

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2939**

5 (By Delegates Pethtel, Givens, Ennis, Guthrie,  
6 D. Poling, Duke and Canterbury)

7 [Passed March 8, 2011; in effect ninety days from passage.]

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10 AN ACT to amend and reenact §5-10-2, §5-10-18, §5-10-21, §5-10-24,  
11 §5-10-25, §5-10-44 and §5-10-48 of the Code of West Virginia,  
12 1931, as amended, all relating to the Public Employees  
13 Retirement System; clarifying the definition of compensation  
14 for purposes of calculating required contributions to the  
15 system; changing definition of final average salary;  
16 clarifying when membership in the system terminates and how  
17 membership may be reinstated; providing that individuals first  
18 hired after July 1, 2011 must have at least five years of  
19 contributory service to retire under the "rule of eighty";  
20 requiring retirants changing annuity options to certify that  
21 no final divorce decree or other court order prohibits the  
22 same; clarifying that correction of errors provision applies  
23 to both employer errors and errors of the system's  
24 administrative body; providing that the correction of an error  
25 with respect to a retirant may be prospective only; and  
26 providing for reimbursement of mistaken contributions that

1 ensures the plan's continued qualified status.

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

3 That §5-10-2, §5-10-18, §5-10-21, §5-10-24, §5-10-25, §5-10-44  
4 and §5-10-48 of the Code of West Virginia, 1931, as amended, be  
5 amended and reenacted, all to read as follows:

6 **ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

7 **§5-10-2. Definitions.**

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

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

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

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

24 (4) "Annuity" means an annual amount payable by the retirement  
25 system throughout the life of a person. All annuities shall be paid

1 in equal monthly installments, rounding to the upper cent for any  
2 fraction of a cent;

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

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

11 (7) "Board of Trustees" or "board" means the Board of Trustees  
12 of the West Virginia Consolidated Public Retirement System;

13 (8) "Compensation" means the remuneration paid a member by a  
14 participating public employer for personal services rendered by the  
15 member to the participating public employer. In the event a  
16 member's remuneration is not all paid in money, his or her  
17 participating public employer shall fix the value of the portion of  
18 the remuneration which is not paid in money. Any lump sum or other  
19 payments paid to members that do not constitute regular salary or  
20 wage payments are not considered compensation for the purpose of  
21 withholding contributions for the system or for the purpose of  
22 calculating a member's final average salary. These payments  
23 include, but are not limited to, attendance or performance bonuses,  
24 one-time flat fee or lump sum payments, payments paid as a result  
25 of excess budget, or employee recognition payments. The board  
26 shall have final power to decide whether the payments shall be

1 considered compensation for purposes of this article;

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

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

10 (11) "Employee" means any person who serves regularly as an  
11 officer or employee, full time, on a salary basis, whose tenure is  
12 not restricted as to temporary or provisional appointment, in the  
13 service of, and whose compensation is payable, in whole or in part,  
14 by any political subdivision, or an officer or employee whose  
15 compensation is calculated on a daily basis and paid monthly or on  
16 completion of assignment, including technicians and other personnel  
17 employed by the West Virginia National Guard whose compensation, in  
18 whole or in part, is paid by the federal government: *Provided*, That  
19 an employee of the Legislature whose term of employment is  
20 otherwise classified as temporary and who is employed to perform  
21 services required by the Legislature for its regular sessions or  
22 during the interim between regular sessions and who has been or is  
23 employed during regular sessions or during the interim between  
24 regular sessions in seven or more consecutive calendar years, as  
25 certified by the clerk of the house in which the employee served,  
26 is an employee, any provision to the contrary in this article

1 notwithstanding, and is entitled to credited service in accordance  
2 with provisions of section fourteen, article ten, chapter five of  
3 this code and: *Provided, however,* That members of the legislative  
4 body of any political subdivision and judges of the State Court of  
5 Claims are employees receiving one year of service credit for each  
6 one-year term served and pro rated service credit for any partial  
7 term served, anything contained in this article to the contrary  
8 notwithstanding. In any case of doubt as to who is an employee  
9 within the meaning of this article, the Board of Trustees shall  
10 decide the question;

11 (12) "Employer error" means an omission, misrepresentation, or  
12 violation of relevant provisions of the West Virginia Code or of  
13 the West Virginia Code of State Regulations or the relevant  
14 provisions of both the West Virginia Code and of the West Virginia  
15 Code of State Regulations by the participating public employer that  
16 has resulted in an underpayment or overpayment of contributions  
17 required. A deliberate act contrary to the provisions of this  
18 section by a participating public employer does not constitute  
19 employer error.

