has
29 commenced, then his or her entire interest in the plan shall
30 be distributed by December 31 of the calendar year
31 containing the fifth anniversary of the member's death,
32 except as follows:

33 (1) If a member's interest is payable to a beneficiary,
34 distributions may be made over the life of that beneficiary
35 or over a period certain not greater than the life expec-
36 tancy of the beneficiary, commencing on or before Decem-
37 ber 31 of the calendar year immediately following the
38 calendar year in which the member died; or

39 (2) If the member's beneficiary is the surviving spouse,
40 the date distributions are required to begin shall be no
41 later than the later of:

42 (A) December 31 of the calendar year in which the
43 member would have attained age seventy and one-half; or

44 (B) The earlier of: (i) December 31 of the calendar year
45 following the calendar year in which the member died; or
46 (ii) December 31 of the calendar year following the
47 calendar year in which the spouse died.

§16-5V-14. Direct rollovers.

1 Notwithstanding any provision of this article to the
2 contrary that would otherwise limit a distributee's election
3 under this plan, a distributee may elect, at the time and in
4 the manner prescribed by the board, to have any portion
5 of an eligible rollover distribution paid directly to an
6 eligible retirement plan specified by the distributee in a
7 direct rollover. For purposes of this section, the following
8 definitions apply:

9 (1) "Eligible rollover distribution" means any distribu-
10 tion of all or any portion of the balance to the credit of the
11 distributee, except that an eligible rollover distribution
12 does not include any of the following: (A) Any distribution
13 that is one of a series of substantially equal periodic
14 payments not less frequently than annually made for the
15 life or life expectancy of the distributee or the joint lives
16 or the joint life expectancies of the distributee and the
17 distributee's designated beneficiary, or for a specified
18 period of ten years or more; (B) any distribution to the
19 extent the distribution is required under Section 401(a)(9)
20 of the Internal Revenue Code; and (C) any hardship
21 distribution described in Section 401(k)(2)(B)(i)(iv) of the
22 Internal Revenue Code. A portion of a distribution shall
23 not fail to be an eligible rollover distribution merely
24 because the portion consists of after-tax employee contri-
25 butions which are not includable in gross income. How-
26 ever, this portion may be paid only to an individual
27 retirement account or annuity described in Section 408(a)
28 or (b) of the Internal Revenue Code (including a Roth IRA
29 described in Section 408(a) of the Internal Revenue Code),
30 or to a qualified trust or to an annuity contract described
31 in Section 403(a) or (b) of the Internal Revenue Code that
32 agrees to separately account for amounts transferred
33 (including interest or earnings thereon), including sepa-
34 rately accounting for the portion of the distribution which

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35 is includable in gross income and the portion of the
36 distribution which is not so includable.

37 (2) "Eligible retirement plan" means an eligible plan
38 under Section 457(b) of the Internal Revenue Code which
39 is maintained by a state, political subdivision of a state, or
40 any agency or instrumentality of a state or political
41 subdivision of a state and which agrees to separately
42 account for amounts transferred into such plan from this
43 plan, an individual retirement account described in
44 Section 408(a) of the Internal Revenue Code, an individual
45 retirement annuity described in Section 408(b) of the
46 Internal Revenue Code, a Roth IRA described in Section
47 ~~408(a)~~ of the Internal Revenue Code, an annuity plan 
48 described in Section 403(a) of the Internal Revenue Code,
49 an annuity contract described in Section 403(b) of the
50 Internal Revenue Code, or a qualified plan described in
51 Section 401(a) of the Internal Revenue Code that accepts
52 the distributee's eligible rollover distribution: *Provided,*
53 That in the case of an eligible rollover distribution to a
54 designated beneficiary (other than a surviving spouse) as
55 such term is defined in Section 402(c)(11) of the Internal
56 Revenue Code, an eligible retirement plan is limited to an
57 individual retirement account or individual retirement
58 annuity which meets the conditions of Section 402(c)(11)
59 of the Internal Revenue Code.

60 (3) "Distributee" means an employee or former em-
61 ployee. In addition, the employee's or former employee's
62 surviving spouse and the employee's or former employee's
63 spouse or former spouse who is the alternate payee under
64 a qualified domestic relations order, as defined in Section
65 414(p) of the Internal Revenue Code with respect to
66 governmental plans, are distributees with regard to the
67 interest of the spouse or former spouse. The term
68 "distributee" also includes a designated beneficiary (other
69 than a surviving spouse) as such term is defined in Section
70 402(c)(11) of the Internal Revenue Code.

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

**§16-5V-14a. Rollovers and transfers to purchase service credit
or repay withdrawn contributions.**

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

33 of this article, the following definitions and limitations
34 apply:

35 (1) "Permissive service credit" means service credit
36 which is permitted to be purchased under the terms of the
37 retirement system by voluntary contributions in an
38 amount which does not exceed the amount necessary to
39 fund the benefit attributable to the period of service for
40 which the service credit is being purchased, all as defined
41 in Section 415(n)(3)(A) of the Internal Revenue Code:
42 *Provided*, That no more than five years of "nonqualified
43 service credit", as defined in Section 415(n)(3)(C) of the
44 Internal Revenue Code, may be included in the permissive
45 service credit allowed to be purchased (other than by
46 means of a rollover or plan transfer), and no nonqualified
47 service credit may be included in any such purchase (other
48 than by means of a rollover or plan transfer) before the
49 member has at least five years of participation in the
50 retirement system.

51 (2) "Repayment of withdrawn or refunded contribu-
52 tions" means the payment into the retirement system of
53 the funds required pursuant to this article for the rein-
54 statement of service credit previously forfeited on account
55 of any refund or withdrawal of contributions permitted in
56 this article, as set forth in Section 415(k)(3) of the Internal
57 Revenue Code.

58 (3) Any contribution (other than by means of a rollover
59 or plan transfer) to purchase permissive service credit
60 under any provision of this article must satisfy the special
61 limitation rules described in Section 415(n) of the Internal
62 Revenue Code, and shall be automatically reduced, limited
63 or required to be paid over multiple years if necessary to
64 ensure such compliance. To the extent any such purchased
65 permissive service credit is qualified military service
66 within the meaning of Section 414(u) of the Internal
67 Revenue Code, the limitations of Section 415 of the

68 Internal Revenue Code shall be applied to such purchase
69 as described in Section 414(u)(1)(B) of the Internal Reve-
70 nue Code.

71 (4) For purposes of Section 415(b) of the Internal Reve-
72 nue Code, the annual benefit attributable to any rollover
73 contribution accepted pursuant to this section shall be
74 determined in accordance with Treasury Regulation
75 §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity
76 payments attributable to any rollover contribution
77 provided under the retirement system over the annual
78 benefit so determined shall be taken into account when
79 applying the accrued benefit limitations of Section 415(b)
80 of the Internal Revenue Code and section twelve of this
81 article.

82 (b) Nothing in this section may be construed as permit-
83 ting rollovers or transfers into this system or any other
84 system administered by the retirement board other than as
85 specified in this section and no rollover or transfer shall be
86 accepted into the system in an amount greater than the
87 amount required for the purchase of permissive service
88 credit or repayment of withdrawn or refunded contribu-
89 tions.

90 (c) Nothing in this section shall be construed as permit-
91 ting the purchase of service credit or repayment of with-
92 drawn or refunded contributions except as otherwise
93 permitted in this article.

§16-5V-16. Retirement benefits.

1 This section describes when adjustment of a member's
2 accrued benefit to reflect the difference in age, in years
3 and months, between the member's annuity starting date
4 and the date the member attains normal retirement age
5 shall be made. This age adjustment, when required, shall
6 be made based upon the normal form of benefit and shall
7 be the actuarial equivalent of the accrued benefit at the

8 member's normal retirement age. The member shall
9 receive the age adjusted retirement income in the normal
10 form or in an actuarial equivalent amount in an optional
11 form as provided under this article, subject to reduction if
12 necessary to comply with the maximum benefit provisions
13 of Section 415 of the Internal Revenue Code and section
14 twelve of this article. The first day of the calendar month
15 following the month of birth shall be used in lieu of any
16 birth date that does not fall on the first day of a calendar
17 month.

18 (a) *Normal retirement.* – A member whose annuity
19 starting date is the date the member attains normal
20 retirement age, is entitled to his or her accrued benefit
21 without adjustment for age at commencement.

22 (b) *Early retirement.* – A member who ceases covered
23 employment and has attained early retirement age while
24 in covered employment may elect in writing by completion
25 of an application for retirement required by and submitted
26 to the board, to receive retirement income payments
27 commencing on the first day of the month coincident with
28 or following the date the member ceases covered employ-
29 ment and submits the proper application to the board.
30 “Normal retirement age” for such a member is the first
31 day of the calendar month coincident with or next follow-
32 ing the month in which the member attains the age of fifty
33 years. If the member's annuity starting date is prior to the
34 date the member attains normal retirement age, his or her
35 accrued benefit is reduced to the actuarial equivalent
36 benefit amount based on the years and months by which
37 his or her annuity starting date precedes the date he or she
38 attains normal retirement age.

39 (c) *Late retirement.* – A member whose annuity starting
40 date is later than the date the member attains normal
41 retirement age shall receive retirement income payments
42 in the normal form without adjustment for age at com-

43 mencement, which is the benefit to which he or she is
44 entitled according to his or her accrued benefit based on
45 his or her final average salary and credited service at the
46 time of his or her actual retirement and following the
47 completion of an application for retirement as required by
48 the board.

49 (d) Retirement benefits shall be paid monthly in an
50 amount equal to one twelfth of the retirement income
51 payments elected and at those times established by the
52 board. Notwithstanding any other provision of the plan,
53 a member who is married on the annuity starting date will
54 receive his or her retirement income payments in the form
55 of a sixty-six and two-thirds percent joint and survivor
56 annuity with his or her spouse unless prior to the annuity
57 starting date the spouse waives the form of benefit.

**§16-5V-18. Refunds to certain members upon discharge or
resignation; deferred retirement; forfeitures.**

1 (a) Any member who terminates covered employment
2 and is not eligible to receive disability benefits under this
3 article is, by written request filed with the board, entitled
4 to receive from the fund the member's accumulated
5 contributions. Except as provided in subsection (b) of this
6 section, upon withdrawal, the member shall forfeit his or
7 her accrued benefit and cease to be a member.

8 (b) Any member who ceases employment in covered
9 employment and active participation in this plan and who
10 thereafter becomes reemployed in covered employment
11 may not receive any credited service for any prior with-
12 drawn accumulated contributions from either this plan or
13 the Public Employees Retirement System unless following
14 his or her return to covered employment and active
15 participation in this plan, the member redeposits in the
16 fund the amount of the accumulated contributions with-
17 drawn from previous covered employment, together with

18 interest on the accumulated contributions at the rate
19 determined by the board from the date of withdrawal to
20 the date of redeposit. Upon repayment he or she shall
21 receive the same credit on account of his or her former
22 covered employment as if no refund had been made.

23 The repayment authorized by this subsection shall be
24 made in a lump sum within sixty months of the emergency
25 medical services officer's reemployment in covered
26 employment or, if later, within sixty months of the effec-
27 tive date of this article.

28 (c) A member of this plan who has elected to transfer
29 from the Public Employees Retirement System into this
30 plan pursuant to subsection (b), section six of this article
31 may not, after having transferred into and become an
32 active member of this plan, reinstate to his or her credit in
33 this plan any service credit relating to periods of
34 nonemergency medical services officer service withdrawn
35 from the Public Employees Retirement System prior to his
36 or her elective transfer into this plan.

37 (d) Every member who completes sixty months of
38 regular contributory service may, upon cessation of
39 covered employment, either withdraw his or her accumu-
40 lated contributions in accordance with this section or
41 choose not to withdraw his or her accumulated contribu-
42 tion and receive retirement income payments, if eligible,
43 upon attaining early or normal retirement age.

44 (e) Notwithstanding any other provision of this article,
45 forfeitures under the plan may not be applied to increase
46 the benefits any member would otherwise receive under
47 the plan.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

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

3 (1) "Accumulated contributions" means all deposits and
4 all deductions from the gross salary of a contributor plus
5 regular interest.

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

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

19 (4) "Annuities" means the annual retirement payments
20 for life granted beneficiaries in accordance with this
21 article.

22 (5) "Average final salary" means the average of the five
23 highest fiscal year salaries earned as a member within the
24 last fifteen fiscal years of total service credit, including
25 military service as provided in this article, or if total
26 service is less than fifteen years, the average annual salary
27 for the period on which contributions were made: *Pro-*
28 *vided*, That salaries for determining benefits during any
29 determination period may not exceed the maximum
30 compensation allowed as adjusted for cost of living in
31 accordance with section seven, article ten-d, chapter five
32 of this code and Section 401(a)(17) of the Internal Revenue
33 Code.

34 (6) "Beneficiary" means the recipient of annuity pay-
35 ments made under the retirement system.

36 (7) "Contributor" means a member of the retirement
37 system who has an account in the teachers accumulation
38 fund.

39 (8) "Deposit" means a voluntary payment to his or her
40 account by a member.

41 (9) "Employer" means the agency of and within the state
42 which has employed or employs a member.

43 (10) "Employer error" means an omission, misrepresen-
44 tation or violation of relevant provisions of the West
45 Virginia Code or of the West Virginia Code of State
46 Regulations or the relevant provisions of both the West
47 Virginia Code and of the West Virginia Code of State
48 Regulations by the participating public employer that has
49 resulted in an underpayment or overpayment of contribu-
50 tions required. A deliberate act contrary to the provisions
51 of this section by a participating public employer does not
52 constitute employer error.

53 (11) "Employment term" means employment for at least
54 ten months, a month being defined as twenty employment
55 days.

56 (12) "Gross salary" means the fixed annual or periodic
57 cash wages paid by a participating public employer to a
58 member for performing duties for the participating public
59 employer for which the member was hired. Gross salary
60 also includes retroactive payments made to a member to
61 correct a clerical error, or made pursuant to a court order
62 or final order of an administrative agency charged with
63 enforcing federal or state law pertaining to the member's
64 rights to employment or wages, with all retroactive salary
65 payments to be allocated to and considered paid in the
66 periods in which the work was or would have been done.
67 Gross salary does not include lump sum payments for

68 bonuses, early retirement incentives, severance pay or any
69 other fringe benefit of any kind including, but not limited
70 to, transportation allowances, automobiles or automobile
71 allowances, or lump sum payments for unused, accrued
72 leave of any type or character.

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

75 (14) "Member" means any person who has accumulated
76 contributions standing to his or her credit in the State
77 Teachers Retirement System. A member shall remain a
78 member until the benefits to which he or she is entitled
79 under this article are paid or forfeited, or until cessation
80 of membership pursuant to section thirteen of this article.

81 (15) "Members of the administrative staff of the public
82 schools" means deans of instruction, deans of men, deans
83 of women, and financial and administrative secretaries.

84 (16) "Members of the extension staff of the public
85 schools" means every agricultural agent, boys' and girls'
86 club agent and every member of the agricultural extension
87 staff whose work is not primarily stenographic, clerical or
88 secretarial.

89 (17) "New entrant" means a teacher who is not a present
90 teacher.

91 (18) "Nonteaching member" means any person, except a
92 teacher member, who is regularly employed for full-time
93 service by: (A) Any county board of education; (B) the
94 State Board of Education; (C) the Higher Education Policy
95 Commission; (D) the West Virginia Council for Community
96 and Technical College Education; or (E) a governing
97 board, as defined in section two, article one, chapter
98 eighteen-b of this code: *Provided*, That any person whose
99 employment with the Higher Education Policy Commis-
100 sion, the West Virginia Council for Community and

101 Technical College Education or a governing board com-
102 mences on or after July 1, 1991, is not considered a
103 nonteaching member.

104 (19) "Plan year" means the twelve-month period com-
105 mencing on July 1 and ending the following June 30 of any
106 designated year.

107 (20) "Present member" means a present teacher who is
108 a member of the retirement system.

109 (21) "Present teacher" means any person who was a
110 teacher within the thirty-five years beginning July 1, 1934,
111 and whose membership in the retirement system is cur-
112 rently active.

113 (22) "Prior service" means all service as a teacher
114 completed prior to July 1, 1941, and all service of a present
115 member who was employed as a teacher, and did not
116 contribute to a retirement account because he or she was
117 legally ineligible for membership during the service.

118 (23) "Public schools" means all publicly supported
119 schools, including colleges and universities in this state.

120 (24) "Refund beneficiary" means the estate of a deceased
121 contributor or a person he or she has nominated as benefi-
122 ciary of his or her contributions by written designation
123 duly executed and filed with the retirement board.

124 (25) "Refund interest" means interest compounded,
125 according to the formula established in legislative rules,
126 series seven of the Consolidated Public Retirement Board,
127 162 CSR 7.

128 (26) "Regular interest" means interest at four percent
129 compounded annually, or a higher earnable rate if set
130 forth in the formula established in legislative rules, series
131 seven of the Consolidated Public Retirement Board, 162
132 CSR 7.

133 (27) "Regularly employed for full-time service" means
134 employment in a regular position or job throughout the
135 employment term regardless of the number of hours
136 worked or the method of pay.

137 (28) "Required beginning date" means April 1 of the
138 calendar year following the later of: (A) The calendar year
139 in which the member attains age seventy and one-half
140 years; or (B) the calendar year in which the member retires
141 or ceases covered employment under the system after
142 having attained the age of seventy and one-half years.

143 (29) "Retirement system" means the State Teachers
144 Retirement System established by this article.

145 (30) "Teacher member" means the following persons, if
146 regularly employed for full-time service: (A) Any person
147 employed for instructional service in the public schools of
148 West Virginia; (B) principals; (C) public school librarians;
149 (D) superintendents of schools and assistant county
150 superintendents of schools; (E) any county school atten-
151 dance director holding a West Virginia teacher's certifi-
152 cate; (F) the executive director of the retirement board; (G)
153 members of the research, extension, administrative or
154 library staffs of the public schools; (H) the State Superin-
155 tendent of Schools, heads and assistant heads of the
156 divisions under his or her supervision, or any other
157 employee under the state superintendent performing
158 services of an educational nature; (I) employees of the
159 State Board of Education who are performing services of
160 an educational nature; (J) any person employed in a
161 nonteaching capacity by the State Board of Education,
162 any county board of education, the State Department of
163 Education or the State Teachers Retirement Board, if that
164 person was formerly employed as a teacher in the public
165 schools; (K) all classroom teachers, principals and educa-
166 tional administrators in schools under the supervision of
167 the Division of Corrections, the Division of Health or the

168 Division of Human Services; (L) an employee of the State
169 Board of School Finance, if that person was formerly
170 employed as a teacher in the public schools; and (M) any
171 person designated as a 21st Century Learner Fellow
172 pursuant to section eleven, article three, chapter eighteen-
173 a of this code who elects to remain a member of the State
174 Teachers Retirement System provided in this article.

175 (31) "Total service" means all service as a teacher while
176 a member of the retirement system since last becoming a
177 member and, in addition thereto, credit for prior service,
178 if any.

179 Age in excess of seventy years shall be considered to be
180 seventy years.

**§18-7A-14. Contributions by members; contributions by em-
ployers; correction of errors; forfeitures.**

1 (a) At the end of each month every member of the
2 retirement system shall contribute six percent of that
3 member's monthly gross salary to the retirement board:
4 *Provided*, That any member employed by a state institu-
5 tion of higher education shall contribute on the member's
6 full earnable compensation, unless otherwise provided in
7 section fourteen-a of this article. The sums are due the
8 State Teachers Retirement System at the end of each
9 calendar month in arrears and shall be paid not later than
10 fifteen days following the end of the calendar month.
11 Each remittance shall be accompanied by a detailed
12 summary of the sums withheld from the compensation of
13 each member for that month on forms, either paper or
14 electronic, provided by the State Teachers Retirement
15 System for that purpose.

16 (b) Annually, the contributions of each member shall be
17 credited to the member's account in the State Teachers
18 Retirement System Fund. The contributions shall be
19 deducted from the salaries of the members as prescribed

20 in this section and every member shall be considered to
21 have given consent to the deductions. No deductions,
22 however, shall be made from the earnable compensation of
23 any member who retired because of age or service and
24 then resumed service unless as provided in section
25 thirteen-a of this article.

26 (c) The aggregate of employer contributions, due and
27 payable under this article, shall equal annually the total
28 deductions from the gross salary of members required by
29 this section. Beginning July 1, 1994, the rate shall be
30 seven and one-half percent; beginning on July 1, 1995, the
31 rate shall be nine percent; beginning on July 1, 1996, the
32 rate shall be ten and one-half percent; beginning on July
33 1, 1997, the rate shall be twelve percent; beginning on July
34 1, 1998, the rate shall be thirteen and one-half percent;
35 and beginning on July 1, 1999, and thereafter, the rate
36 shall be fifteen percent: *Provided*, That the rate shall be
37 seven and one-half percent for any individual who be-
38 comes a member of the State Teachers Retirement System
39 for the first time on or after July 1, 2005, or any individual
40 who becomes a member of the State Teachers Retirement
41 System as a result of the voluntary transfer contemplated
42 in article seven-d of this chapter.