20 (13) "Final average salary" means either of the following:  
21 *Provided,* That salaries for determining benefits during any  
22 determination period may not exceed the maximum compensation  
23 allowed as adjusted for cost of living in accordance with section  
24 seven, article ten-d, chapter five of this code and Section  
25 401(a)(17) of the Internal Revenue Code: *Provided, however,* That  
26 the provisions of section twenty-two-h of this article are not

1 applicable to the amendments made to this subdivision during the  
2 2011 regular session of the Legislature.

3 (A) The average of the highest annual compensation received by  
4 a member (including a member of the Legislature who participates in  
5 the retirement system in the year 1971 or thereafter), during any  
6 period of three consecutive years of credited service contained  
7 within the member's fifteen years of credited service immediately  
8 preceding the date his or her employment with a participating  
9 public employer last terminated; or

10 (B) If the member has less than five years of credited  
11 service, the average of the annual rate of compensation received by  
12 the member during his or her total years of credited service; and  
13 in determining the annual compensation, under either paragraph (A)  
14 or (B) of this subdivision, of a member of the Legislature who  
15 participates in the retirement system as a member of the  
16 Legislature in the year 1971, or in any year thereafter, his or her  
17 actual legislative compensation (the total of all compensation paid  
18 under sections two, three, four and five, article two-a, chapter  
19 four of this code), in the year 1971, or in any year thereafter,  
20 plus any other compensation he or she receives in any year from any  
21 other participating public employer including the State of West  
22 Virginia, without any multiple in excess of one times his or her  
23 actual legislative compensation and other compensation, shall be  
24 used: *Provided*, That "final average salary" for any former member  
25 of the Legislature or for any member of the Legislature in the year  
26 1971, who, in either event, was a member of the Legislature on

1 November 30, 1968, or November 30, 1969, or November 30, 1970, or  
2 on November 30 in any one or more of those three years and who  
3 participated in the retirement system as a member of the  
4 Legislature in any one or more of those years means: (I) Either  
5 (notwithstanding the provisions of this subdivision preceding this  
6 proviso) \$1,500 multiplied by eight, plus the highest other  
7 compensation the former member or member received in any one of the  
8 three years from any other participating public employer including  
9 the State of West Virginia; or (ii) "final average salary"  
10 determined in accordance with paragraph (A) or (B) of this  
11 subdivision, whichever computation produces the higher final  
12 average salary (and in determining the annual compensation under  
13 subparagraph (ii) of this proviso, the legislative compensation of  
14 the former member shall be computed on the basis of \$1,500  
15 multiplied by eight, and the legislative compensation of the member  
16 shall be computed on the basis set forth in the provisions of this  
17 subdivision immediately preceding this proviso or on the basis of  
18 \$1,500 multiplied by eight, whichever computation as to the member  
19 produces the higher annual compensation);

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

23 (15) "Limited credited service" means service by employees of  
24 the West Virginia Educational Broadcasting Authority, in the  
25 employment of West Virginia University, during a period when the  
26 employee made contributions to another retirement system, as

1 required by West Virginia University, and did not make  
2 contributions to the Public Employees Retirement System: *Provided,*  
3 That while limited credited service can be used for the formula set  
4 forth in subsection (e), section twenty-one of this article, it may  
5 not be used to increase benefits calculated under section twenty-  
6 two of this article;

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

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

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

20 (19) "Political subdivision" means the State of West Virginia,  
21 a county, city or town in the state; a school corporation or  
22 corporate unit; any separate corporation or instrumentality  
23 established by one or more counties, cities or towns, as permitted  
24 by law; any corporation or instrumentality supported in most part  
25 by counties, cities or towns; and any public corporation charged by  
26 law with the performance of a governmental function and whose

1 jurisdiction is coextensive with one or more counties, cities or  
2 towns: *Provided*, That any mental health agency participating in  
3 the Public Employees Retirement System before July 1, 1997, is  
4 considered a political subdivision solely for the purpose of  
5 permitting those employees who are members of the Public Employees  
6 Retirement System to remain members and continue to participate in  
7 the retirement system at their option after July 1, 1997:  
8 *Provided, however*, That the Regional Community Policing Institute  
9 which participated in the Public Employees Retirement System before  
10 July 1, 2000, is considered a political subdivision solely for the  
11 purpose of permitting those employees who are members of the Public  
12 Employees Retirement System to remain members and continue to  
13 participate in the Public Employees Retirement System after July 1,  
14 2000;