43 (d) Payment by an employer to a member of the sum
44 specified in the employment contract minus the amount of
45 the employee's deductions shall be considered to be a full
46 discharge of the employer's contractual obligation as to
47 earnable compensation.

48 (e) Each contributor shall file with the retirement board
49 or with the employer to be forwarded to the retirement
50 board an enrollment form showing the contributor's date
51 of birth and other data needed by the retirement board.

52 (f) If any change or employer error in the records of any
53 participating public employer or the retirement system
54 results in any member receiving from the system more or

55 less than he or she would have been entitled to receive had
56 the records been correct, the board shall correct the error,
57 and as far as is practicable shall adjust the payment of the
58 benefit in a manner that the actuarial equivalent of the
59 benefit to which the member was correctly entitled shall
60 be paid. Any employer error resulting in an underpayment
61 to the retirement system may be corrected by the member
62 remitting the required employee contribution and the
63 participating public employer remitting the required
64 employer contribution. Interest shall accumulate in
65 accordance with the legislative rule, Retirement Board
66 Reinstatement Interest, 162 CSR 7, and any accumulating
67 interest owed on the employee and employer contributions
68 resulting from the employer error shall be the responsibil-
69 ity of the participating public employer. The participating
70 public employer may remit total payment and the em-
71 ployee reimburse the participating public employer
72 through payroll deduction over a period equivalent to the
73 time period during which the employer error occurred.

74 (g) Notwithstanding any other provisions of this article,
75 forfeitures under the retirement system shall not be
76 applied to increase the benefits any member would
77 otherwise receive under the retirement system.

§18-7A-26. Computation of annuities.

1 (a) Annuitants whose annuities were approved by the
2 retirement board effective before July 1, 1980, shall be
3 paid the annuities which were approved by the retirement
4 board.

5 (b) Annuities approved by the board effective after June
6 30, 1980, shall be computed as provided in this section.

7 (c) Upon establishment of eligibility for a retirement
8 allowance, a member shall be granted an annuity which
9 shall be the sum of the following, subject to reduction if
10 necessary to comply with the maximum benefit provisions

11 of Section 415 of the Internal Revenue Code and section
12 twenty-eight-a of this article:

13 (1) Two percent of the member's average salary multi-
14 plied by his or her total service credit as a teacher. In this
15 subdivision "average salary" means the average of the
16 highest annual salaries received by the member during any
17 five years contained within his or her last fifteen years of
18 total service credit: *Provided*, That the highest annual
19 salary used in this calculation for certain members em-
20 ployed by the West Virginia Higher Education Policy
21 Commission under its control shall be \$4,800, as provided
22 by section fourteen-a of this article;

23 (2) The actuarial equivalent of the voluntary deposits of
24 the member in his or her individual account up to the time
25 of his or her retirement, with regular interest.

26 (d) The disability annuities of all teachers retired for
27 disability shall be based upon a disability table prepared
28 by a competent actuary approved by the board.

29 (e) Upon the death of an annuitant who qualified for an
30 annuity as the surviving spouse of an active member or
31 because of permanent disability, the estate of the deceased
32 or beneficiary designated for such purpose shall be paid
33 the difference, if any, between the member's contributions
34 with regular interest thereon, and the sum of the annuity
35 payments. Upon the death of a spouse who was named as
36 the member's survivor, a retirant may elect an annuity
37 option approved by the board in an amount adjusted on a
38 fair basis to be of equal actuarial value as the annuity
39 prospectively in effect relative to the surviving member at
40 the time the new option is elected.

41 (f) All annuities shall be paid in twelve monthly pay-
42 ments. In computing the monthly payments, fractions of
43 a cent shall be considered a cent. The monthly payments
44 shall cease with the payment for the month within which

45 the beneficiary dies, and shall begin with the payment for
46 the month succeeding the month within which the annu-
47 itant became eligible under this article for the annuity
48 granted; in no case, however, shall an annuitant receive
49 more than four monthly payments which are retroactive
50 after the board receives his or her application for annuity.
51 The monthly payments shall be made on the twenty-fifth
52 day of each month, except the month of December, when
53 the payment shall be made on December 18. If the date of
54 payment falls on a holiday, Saturday or Sunday, then the
55 payment shall be made on the preceding workday.

56 (g) In case the retirement board receives data affecting
57 the approved annuity of a retired teacher, the annuity
58 shall be changed in accordance with the data, the change
59 being effective with the payment for the month within
60 which the board received the new data.

61 (h) Any person who has attained the age of sixty-five
62 and who has served at least twenty-five years as a teacher
63 prior to July 1, 1941, is eligible for prior service credit and
64 for prior service pensions as prescribed in this section.

**§18-7A-26r. Minimum benefit for certain retired members;
legislative declaration; state interest and
public purpose.**

1 The Legislature hereby finds and declares that an
2 important state interest exists in providing a minimum
3 retirement annuity for certain retired members who are
4 credited with twenty or more years of total service; that
5 such program constitutes a public purpose; and that the
6 exclusion of total service for certain employees of institu-
7 tions of higher education is a reasonable and equitable
8 exclusion for purposes of determining eligibility for such
9 minimum benefits.

10 If the retirement annuity of a retired member (or if
11 applicable, a spouse thereof) with at least twenty years of

12 total service is less than \$500 per month (including any
13 supplemental or additional benefits provided by this
14 article), then the monthly retirement annuity for any such
15 retired member shall be increased to \$500 per month:
16 *Provided*, That any year of service while an employee of
17 an institution of higher education shall not be taken into
18 account for purposes of this section if his or her salary is
19 capped under the retirement system at \$4,800 per year
20 pursuant to section fourteen-a of this article.

21 The payment of any minimum benefit under this section
22 shall be in lieu of, and not in addition to, the payments of
23 any retirement annuity or supplemental or additional
24 benefits otherwise provided by this article: *Provided*, That
25 the minimum benefit provided herein shall be subject to
26 any limitations thereon under §415 of the Internal Reve-
27 nue Code of 1986, as the same may be amended, and
28 section twenty-eight-a of this article.

29 Any minimum benefit conferred herein shall not be
30 retroactive to the time of retirement and shall apply only
31 to members who have retired prior to the effective date of
32 this section, or, if applicable, to beneficiaries receiving
33 benefits under the retirement system prior to the effective
34 date.

35 The minimum benefit provided herein shall be subject to
36 a recommendation by the Governor for such minimum
37 benefit through the delivery of an executive message to the
38 Legislature and an appropriation by the Legislature for
39 such minimum benefit, such appropriation to be made
40 over a continuous six-year period following the effective
41 date of this section.

§18-7A-28a. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or
2 state law, the board shall administer the retirement system
3 in compliance with the limitations of Section 415 of the

4 Internal Revenue Code and regulations under that section
5 to the extent applicable to governmental plans (hereafter
6 sometimes referred to as the "415 limitation(s)" or "415
7 dollar limitation(s)"), so that the annual benefit
8 payable under this system to a member shall not exceed
9 those limitations. Any annual benefit payable under this
10 system shall be reduced or limited if necessary to an
11 amount which does not exceed those limitations. The
12 extent to which any annuity or other annual benefit
13 payable under this retirement system shall be reduced, as
14 compared with the extent to which an annuity, contribu-
15 tions or other benefits under any other defined benefit
16 plans or defined contribution plans required to be taken
17 into consideration under Section 415 of the Internal
18 Revenue Code shall be reduced, shall be proportional on a
19 percentage basis to the reductions made in such other
20 plans administered by the board and required to be so
21 taken into consideration under Section 415, unless a
22 disproportionate reduction is determined by the board to
23 maximize the aggregate benefits payable to the member.
24 If the reduction is under this retirement system, the board
25 shall advise affected members of any additional limitation
26 on the annuities or other annual benefit required by this
27 section. For purposes of the 415 limitations, the "limita-
28 tion year" shall be the calendar year. The 415 limitations
29 are incorporated herein by reference, except to the extent
30 the following provisions may modify the default provi-
31 sions thereunder:

32 (a) The annual adjustment to the 415 dollar limitations
33 made by Section 415(d) of the Internal Revenue Code and
34 the regulations thereunder shall apply for each limitation
35 year. The annual adjustments to the dollar limitations
36 under Section 415(d) of the Internal Revenue Code which
37 become effective: (i) After a retirant's severance from
38 employment with the employer; or (ii) after the annuity
39 starting date in the case of a retirant who has already

40 commenced receiving benefits, will apply with respect to
41 a retirant's annual benefit in any limitation year. A
42 retirant's annual benefit payable in any limitation year
43 from this retirement system shall in no event be greater
44 than the limit applicable at the annuity starting date, as
45 increased in subsequent years pursuant to Section 415(d)
46 of the Internal Revenue Code and the regulations thereun-
47 der.

48 (b) For purposes of this section, the "annual benefit"
49 means a benefit that is payable annually in the form of a
50 straight life annuity. Except as provided below, where a
51 benefit is payable in a form other than a straight life
52 annuity, the benefit shall be adjusted to an actuarially
53 equivalent straight life annuity that begins at the same
54 time as such other form of benefit, using factors prescribed
55 in the 415 limitation regulations, before applying the 415
56 limitations. No actuarial adjustment to the benefit shall
57 be made for: (1) Survivor benefits payable to a surviving
58 spouse under a qualified joint and survivor annuity to the
59 extent such benefits would not be payable if the member's
60 benefit were paid in another form; (2) benefits that are not
61 directly related to retirement benefits (such as a qualified
62 disability benefit, preretirement incidental death benefits
63 and post-retirement medical benefits); or (3) the inclusion
64 in the form of benefit of an automatic benefit increase
65 feature, provided the form of benefit is not subject to
66 Section 417(e)(3) of the Internal Revenue Code and would
67 otherwise satisfy the limitations of this article, and the
68 plan provides that the amount payable under the form of
69 benefit in any limitation year shall not exceed the limits of
70 this article applicable at the annuity starting date, as
71 increased in subsequent years pursuant to Section 415(d)
72 of the Internal Revenue Code. For this purpose an auto-
73 matic benefit increase feature is included in a form of
74 benefit if the form of benefit provides for automatic,
75 periodic increases to the benefits paid in that form.

76 (c) *Adjustment for benefit forms not subject to Section*
77 *417(e)(3).* – The straight life annuity that is actuarially
78 equivalent to the member’s form of benefit shall be
79 determined under this subsection if the form of the
80 member’s benefit is either: (1) A nondecreasing annuity
81 (other than a straight life annuity) payable for a period of
82 not less than the life of the member (or, in the case of a
83 qualified preretirement survivor annuity, the life of the
84 surviving spouse); or (2) an annuity that decreases during
85 the life of the member merely because of: (i) The death of
86 the survivor annuitant (but only if the reduction is not
87 below fifty percent of the benefit payable before the death
88 of the survivor annuitant); or (ii) the cessation or reduction
89 of Social Security supplements or qualified disability
90 payments (as defined in Section 411(a)(9) of the Internal
91 Revenue Code). The actuarially equivalent straight life
92 annuity is equal to the greater of: (I) The annual amount of
93 the straight life annuity (if any) payable to the member
94 under the plan commencing at the same annuity starting
95 date as the member’s form of benefit; and (II) the annual
96 amount of the straight life annuity commencing at the
97 same annuity starting date that has the same actuarial
98 present value as the member’s form of benefit, computed
99 using a five percent interest rate assumption and the
100 applicable mortality table defined in Treasury Regulation
101 §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subse-
102 quent Revenue Ruling modifying the applicable provisions
103 of Revenue Ruling 2001-62) for that annuity starting date.

104 (d) *Adjustment for benefit forms subject to Section*
105 *417(e)(3).* – The straight life annuity that is actuarially
106 equivalent to the member’s form of benefit shall be
107 determined under this subsection if the form of the
108 member’s benefit is other than a benefit form described in
109 subdivision (c) of this section. In this case, the actuarially
110 equivalent straight life annuity shall be determined as
111 follows: The actuarially equivalent straight life annuity is

112 equal to the greatest of: (1) The annual amount of the
113 straight life annuity commencing at the same annuity
114 starting date that has the same actuarial present value as
115 the member's form of benefit, computed using the interest
116 rate specified in this retirement system and the mortality
117 table (or other tabular factor) specified in this retirement
118 system for adjusting benefits in the same form; (2) the
119 annual amount of the straight life annuity commencing at
120 the same annuity starting date that has the same actuarial
121 present value as the member's form of benefit, computed
122 using a five and a half percent interest rate assumption
123 and the applicable mortality table defined in Treasury
124 Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or
125 any subsequent Revenue Ruling modifying the applicable
126 provisions of Revenue Ruling 2001-62) for that annuity
127 starting date; and (3) the annual amount of the straight
128 life annuity commencing at the same annuity starting date
129 that has the same actuarial present value as the member's
130 form of benefit, computed using the applicable interest
131 rate defined in Treasury Regulation §1.417(e)-1(d)(3) and
132 the applicable mortality table defined in Treasury Regula-
133 tion §1.417(e)-1(d)(2) (the mortality table specified in
134 Revenue Ruling 2001-62 or any subsequent Revenue
135 Ruling modifying the applicable provisions of Revenue
136 Ruling 2001-62), divided by 1.05.

137 (e) *Benefits payable prior to age sixty-two.* —

138 (1) Except as provided in paragraphs (2) and (3) of this
139 subdivision, if the member's retirement benefits become
140 payable before age sixty-two, the 415 dollar limitation
141 prescribed by this section shall be reduced in accordance
142 with regulations issued by the Secretary of the Treasury
143 pursuant to the provisions of Section 415(b) of the Internal
144 Revenue Code, so that the limitation (as so reduced) equals
145 an annual straight life benefit (when the retirement
146 income benefit begins) which is equivalent to an annual
147 benefit in the amount of the applicable dollar limitation of

148 Section 415(b)(1)(A) of the Internal Revenue Code (as
149 adjusted pursuant to Section 415(d) of the Internal
150 Revenue Code) beginning at age sixty-two.

151 (2) The limitation reduction provided in paragraph (1) of
152 this subdivision shall not apply if the member commencing
153 retirement benefits before age sixty-two is a qualified
154 participant. A qualified participant for this purpose is a
155 participant in a defined benefit plan maintained by a
156 state, or any political subdivision of a state, with respect
157 to whom the service taken into account in determining the
158 amount of the benefit under the defined benefit plan
159 includes at least fifteen years of service: (i) As a full-time
160 employee of any police or fire department organized and
161 operated by the state or political subdivision maintaining
162 the defined benefit plan to provide police protection, fire-
163 fighting services or emergency medical services for any
164 area within the jurisdiction of such state or political
165 subdivision; or (ii) as a member of the armed forces of the
166 United States.

167 (3) The limitation reduction provided in paragraph (1) of
168 this subdivision shall not be applicable to preretirement
169 disability benefits or preretirement death benefits.

170 (4) For purposes of adjusting the 415 dollar limitation
171 for benefit commencement before age sixty-two or after
172 age sixty-five (if the plan provides for such adjustment),
173 no adjustment is made to reflect the probability of a
174 member's death: (i) After the annuity starting date and
175 before age sixty-two; or (ii) after age sixty-five and before
176 the annuity starting date.

177 (f) *Adjustment when member has less than ten years of*
178 *participation.* – In the case of a member who has less than
179 ten years of participation in the retirement system (within
180 the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)),
181 the 415 dollar limitation (as adjusted pursuant to Section

182 415(d) of the Internal Revenue Code and subdivision (e) of
183 this section) shall be reduced by multiplying the otherwise
184 applicable limitation by a fraction, the numerator of
185 which is the number of years of participation in the plan
186 (or one, if greater), and the denominator of which is ten.
187 This adjustment shall not be applicable to preretirement
188 disability benefits or preretirement death benefits.

189 (g) The application of the provisions of this section shall
190 not cause the maximum annual benefit provided to a
191 member to be less than the member's accrued benefit as of
192 December 31, 2008 (the end of the limitation year that is
193 immediately prior to the effective date of the final regula-
194 tions for this retirement system as defined in Treasury
195 Regulation §1.415(a)-1(g)(2)), under provisions of the
196 retirement system that were both adopted and in effect
197 before April 5, 2007, provided that such provisions satis-
198 fied the applicable requirements of statutory provisions,
199 regulations and other published guidance relating to
200 Section 415 of the Internal Revenue Code in effect as of
201 December 31, 2008, as described in Treasury Regulation
202 §1.415(a)-1(g)(4). If additional benefits are accrued for a
203 member under this retirement system after January 1,
204 2009, then the sum of the benefits described under the first
205 sentence of this subdivision and benefits accrued for a
206 member after January 1, 2009, must satisfy the require-
207 ments of Section 415, taking into account all applicable
208 requirements of the final 415 Treasury Regulations.

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

1 The requirements of this section apply to any distribu-
2 tion of a member's or beneficiary's interest and take
3 precedence over any inconsistent provisions of this
4 retirement system. This section applies to plan years
5 beginning after December 31, 1986. Notwithstanding
6 anything in the retirement system to the contrary, the
7 payment of benefits under this article shall be determined

8 and made in accordance with Section 401(a)(9) of the
9 Internal Revenue Code and the regulations thereunder.
10 For this purpose, the following provisions apply:

11 (a) The payment of benefits under the retirement system
12 to any member shall be distributed to him or her not later
13 than the required beginning date, or be distributed to him
14 or her commencing not later than the required beginning
15 date, in accordance with regulations prescribed under
16 Section 401(a)(9) of the Internal Revenue Code, over the
17 life of the member or over the lives of the member and his
18 or her beneficiary or over a period not extending beyond
19 the life expectancy of the member and his or her benefi-
20 ciary. Benefit payments under this section shall not be
21 delayed pending, or contingent upon, receipt of an appli-
22 cation for retirement from the member.

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

29 (c) If a member dies before distribution to him or her has
30 commenced, then his or her entire interest in the retire-
31 ment system shall be distributed by December 31 of the
32 calendar year containing the fifth anniversary of the
33 member's death, except as follows:

34 (1) If a member's interest is payable to a beneficiary,
35 distributions may be made over the life or over a period
36 certain not greater than the life expectancy of the benefi-
37 ciary commencing on or before December 31 of the
38 calendar year immediately following the calendar year in
39 which the member died; or

40 (2) If the member's beneficiary is the surviving spouse,
41 the date distributions are required to begin shall not be
42 earlier than the later of:

43 (A) December 31 of the calendar year in which the
44 member would have attained age seventy and one-half; or

45 (B) The earlier of: (i) December 31 of the calendar year
46 following the calendar year in which the member died; or
47 (ii) December 31 of the calendar year following the
48 calendar year in which the spouse died.

§18-7A-28c. Direct rollovers.

1 (a) Except where otherwise stated, this section applies to
2 distributions made on or after January 1, 1993. Notwith-
3 standing any provision of this article to the contrary that
4 would otherwise limit a distributee's election under this
5 system, a distributee may elect, at the time and in the
6 manner prescribed by the board, to have any portion of an
7 eligible rollover distribution paid directly to an eligible
8 retirement plan specified by the distributee in a direct
9 rollover. For purposes of this section, the following
10 definitions apply:

11 (1) "Eligible rollover distribution" means any distribu-
12 tion of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution
14 does not include any of the following: (A) Any distribution
15 that is one of a series of substantially equal periodic
16 payments not less frequently than annually made for the
17 life or life expectancy of the distributee or the joint lives
18 or the joint life expectancies of the distributee and the
19 distributee's designated beneficiary, or for a specified
20 period of ten years or more; (B) any distribution to the
21 extent the distribution is required under Section 401(a)(9)
22 of the Internal Revenue Code; (C) the portion of any
23 distribution that is not includable in gross income deter-
24 mined without regard to the exclusion for net unrealized
25 appreciation with respect to employer securities; and (D)
26 any hardship distribution described in Section
27 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. For

28 distributions after December 31, 2001, a portion of a
29 distribution shall not fail to be an eligible rollover distri-
30 bution merely because the portion consists of after-tax
31 employee contributions which are not includable in gross
32 income. However, this portion may be paid only to an
33 individual retirement account or annuity described in
34 Section 408(a) or (b) of the Internal Revenue Code, or (for
35 taxable years beginning before January 1, 2007) to a
36 qualified trust which is part of a defined contribution plan
37 described in Section 401(a) or (for taxable years beginning
38 after December 31, 2006) to a qualified trust or to an
39 annuity contract described in Section 403(a) or (b) of the
40 Internal Revenue Code that agrees to separately account
41 for amounts transferred (including interest or earnings
42 thereon), including separately accounting for the portion
43 of the distribution which is includable in gross income and
44 the portion of the distribution which is not so includable,
45 or (for taxable years beginning after December 31, 2007)
46 to a Roth IRA described in Section 408(a) of the Internal
47 Revenue Code. 