15 (20) "Prior service" means service rendered prior to July 1,  
16 1961, to the extent credited a member as provided in this article;

17 (21) "Regular interest" means the rate or rates of interest  
18 per annum, compounded annually, as the Board of Trustees adopts  
19 from time to time;

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

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

1 payable by the retirement system;

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

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

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

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

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

21 **§5-10-18. Termination of membership; reentry.**

22 (a) When a member of the retirement system retires, withdraws  
23 his or her accumulated contributions, or dies, he or she ceases to  
24 be a member. When a member leaves the employ of a participating  
25 public employer for any reason other than retirement or death, and  
26 withdraws his or her accumulated contributions from the system, he

1 or she ceases to be a member and forfeits service credited to him  
2 or her at that time. If he or she becomes reemployed by a  
3 participating public employer he or she shall be reinstated as a  
4 member of the retirement system and his or her credited service  
5 last forfeited by him or her shall be restored to his or her  
6 credit: *Provided*, That he or she must be reemployed for a period  
7 of one year or longer to have the service restored: *Provided*,  
8 *however*, That he or she returns to the members' deposit fund the  
9 amount, if any, he or she withdrew from the fund, together with  
10 regular interest on the withdrawn amount from the date of  
11 withdrawal to the date of repayment, and that the repayment begins  
12 within two years of the return to employment and that the full  
13 amount is repaid within five years of the return to employment.  
14 Any failure to repay the full amount in accordance with this  
15 section shall be treated as an overpayment or excess contribution  
16 subject to section forty-four of this article.

17 (b) The Prestera Center for Mental Health Services, Valley  
18 Comprehensive Mental Health Center, Westbrook Health Services and  
19 Eastern Panhandle Mental Health Center, and their successors in  
20 interest, shall provide for their employees a pension plan in lieu  
21 of the Public Employees Retirement System during the existence of  
22 the named mental health centers and their successors in interest.

23 (c) The administrative bodies of the Prestera Center for  
24 Mental Health Services, Valley Comprehensive Mental Health Center,  
25 Westbrook Health Services and Eastern Panhandle Mental Health  
26 Center shall, on or before May 1, 1997, give written notice to each

1 employee who is a member of the Public Employees Retirement System  
2 of the option to withdraw from or remain in the system. The notice  
3 shall include a copy of this section and a statement explaining the  
4 member's options regarding membership. The notice shall include a  
5 statement in plain language giving a full explanation and actuarial  
6 projection figures in support of the explanation regarding the  
7 individual member's current account balance, vested and nonvested,  
8 and his or her projected return upon remaining in the Public  
9 Employees Retirement System until retirement, disability or death,  
10 in comparison with the projected return upon withdrawing from the  
11 Public Employees Retirement System and joining a private pension  
12 plan provided by the Community Mental Health Center and remaining  
13 therein until retirement, disability or death. The administrative  
14 bodies shall keep in their respective records a permanent record of  
15 each employee's signature confirming receipt of the notice.

16 (d) Effective the March 1, 2003, and ending December 31, 2004,  
17 any member may purchase credited service previously forfeited by  
18 him or her and the credited service shall be restored to his or her  
19 credit: *Provided*, That he or she returns to the members' deposit  
20 fund the amount, if any, he or she withdrew from the fund, together  
21 with interest on the withdrawn amount from the date of withdrawal  
22 to the date of repayment at a rate to be determined by the board.  
23 The repayment under this section may be made by lump sum or repaid  
24 over a period of time not to exceed sixty months. Where the member  
25 elects to repay the required amount other than by lump sum, the  
26 member is required to pay interest at the rate determined by the

1 board until all sums are fully repaid.

2 (e) Effective July 1, 2005, and ending December 31, 2006, any  
3 emergency services personnel may purchase service credit for the  
4 time period beginning January 1, 1990, and ending December 31,  
5 1995: *Provided*, That person was employed as an emergency service  
6 person in this state for that time period: *Provided, however*, That  
7 any person obtaining service credit under this subsection is  
8 required to pay the employee's share and the employer's share upon  
9 his or her actual salary for the years in question plus interest at  
10 the assumed actuarial rate of return for the plan year being  
11 repurchased.