48 (2) "Eligible retirement plan" means an individual
49 retirement account described in Section 408(a) of the
50 Internal Revenue Code, an individual retirement annuity
51 described in Section 408(b) of the Internal Revenue Code,
52 an annuity plan described in Section 403(a) of the Internal
53 Revenue Code, or a qualified plan described in Section
54 401(a) of the Internal Revenue Code, that accepts the
55 distributee's eligible rollover distribution: *Provided*, That
56 in the case of an eligible rollover distribution prior to
57 January 1, 2002, to the surviving spouse, an eligible
58 retirement plan is limited to an individual retirement
59 account or individual retirement annuity. For distribu-
60 tions after December 31, 2001, an eligible retirement plan
61 also means an annuity contract described in Section 403(b)
62 of the Internal Revenue Code and an eligible plan under
63 Section 457(b) of the Internal Revenue Code which is

64 maintained by a state, political subdivision of a state, or
65 any agency or instrumentality of a state or political
66 subdivision of a state and which agrees to separately
67 account for amounts transferred into the plan from this
68 system. For distributions after December 31, 2007, an
69 eligible retirement plan also means a Roth IRA described
70 in Section 408(a) of the Internal Revenue Code: *Provided,*
71 *however,* That in the case of an eligible rollover distribu-
72 tion after December 31, 2007, to a designated beneficiary
73 (other than a surviving spouse) as such term is defined in
74 Section 402(c)(11) of the Internal Revenue Code, an
75 eligible retirement plan is limited to an individual retire-
76 ment account or individual retirement annuity which
77 meets the conditions of Section 402(c)(11) of the Internal
78 Revenue Code.

79 (3) "Distributee" means an employee or former em-
80 ployee. In addition, the employee's or former employee's
81 surviving spouse and the employee's or former employee's
82 spouse or former spouse who is the alternate payee under
83 a qualified domestic relations order, as defined in Section
84 414(p) of the Internal Revenue Code, as applicable to
85 governmental plans, are distributees with regard to the
86 interest of the spouse or former spouse. For distributions
87 after December 31, 2007, "distributee" also includes a
88 designated beneficiary (other than a surviving spouse) as
89 such term is defined in Section 402(c)(11) of the Internal
90 Revenue Code.

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

93 (b) Nothing in this section may be construed as permit-
94 ting rollovers into this system or any other retirement
95 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 January 1, 2002.
3 Notwithstanding any provision of this article to the
4 contrary that would otherwise prohibit or limit rollovers
5 and plan transfers to this system, the retirement system
6 shall accept the following rollovers and plan transfers on
7 behalf of a member solely for the purpose of purchasing
8 permissive service credit, in whole or in part, as otherwise
9 provided in this article or for the repayment of withdrawn
10 or refunded contributions, in whole or in part, with respect
11 to a previous forfeiture of service credit as otherwise
12 provided in this article: (i) One or more rollovers within
13 the meaning of Section 408(d)(3) of the Internal Revenue
14 Code from an individual retirement account described in
15 Section 408(a) of the Internal Revenue Code or from an
16 individual retirement annuity described in Section 408(b)
17 of the Internal Revenue Code; (ii) one or more rollovers
18 described in Section 402(c) of the Internal Revenue Code
19 from a retirement plan that is qualified under Section
20 401(a) of the Internal Revenue Code or from a plan
21 described in Section 403(b) of the Internal Revenue Code;
22 (iii) one or more rollovers described in Section 457(e)(16)
23 of the Internal Revenue Code from a governmental plan
24 described in Section 457 of the Internal Revenue Code; or
25 (iv) direct trustee-to-trustee transfers or rollovers from a
26 plan that is qualified under Section 401(a) of the Internal
27 Revenue Code, from a plan described in Section 403(b) of
28 the Internal Revenue Code or from a governmental plan
29 described in Section 457 of the Internal Revenue Code:
30 *Provided*, That any rollovers or transfers pursuant to this
31 section shall be accepted by the system only if made in
32 cash or other asset permitted by the board and only in
33 accordance with the policies, practices and procedures
34 established by the board from time to time. For purposes
35 of this article, the following definitions and limitations
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 *Provided*, That no more than five years of "nonqualified
45 service credit", as defined in Section 415(n)(3)(C) of the
46 Internal Revenue Code, may be included in the permissive
47 service credit allowed to be purchased (other than by
48 means of a rollover or plan transfer), and no nonqualified
49 service credit may be included in any such purchase (other
50 than by means of a rollover or plan transfer) before the
51 member has at least five years of participation in the
52 retirement system.

53 (2) "Repayment of withdrawn or refunded contribu-
54 tions" means the payment into the retirement system of
55 the funds required pursuant to this article for the rein-
56 statement of service credit previously forfeited on account
57 of any refund or withdrawal of contributions permitted in
58 this article, as set forth in Section 415(k)(3) of the Internal
59 Revenue Code.

60 (3) Any contribution (other than by means of a rollover
61 or plan transfer) to purchase permissive service credit
62 under any provision of this article must satisfy the special
63 limitation rules described in Section 415(n) of the Internal
64 Revenue Code, and shall be automatically reduced,
65 limited or required to be paid over multiple years if
66 necessary to ensure such compliance. To the extent any
67 such purchased permissive service credit is qualified
68 military service within the meaning of Section 414(u) of
69 the Internal Revenue Code, the limitations of Section 415
70 of the Internal Revenue Code shall be applied to such
71 purchase as described in Section 414(u)(1)(B) of the
72 Internal Revenue Code.

73 (4) For purposes of Section 415(b) of the Internal Reve-
74 nue Code, the annual benefit attributable to any rollover
75 contribution accepted pursuant to this section shall be
76 determined in accordance with Treasury Regulation
77 §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity
78 payments attributable to any rollover contribution
79 provided under the retirement system over the annual
80 benefit so determined shall be taken into account when
81 applying the accrued benefit limitations of Section 415(b)
82 of the Internal Revenue Code and section twenty-eight-a
83 of this article.

84 (b) Nothing in this section shall be construed as permit-
85 ting rollovers or transfers into this system or any other
86 system administered by the retirement board other than as
87 specified in this section and no rollover or transfer shall be
88 accepted into the system in an amount greater than the
89 amount required for the purchase of permissive service
90 credit or repayment of withdrawn or refunded contribu-
91 tions.

92 (c) Nothing in this section shall be construed as permit-
93 ting the purchase of service credit or repayment of with-
94 drawn or refunded contributions except as otherwise
95 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) "Annual addition" means, for purposes of the limita-
4 tions under Section 415(c) of the Internal Revenue Code,
5 the sum credited to a member's account for any limitation
6 year of: (A) Employer contributions; (B) employee contri-
7 butions; and (C) forfeitures. Repayment of cashouts or

8 contributions as described in Section 415(k)(3) of the
9 Internal Revenue Code, rollover contributions and picked-
10 up employee contributions to a defined benefit plan shall
11 not be treated as annual additions, consistent with the
12 requirements of Treasury Regulation §1.415(c)-1.

13 (2) "Annuity account" or "annuity" means an account
14 established for each member to record the deposit of
15 member contributions and employer contributions and
16 interest, dividends or other accumulations credited on
17 behalf of the member;

18 (3) "Compensation" means the full compensation
19 actually received by members for service whether or not a
20 part of the compensation is received from other funds,
21 federal or otherwise, than those provided by the state or
22 its subdivisions: *Provided*, That annual compensation for
23 determining contributions during any determination
24 period may not exceed the maximum compensation
25 allowed as adjusted for cost-of-living in accordance with
26 section seven, article ten-d, chapter five of this code and
27 Section 401(a)(17) of the Internal Revenue Code: *Provided*,
28 *however*, That solely for purposes of applying the limita-
29 tions of Section 415 of the Internal Revenue Code to any
30 annual addition, "compensation" shall have the meaning
31 given it in subsection (d), section thirteen of this article.

32 (4) "Consolidated board" or "board" means the Consoli-
33 dated Public Retirement Board created and established
34 pursuant to article ten-d, chapter five of this code;

35 (5) "Defined contribution system" or "system" means
36 the Teachers' Defined Contribution Retirement System
37 created and established by this article;

38 (6) "Employer" means the agency of and within the
39 State of West Virginia which has employed or employs a
40 member;

41 (7) "Employer contribution" means an amount deposited
42 into the member's individual annuity account on a peri-
43 odic basis coinciding with the employee's regular pay
44 period by an employer from its own funds;

45 (8) "Existing employer" means any employer who
46 employed or employs a member of the existing retirement
47 system;

48 (9) "Existing retirement system" means the State
49 Teachers Retirement System established in article seven-a
50 of this chapter;

51 (10) "Internal Revenue Code" means the Internal
52 Revenue Code of 1986, as it has been amended;

53 (11) "Member" or "employee" means the following
54 persons, if regularly employed for full-time service: (A)
55 Any person employed for instructional service in the
56 public schools of West Virginia; (B) principals; (C) public
57 school librarians; (D) superintendents of schools and
58 assistant county superintendents of schools; (E) any county
59 school attendance director holding a West Virginia
60 teacher's certificate; (F) members of the research, exten-
61 sion, administrative or library staffs of the public schools;
62 (G) the State Superintendent of Schools, heads and
63 assistant heads of the divisions under his or her supervi-
64 sion, or any other employee under the state superintendent
65 performing services of an educational nature; (H) employ-
66 ees of the State Board of Education who are performing
67 services of an educational nature; (I) any person employed
68 in a nonteaching capacity by the State Board of Educa-
69 tion, any county board of education or the State Depart-
70 ment of Education if that person was formerly employed
71 as a teacher in the public schools; (J) all classroom teach-
72 ers, principals and educational administrators in schools
73 under the supervision of the Division of Corrections and
74 the Department of Health and Human Resources; (K) any

75 person who is regularly employed for full-time service by
76 any county board of education or the State Board of
77 Education; (L) the administrative staff of the public
78 schools including deans of instruction, deans of men and
79 deans of women, and financial and administrative secre-
80 taries; and (M) any person designated as a 21st Century
81 Learner Fellow pursuant to section eleven, article three,
82 chapter eighteen-a of this code who elects to remain a
83 member of the Teachers' Defined Contribution Retirement
84 System established by this article;

85 (12) "Member contribution" means an amount reduced
86 from the employee's regular pay periods, and deposited
87 into the member's individual annuity account within the
88 Teachers' Defined Contribution Retirement System;

89 (13) "Permanent, total disability" means a mental or
90 physical incapacity requiring absence from employment
91 service for at least six months: *Provided*, That the incapac-
92 ity is shown by an examination by a physician or physi-
93 cians selected by the board: *Provided, however*, That for
94 employees hired on or after July 1, 2005, permanent, total
95 disability means an inability to engage in substantial
96 gainful activity by reason of any medically determinable
97 physical or mental impairment that can be expected to
98 result in death, or has lasted or can be expected to last for
99 a continuous period of not less than twelve months and the
100 incapacity is so severe that the member is likely to be
101 permanently unable to perform the duties of the position
102 the member occupied immediately prior to his or her
103 disabling injury or illness;

104 (14) "Plan year" means the twelve-month period com-
105 mencing on July 1 of any designated year and ending on
106 the following June 30;

107 (15) "Public schools" means all publicly supported
108 schools, including normal schools, colleges and universi-
109 ties in this state;

110 (16) "Regularly employed for full-time service" means
111 employment in a regular position or job throughout the
112 employment term regardless of the number of hours
113 worked or the method of pay;

114 (17) "Required beginning date" means April 1 of the
115 calendar year following the later of: (a) The calendar year
116 in which the member attains age seventy and one-half
117 years; or (b) the calendar year in which the member retires
118 or otherwise ceases employment with a participating
119 employer after having attained the age of seventy and one-
120 half years;

121 (18) "Retirement" means a member's withdrawal from
122 the active employment of a participating employer and
123 completion of all conditions precedent to retirement;

124 (19) "Year of employment service" means employment
125 for at least ten months, a month being defined as twenty
126 employment days: *Provided*, That no more than one year
127 of service may be accumulated in any twelve-month
128 period.

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

1 The requirements of this section apply to any distribu-
2 tion of a member's or beneficiary's interest and take
3 precedence over any inconsistent provisions of this defined
4 contribution system. This section applies to plan years
5 beginning after December 31, 1986. Notwithstanding
6 anything in this system to the contrary, the payment of
7 benefits under this article shall be determined and made
8 in accordance with Section 401(a)(9) of the Internal
9 Revenue Code and the regulations thereunder, including
10 without limitation the incidental death benefit provisions
11 of Section 401(a)(9)(G) of the Internal Revenue Code and
12 the regulations thereunder. For this purpose, the follow-
13 ing provisions apply:

14 (a) The payment of benefits under the defined contribu-
15 tion system to any member shall be distributed to him or
16 her not later than the required beginning date, or be
17 distributed to him or her commencing not later than the
18 required beginning date, in accordance with regulations
19 prescribed under Section 401(a)(9) of the Internal Revenue
20 Code, over the life of the member or over the lives of the
21 member and his or her beneficiary or over a period not
22 extending beyond the life expectancy of the member and
23 his or her beneficiary. Benefit payments under this section
24 shall not be delayed pending, or contingent upon, receipt
25 of an application for retirement from the member.

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

32 (c) If a member dies before distribution to him or her has
33 commenced, then his or her entire interest in the system
34 shall be distributed by December 31 of the calendar year
35 containing the fifth anniversary of the member's death,
36 except as follows:

37 (1) If a member's interest is payable to a beneficiary,
38 distributions may be made over the life of that beneficiary
39 or over a period certain not greater than the life expect-
40 tancy of the beneficiary commencing on or before Decem-
41 ber 31 of the calendar year immediately following the
42 calendar year in which the participant died; or

43 (2) If the member's beneficiary is the surviving spouse,
44 the date distributions are required to begin shall be no
45 later than the later of:

46 (A) December 31 of the calendar year in which the
47 member would have attained age seventy and one-half
48 years; or

49 (B) The earlier of: (i) December 31 of the calendar year
50 in which the member died; or (ii) December 31 of the
51 calendar year following the calendar year in which the
52 spouse died.

53 (d) For purposes of this section, any amount paid to a
54 child of a member will be treated as if it had been paid to
55 the surviving spouse of the member if the remaining
56 amount becomes payable to the surviving spouse when the
57 child reaches the age of majority.

**§18-7B-13. Amount of annuity payments; federal law maximum
benefit limitations.**

1 (a) The amount of annuity payments a retired member
2 shall receive shall be based solely upon the balance in the
3 member's annuity account at the date of retirement, the
4 retirement option selected, or in the event of an annuity
5 option being selected, the actuarial life expectancy of the
6 member and such other factors as normally govern annuity
7 payments.

8 (b) The board, or its designee, is authorized upon retire-
9 ment of a member, with the approval of that member, to
10 purchase an annuity with the balance of the member's
11 account. Upon delivery of the annuity to the member
12 upon his or her retirement, the member shall execute a
13 release surrendering any claim the member may have
14 against the retirement trust.

15 (c) Notwithstanding any other provision of this article or
16 state law, the board shall administer the retirement system
17 in compliance with the limitations of Section 415 of the
18 Internal Revenue Code (as such limitations are adjusted
19 for cost of living in accordance with Section 415(d) of the
20 Internal Revenue Code) and Treasury Regulations thereun-
21 der to the extent applicable to governmental plans (hereaf-
22 ter sometimes referred to as the "415 limitation(s)" or "415
23 annual addition limitation(s)") so that an annual addition

24 made under this system shall not exceed those limitations.
25 Any annual addition made under this system shall be
26 reduced or limited if necessary to an amount which does
27 not exceed those limitations. The extent to which an
28 annual addition under this retirement system shall be
29 reduced, as compared to the extent which an annual
30 addition under any other defined benefit plans or defined
31 contribution plans required to be taken into consideration
32 under Section 415 of the Internal Revenue Code shall be
33 reduced, shall be proportional on a percentage basis to the
34 reductions made in such other plans administered by the
35 board and required to be so taken into consideration under
36 Section 415, unless a disproportionate reduction is deter-
37 mined by the board to maximize the aggregate benefits
38 payable to the member. If the reduction is under this
39 retirement system, the board shall advise affected mem-
40 bers of any additional limitation on the annual addition
41 required by this section. The 415 limitations shall apply
42 as if the total annual additions under all defined contribu-
43 tion plans in which a member has been a member were
44 payable from one plan for any member who has at any
45 time been a member in any other defined contribution
46 plan maintained by the member's participating employer.
47 For purposes of the 415 limitations, the "limitation year"
48 shall be the calendar year.

49 (d) Solely for purposes of calculating and applying the
50 415 limitations, a member's compensation for a limitation
51 year is defined to be wages within the meaning of Section
52 3401(a) of the Internal Revenue Code (including amounts
53 that would be included in wages but for an election under
54 Section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or
55 457(b) of the Internal Revenue Code), plus all other
56 payments of compensation to a member by a participating
57 employer (in the course of the employer's trade or busi-
58 ness) for which the employer is required to furnish the
59 employee a written statement under Sections 6041(d),

60 6051(a)(3) and 6052 of the Internal Revenue Code, and
61 determined without regard to any rules that limit the
62 remuneration included in wages based upon the nature or
63 location of employment or services performed. In addi-
64 tion:

65 (1) For limitation years beginning on or after January 1,
66 2009, compensation for a limitation year shall also in-
67 clude:

68 (A) Compensation paid by the later of two and one-half
69 months after a member's severance from employment with
70 the employer or the end of the limitation year that in-
71 cludes the date of the member's severance from employ-
72 ment with the employer maintaining the plan, if the
73 payment is regular compensation for services during the
74 member's regular working hours, or compensation for
75 services outside the employee's regular working hours
76 (such as overtime or shift differential), commissions,
77 bonuses, or other similar payments and, absent a sever-
78 ance from employment, the payments would have been
79 paid to the member while the member continued in
80 employment with the employer;

81 (B) Back pay, within the meaning of Treasury Regulation
82 §1.415(c)-2(g)(8), for the limitation year to which the back
83 pay relates, but only to the extent the back pay represents
84 wages and compensation that would otherwise be included
85 in compensation under this definition; and

86 (C) For an employee in qualified military service (within
87 the meaning of Section 414(u)(5) of the Internal Revenue
88 Code), compensation such employee would have received
89 during such period if the employee were not in qualified
90 military service, to the extent required pursuant to Section
91 414(u)(7) of the Internal Revenue Code.

92 (2) For limitation years beginning on or after January 1,
93 2009, compensation for a limitation year may not exceed

94 the maximum compensation allowed as adjusted for cost
95 of living in accordance with section seven, article ten-d,
96 chapter five of this code and Section 401(a)(17) of the
97 Internal Revenue Code.

§18-7B-13b. Direct rollovers.

1 (a) Except where otherwise stated, this section applies to
2 distributions made on or after January 1, 1993. Notwith-
3 standing any provision of this article to the contrary that
4 would otherwise limit a distributee's election under this
5 system, a distributee may elect, at the time and in the
6 manner prescribed by the board, to have any portion of an
7 eligible rollover distribution that is equal to at least \$500
8 paid directly to an eligible retirement plan specified by the
9 distributee in a direct rollover. For purposes of this
10 section, the following definitions apply:

11 (1) "Eligible rollover distribution" means any distribu-
12 tion of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution
14 does not include any of the following: (i) Any distribution
15 that is one of a series of substantially equal periodic
16 payments not less frequently than annually made for the
17 life or life expectancy of the distributee or the joint lives
18 or the joint life expectancies of the distributee and the
19 distributee's designated beneficiary, or for a specified
20 period of ten years or more; (ii) any distribution to the
21 extent such distribution is required under Section
22 401(a)(9) of the Internal Revenue Code; (iii) the portion of
23 any distribution that is not includable in gross income
24 determined without regard to the exclusion for net unreal-
25 ized appreciation with respect to employer securities; (iv)
26 any hardship distribution described in Section
27 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v)
28 any other distribution or distributions reasonably ex-
29 pected to total less than \$200 during a year. For distribu-
30 tions after December 31, 2001, a portion of a distribution

31 shall not fail to be an eligible rollover distribution merely
32 because the portion consists of after-tax employee contri-
33 butions which are not includable in gross income. How-
34 ever, this portion may be paid only to an individual
35 retirement account or annuity described in Section 408(a)
36 or (b) of the Internal Revenue Code, or (for taxable years
37 beginning before January 1, 2007) to a qualified trust
38 which is part of a defined contribution plan described in
39 Section 401(a) or (for taxable years beginning after
40 December 31, 2006) to a qualified trust or to an annuity
41 contract described in Section 403(a) or (b) of the Internal
42 Revenue Code that agrees to separately account for
43 amounts transferred (including interest or earnings
44 thereon), including separately accounting for the portion
45 of the distribution which is includable in gross income and
46 the portion of the distribution which is not so includable,
47 or (for taxable years beginning after December 31, 2007)
48 to a Roth IRA described in Section 408(a) of the Internal
49 Revenue Code. 

50 (2) "Eligible retirement plan" means an individual
51 retirement account described in Section 408(a) of the
52 Internal Revenue Code, an individual retirement annuity
53 described in Section 408(b) of the Internal Revenue Code,
54 an annuity plan described in Section 403(a) of the Internal
55 Revenue Code or a qualified plan described in Section
56 401(a) of the Internal Revenue Code that accepts the
57 distributee's eligible rollover distribution: *Provided*, That
58 in the case of an eligible rollover distribution prior to
59 January 1, 2002, to the surviving spouse, an eligible
60 retirement plan is limited to an individual retirement
61 account or individual retirement annuity. For distribu-
62 tions after December 31, 2001, an eligible retirement plan
63 shall also mean an annuity contract described in Section
64 403(b) of the Internal Revenue Code and an eligible plan
65 under Section 457(b) of the Internal Revenue Code which
66 is maintained by a state, political subdivision of a state or

67 any agency or instrumentality of a state or political
68 subdivision of a state and which agrees to separately
69 account for amounts transferred into the plan from this
70 system. For distributions after December 31, 2007, an
71 eligible retirement plan also means a Roth IRA described
72 in Section 408(a) of the Internal Revenue Code: *Provided,*
73 That in the case of an eligible rollover distribution after
74 December 31, 2007, to a designated beneficiary (other than
75 a surviving spouse) as such term is defined in Section
76 402(c)(11) of the Internal Revenue Code, an eligible
77 retirement plan is limited to an individual retirement
78 account or individual retirement annuity which meets the
79 conditions of Section 402(c)(11) of the Internal Revenue
80 Code.

81 (3) "Distributee" means an employee or former em-
82 ployee. In addition, the employee's or former employee's
83 surviving spouse and the employee's or former employee's
84 spouse or former spouse who is the alternate payee under
85 a qualified domestic relations order, as defined in Section
86 414(p) of the Internal Revenue Code with respect to
87 governmental plans, are distributees with regard to the
88 interest of the spouse or former spouse. For distributions
89 after December 31, 2007, "distributee" also includes a
90 designated beneficiary (other than a surviving spouse) as
91 such term is defined in Section 402(c)(11) of the Internal
92 Revenue Code.

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

95 (b) Nothing in this section may be construed as permit-
96 ting rollovers into this retirement system or any other
97 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) “Actuarially equivalent” or “of equal actuarial
8 value” means a benefit of equal value computed upon the
9 basis of the mortality table and interest rates as set and
10 adopted by the retirement board in accordance with the
11 provisions of this article: *Provided*, That when used in the
12 context of compliance with the federal maximum benefit
13 requirements of Section 415 of the Internal Revenue Code,
14 “actuarially equivalent” shall be computed using the
15 mortality tables and interest rates required to comply with
16 those requirements.

17 (c) “Beneficiary” means any person, except a member,
18 who is entitled to an annuity or other benefit payable by
19 the retirement system.

20 (d) “Board” means the Consolidated Public Retirement
21 Board created pursuant to article ten-d, chapter five of
22 this code.

23 (e) “Final average salary” means the average of the
24 highest thirty-six consecutive months’ compensation
25 received by the member as a judge of any court of record
26 of this state.

27 (f) “Internal Revenue Code” means the Internal Revenue
28 Code of 1986, as it has been amended.

29 (g) “Member” means a judge participating in this system.

30 (h) “Plan year” means the twelve-month period com-
31 mencing on July 1 of any designated year and ending the
32 following June 30.

33 (i) "Required beginning date" means April 1 of the
34 calendar year following the later of: (i) The calendar year
35 in which the member attains age seventy and one-half; or
36 (ii) the calendar year in which the member retires or
37 otherwise separates from covered employment.

38 (j) "Retirement system" or "system" means the Judges'
39 Retirement System created and established by this article.
40 Notwithstanding any other provision of law to the con-
41 trary, the provisions of this article are applicable only to
42 circuit judges and justices of the Supreme Court of
43 Appeals in the manner specified in this article. No service
44 as a family court judge may be construed to qualify a
45 person to participate in the Judges' Retirement System or
46 used in any manner as credit toward eligibility for retire-
47 ment benefits under the Judges' Retirement System.

§51-9-12a. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or
2 state law, the board shall administer the retirement system
3 in compliance with the limitations of Section 415 of the
4 Internal Revenue Code and regulations under that section,
5 to the extent applicable to governmental plans (hereafter
6 sometimes referred to as the "415 limitation(s)" or "415
7 dollar limitation(s)"), so that the annual benefit payable
8 under this system to a member shall not exceed those
9 limitations. Any annual benefit payable under this system
10 shall be reduced or limited if necessary to an amount
11 which does not exceed those limitations. The extent to
12 which any annuity or other annual benefit payable under
13 this retirement system shall be reduced as compared with
14 the extent to which an annuity, contributions or other
15 benefits under any other defined benefit plans or defined
16 contribution plans required to be taken into consideration
17 under Section 415 of the Internal Revenue Code shall be
18 reduced, shall be proportional on a percentage basis to the
19 reductions made in such other plans administered by the

20 board and required to be so taken into consideration under
21 Section 415, unless a disproportionate reduction is deter-
22 mined by the board to maximize the aggregate benefits
23 payable to the member. If the reduction is under this
24 retirement system, the board shall advise affected mem-
25 bers of any additional limitation on the annuities or other
26 annual benefit required by this section. For purposes of
27 the 415 limitations, the "limitation year" shall be the
28 calendar year. The 415 limitations are incorporated herein
29 by reference, except to the extent the following provisions
30 may modify the default provisions thereunder:

31 (a) The annual adjustment to the 415 dollar limitations
32 made by Section 415(d) of the Internal Revenue Code and
33 the regulations thereunder shall apply for each limitation
34 year. The annual adjustments to the dollar limitations
35 under Section 415(d) of the Internal Revenue Code which
36 become effective: (i) After a retirant's severance from
37 employment with the employer; or (ii) after the annuity
38 starting date in the case of a retirant who has already
39 commenced receiving benefits, will apply with respect to
40 a retirant's annual benefit in any limitation year. A
41 retirant's annual benefit payable in any limitation year
42 from this retirement system shall in no event be greater
43 than the limit applicable at the annuity starting date, as
44 increased in subsequent years pursuant to Section 415(d)
45 of the Internal Revenue Code and the regulations thereun-
46 der.

47 (b) For purposes of this section, the "annual benefit"
48 means a benefit that is payable annually in the form of a
49 straight life annuity. Except as provided below, where a
50 benefit is payable in a form other than a straight life
51 annuity, the benefit shall be adjusted to an actuarially
52 equivalent straight life annuity that begins at the same
53 time as such other form of benefit, using factors prescribed
54 in the 415 limitation regulations, before applying the 415
55 limitations. No actuarial adjustment to the benefit shall

56 be made for: (1) Survivor benefits payable to a surviving
57 spouse under a qualified joint and survivor annuity to the
58 extent such benefits would not be payable if the member's
59 benefit were paid in another form; (2) benefits that are not
60 directly related to retirement benefits (such as a qualified
61 disability benefit, preretirement incidental death benefits
62 and post-retirement medical benefits); or (3) the inclusion
63 in the form of benefit of an automatic benefit increase
64 feature, provided the form of benefit is not subject to
65 Section 417(e)(3) of the Internal Revenue Code and would
66 otherwise satisfy the limitations of this article, and the
67 plan provides that the amount payable under the form of
68 benefit in any limitation year shall not exceed the limits of
69 this article applicable at the annuity starting date, as
70 increased in subsequent years pursuant to Section 415(d)
71 of the Internal Revenue Code. For this purpose an auto-
72 matic benefit increase feature is included in a form of
73 benefit if the form of benefit provides for automatic,
74 periodic increases to the benefits paid in that form.

75 (c) *Adjustment for benefit forms not subject to Section*
76 *417(e)(3).* – The straight life annuity that is actuarially
77 equivalent to the member's form of benefit shall be
78 determined under this subsection if the form of the mem-
79 ber's benefit is either: (1) A nondecreasing annuity (other
80 than a straight life annuity) payable for a period of not
81 less than the life of the member (or, in the case of a
82 qualified preretirement survivor annuity, the life of the
83 surviving spouse); or (2) an annuity that decreases during
84 the life of the member merely because of: (i) The death of
85 the survivor annuitant (but only if the reduction is not
86 below fifty percent of the benefit payable before the death
87 of the survivor annuitant); or (ii) the cessation or reduction
88 of Social Security supplements or qualified disability
89 payments (as defined in Section 411(a)(9) of the Internal
90 Revenue Code). The actuarially equivalent straight life
91 annuity is equal to the greater of: (I) The annual amount of

92 the straight life annuity (if any) payable to the member
93 under the plan commencing at the same annuity starting
94 date as the member's form of benefit; and (II) the annual
95 amount of the straight life annuity commencing at the
96 same annuity starting date that has the same actuarial
97 present value as the member's form of benefit, computed
98 using a five percent interest rate assumption and the
99 applicable mortality table defined in Treasury Regulation
100 §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subse-
101 quent Revenue Ruling modifying the applicable provisions
102 of Revenue Ruling 2001-62) for that annuity starting date.

103 (d) *Adjustment for benefit forms subject to Section*
104 *417(e)(3).* – The straight life annuity that is actuarially
105 equivalent to the member's form of benefit shall be
106 determined under this subsection if the form of the mem-
107 ber's benefit is other than a benefit form described in
108 subdivision (c) of this section. The actuarially equivalent
109 straight life annuity shall be determined as follows: The
110 actuarially equivalent straight life annuity is equal to the
111 greatest of: (1) The annual amount of the straight life
112 annuity commencing at the same annuity starting date
113 that has the same actuarial present value as the member's
114 form of benefit, computed using the interest rate specified
115 in this retirement system and the mortality table (or other
116 tabular factor) specified in this retirement system for
117 adjusting benefits in the same form; (2) the annual amount
118 of the straight life annuity commencing at the same
119 annuity starting date that has the same actuarial present
120 value as the member's form of benefit, computed using a
121 five and a half percent interest rate assumption and the
122 applicable mortality table defined in Treasury Regulation
123 §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subse-
124 quent Revenue Ruling modifying the applicable provisions
125 of Revenue Ruling 2001-62) for that annuity starting date;
126 and (3) the annual amount of the straight life annuity
127 commencing at the same annuity starting date that has the

128 same actuarial present value as the member's form of
129 benefit, computed using the applicable interest rate
130 defined in Treasury Regulation §1.417(e)-1(d)(3) and the
131 applicable mortality table defined in Treasury Regulation
132 §1.417(e)-1(d)(2) (the mortality table specified in Revenue
133 Ruling 2001-62 or any subsequent Revenue Ruling modify-
134 ing the applicable provisions of Revenue Ruling 2001-62),
135 divided by 1.05.

136 (e) *Benefits payable prior to age sixty-two.* –

137 (1) Except as provided in paragraphs (2) and (3) of this
138 subdivision, if the member's retirement benefits become
139 payable before age sixty-two, the 415 dollar limitation
140 prescribed by this section shall be reduced in accordance
141 with regulations issued by the Secretary of the Treasury
142 pursuant to the provisions of Section 415(b) of the Internal
143 Revenue Code, so that the limitation (as so reduced) equals
144 an annual straight life benefit (when the retirement
145 income benefit begins) which is equivalent to an annual
146 benefit in the amount of the applicable dollar limitation of
147 Section 415(b)(1)(A) of the Internal Revenue Code (as
148 adjusted pursuant to Section 415(d) of the Internal
149 Revenue Code) beginning at age sixty-two.

150 (2) The limitation reduction provided in paragraph (1) of
151 this subdivision shall not apply if the member commencing
152 retirement benefits before age sixty-two is a qualified
153 participant. A qualified participant for this purpose is a
154 participant in a defined benefit plan maintained by a
155 state, or any political subdivision of a state, with respect
156 to whom the service taken into account in determining the
157 amount of the benefit under the defined benefit plan
158 includes at least fifteen years of service: (i) As a full-time
159 employee of any police or fire department organized and
160 operated by the state or political subdivision maintaining
161 the defined benefit plan to provide police protection, fire-
162 fighting services or emergency medical services for any

163 area within the jurisdiction of such state or political
164 subdivision; or (ii) as a member of the armed forces of the
165 United States.

166 (3) The limitation reduction provided in paragraph (1) of
167 this subdivision shall not be applicable to preretirement
168 disability benefits or preretirement death benefits.

169 (4) For purposes of adjusting the 415 dollar limitation
170 for benefit commencement before age sixty-two or after
171 age sixty-five (if the plan provides for such adjustment),
172 no adjustment is made to reflect the probability of a
173 member's death: (i) After the annuity starting date and
174 before age sixty-two; or (ii) after age sixty-five and before
175 the annuity starting date.

176 (f) *Adjustment when member has less than ten years of*
177 *participation.* – In the case of a member who has less than
178 ten years of participation in the retirement system (within
179 the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)),
180 the 415 dollar limitation (as adjusted pursuant to Section
181 415(d) of the Internal Revenue Code and subdivision (e) of
182 this section) shall be reduced by multiplying the otherwise
183 applicable limitation by a fraction, the numerator of
184 which is the number of years of participation in the plan
185 (or one, if greater), and the denominator of which is ten.
186 This adjustment shall not be applicable to preretirement
187 disability benefits or preretirement death benefits.

188 (g) The application of the provisions of this section shall
189 not cause the maximum annual benefit provided to a
190 member to be less than the member's accrued benefit as of
191 December 31, 2008 (the end of the limitation year that is
192 immediately prior to the effective date of the final regula-
193 tions for this retirement system as defined in Treasury
194 Regulation §1.415(a)-1(g)(2)), under provisions of the
195 retirement system that were both adopted and in effect
196 before April 5, 2007, provided that such provisions satis-

197 fied the applicable requirements of statutory provisions,
198 regulations and other published guidance relating to
199 Section 415 of the Internal Revenue Code in effect as of
200 December 31, 2008, as described in Treasury Regulation
201 §1.415(a)-1(g)(4). If additional benefits are accrued for a
202 member under this retirement system after January 1,
203 2009, then the sum of the benefits described under the first
204 sentence of this subdivision and benefits accrued for a
205 member after January 1, 2009, must satisfy the require-
206 ments of Section 415, taking into account all applicable
207 requirements of the final 415 Treasury Regulations.

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

1 The requirements of this section apply to any distribu-
2 tion of a member's or beneficiaries' interest and take
3 precedence over any inconsistent provisions of this
4 retirement system. This section applies to plan years
5 beginning after December 31, 1986. Notwithstanding
6 anything in the retirement system to the contrary, the
7 payment of benefits under this article shall be determined
8 and made in accordance with Section 401(a)(9) of the
9 Internal Revenue Code and the regulations thereunder.
10 For this purpose, the following provisions apply:

11 (a) The payment of benefits under the retirement system
12 to any member shall be distributed to him or her not later
13 than the required beginning date, or be distributed to him
14 or her commencing not later than the required beginning
15 date, in accordance with Treasury Regulations prescribed
16 under Section 401(a)(9) of the Internal Revenue Code, over
17 the life of the member or over the lives of the member and
18 his or her beneficiary or over a period not extending
19 beyond the life expectancy of the member and his or her
20 beneficiary. Benefit payments under this section shall not
21 be delayed pending, or contingent upon, receipt of an
22 application for retirement from the member.

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

29 (c) If a member dies before distribution to him or her has
30 commenced, then his or her entire interest in the retire-
31 ment system shall be distributed by December 31 of the
32 calendar year containing the fifth anniversary of the
33 member's death, except as follows:

34 (1) If a member's interest is payable to a beneficiary,
35 distributions may be made over the life of that beneficiary
36 or over a period certain not greater than the life expect-
37 tancy of the beneficiary commencing on or before Decem-
38 ber 31 of the calendar year immediately following the
39 calendar year in which the member died; or

40 (2) If the member's beneficiary is the surviving spouse,
41 the date distributions are required to begin shall be no
42 later than the later of:

43 (A) December 31 of the calendar year in which the
44 member would have attained age seventy and one-half; or

45 (B) The earlier of: (i) December 31 of the calendar year
46 following the calendar year in which the member died; or
47 (ii) December 31 of the calendar year following the
48 calendar year in which the spouse died.

§51-9-12c. Direct rollovers.

1 (a) Except where otherwise stated, this section applies to
2 distributions made on or after January 1, 1993. Notwith-
3 standing any provision of this article to the contrary that
4 would otherwise limit a distributee's election under this
5 system, a distributee may elect, at the time and in the
6 manner prescribed by the board, to have any portion of an

7 eligible rollover distribution that is equal to at least \$500
8 paid directly to an eligible retirement plan specified by the
9 distributee in a direct rollover. For purposes of this
10 section, the following definitions apply:

11 (1) "Eligible rollover distribution" means any distribu-
12 tion of all or any portion of the balance to the credit of the
13 distributee, except that an eligible rollover distribution
14 does not include any of the following: (i) Any distribution
15 that is one of a series of substantially equal periodic
16 payments not less frequently than annually made for the
17 life or life expectancy of the distributee or the joint lives
18 or the joint life expectancies of the distributee and the
19 distributee's designated beneficiary, or for a specified
20 period of ten years or more; (ii) any distribution to the
21 extent such distribution is required under Section
22 401(a)(9) of the Internal Revenue Code; (iii) the portion of
23 any distribution that is not includable in gross income
24 determined without regard to the exclusion for net unreal-
25 ized appreciation with respect to employer securities; (iv)
26 any hardship distribution described in Section
27 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v)
28 any other distribution or distributions expected to total
29 less than \$200 during a year. For distributions after
30 December 31, 2001, a portion of a distribution shall not
31 fail to be an eligible rollover distribution merely because
32 the portion consists of after-tax employee contributions
33 which are not includable in gross income. However, this
34 portion may be paid only to an individual retirement
35 account or annuity described in Section 408(a) or (b) of the
36 Internal Revenue Code, or (for taxable years beginning
37 before January 1, 2007) to a qualified trust which is part
38 of a defined contribution plan described in Section 401(a)
39 or (for taxable years beginning after December 31, 2006)
40 to a qualified trust or to an annuity contract described in
41 Section 403(a) or (b) of the Internal Revenue Code that
42 agrees to separately account for amounts transferred

43 (including interest or earnings thereon), including sepa-
44 rately accounting for the portion of the distribution which
45 is includable in gross income and the portion of the
46 distribution which is not so includable, or (for taxable
47 years beginning after December 31, 2007) to a Roth IRA
48 described in Section 408(a) of the Internal Revenue Code.

49 (2) "Eligible retirement plan" means an individual
50 retirement account described in Section 408(a) of the
51 Internal Revenue Code, an individual retirement annuity
52 described in Section 408(b) of the Internal Revenue Code,
53 an annuity plan described in Section 403(a) of the Internal
54 Revenue Code, or a qualified plan described in Section
55 401(a) of the Internal Revenue Code, that accepts the
56 distributee's eligible rollover distribution: *Provided*, That
57 in the case of an eligible rollover distribution prior to
58 January 1, 2002, to the surviving spouse, an eligible
59 retirement plan is limited to an individual retirement
60 account or individual retirement annuity. For distribu-
61 tions after December 31, 2001, an eligible retirement plan
62 also means an annuity contract described in Section 403(b)
63 of the Internal Revenue Code and an eligible plan under
64 Section 457(b) of the Internal Revenue Code which is
65 maintained by a state, political subdivision of a state, or
66 any agency or instrumentality of a state or political
67 subdivision of a state and which agrees to separately
68 account for amounts transferred into the plan from this
69 system. For distributions after December 31, 2007, an
70 eligible retirement plan also means a Roth IRA described
71 in Section 408(a) of the Internal Revenue Code: *Provided*,
72 That in the case of an eligible rollover distribution after
73 December 31, 2007, to a designated beneficiary (other than
74 a surviving spouse) as such term is defined in Section
75 402(c)(11) of the Internal Revenue Code, an eligible
76 retirement plan is limited to an individual retirement
77 account or individual retirement annuity which meets the
78 conditions of Section 402(c)(11) of the Internal Revenue
79 Code.

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80 (3) "Distributee" means a judge or former judge. In
81 addition, the judge's or former judge's surviving spouse
82 and the judge's or former judge's spouse or former spouse
83 who is the alternate payee under a qualified domestic
84 relations order, as defined in Section 414(p) of the Internal
85 Revenue Code, with respect to governmental plans, are
86 distributees with regard to the interest of the spouse or
87 former spouse. For distributions after December 31, 2007,
88 "distributee" also includes a designated beneficiary (other
89 than a surviving spouse) as such term is defined in Section
90 402(c)(11) of the Internal Revenue Code.

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

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

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

[Signature]
.....
Chairman Senate Committee

Janny Wells
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Darrell E. Hobbs
.....
Clerk of the Senate

Bryan W. Bond
.....
Clerk of the House of Delegates

Carl Roy Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *7th*
Day of *December* 2009.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

DEC 2 2009

Time 4:20 pm