12 (f) Jobs for West Virginia's graduates and their successors  
13 in interest shall provide a pension plan in lieu of the Public  
14 Employees Retirement System for employees hired on or after July 1,  
15 2005.

16 (g) Wetzel County Hospital and their successors in interest  
17 shall provide a pension plan in lieu of the Public Employees  
18 Retirement System for employees hired on or after July 1, 2005.

19 **§5-10-21. Deferred retirement and early retirement.**

20 (a) Any member who has five or more years of credited service  
21 in force, of which at least three years are contributing service,  
22 and who leaves the employ of a participating public employer prior  
23 to his or her attaining age sixty years for any reason except his  
24 or her disability retirement or death, is entitled to an annuity  
25 computed according to section twenty-two of this article, as that  
26 section was in force as of the date of his or her separation from

1 the employ of a participating public employer: *Provided*, That he or  
2 she does not withdraw his or her accumulated contributions from the  
3 members' deposit fund: *Provided, however*, That on and after July  
4 1, 2002, any person who becomes a new member of this retirement  
5 system shall, in qualifying for retirement under this section, have  
6 five or more years of service, all of which years shall be actual,  
7 contributory ones. His or her annuity shall begin the first day of  
8 the calendar month next following the month in which his or her  
9 application for same is filed with the Board of Trustees on or  
10 after his or her attaining age sixty-two years.

11 (b) Any member who qualifies for deferred retirement benefits  
12 in accordance with subsection (a) of this section and has ten or  
13 more years of credited service in force and who has attained age  
14 fifty-five as of the date of his or her separation, may, prior to  
15 the effective date of his or her retirement, but not thereafter,  
16 elect to receive the actuarial equivalent of his or her deferred  
17 retirement annuity as a reduced annuity commencing on the first day  
18 of any calendar month between his or her date of separation and his  
19 or her attainment of age sixty-two years and payable throughout his  
20 or her life.

21 (c) Any member who qualifies for deferred retirement benefits  
22 in accordance with subsection (a) of this section and has twenty or  
23 more years of credited service in force may elect to receive the  
24 actuarial equivalent of his or her deferred retirement annuity as  
25 a reduced annuity commencing on the first day of any calendar month  
26 between his or her fifty-fifth birthday and his or her attainment

1 of age sixty-two years and payable throughout his or her life.

2 (d) Notwithstanding any of the other provisions of this  
3 section or of this article, except sections twenty-seven-a and  
4 twenty-seven-b of this article, and pursuant to rules promulgated  
5 by the board, any member who has thirty or more years of credited  
6 service in force, at least three of which are contributing service,  
7 and who elects to take early retirement, which for the purposes of  
8 this subsection means retirement prior to age sixty, whether an  
9 active employee or a separated employee at the time of application,  
10 is entitled to the full computation of annuity according to section  
11 twenty-two of this article, as that section was in force as of the  
12 date of retirement application, but with the reduced actuarial  
13 equivalent of the annuity the member would have received if his or  
14 her benefit had commenced at age sixty when he or she would have  
15 been entitled to full computation of benefit without any reduction.

16 (e) Notwithstanding any of the other provisions of this  
17 section or of this article, except sections twenty-seven-a and  
18 twenty-seven-b of this article, any member of the retirement system  
19 may retire with full pension rights, without reduction of benefits,  
20 if he or she is at least fifty-five years of age and the sum of his  
21 or her age plus years of contributing service and limited credited  
22 service, as defined in section two of this article, equals or  
23 exceeds eighty; *Provided*, That on and after July 1, 2011, any  
24 person who becomes a new member of this retirement system shall, in  
25 qualifying for retirement under this subsection, have five or more  
26 years of service, all of which years shall be actual, contributory

1 ones. The member's annuity shall begin the first day of the  
2 calendar month immediately following the calendar month in which  
3 his or her application for the annuity is filed with the board.

4 **§5-10-24. Annuity options.**

5 (a) Prior to the effective date of his or her retirement, but  
6 not thereafter except upon the death of a spouse, a member may  
7 elect to receive his or her annuity as a straight life annuity  
8 payable throughout his or her life, or he or she may elect to  
9 receive the actuarial equivalent, at the time, of his or her  
10 straight life annuity in a reduced annuity payable throughout his  
11 or her life, and nominate a beneficiary, in accordance with option  
12 A or B set forth below:

13 *Option A -- Joint and survivor annuity.* -- Upon the death of  
14 a retirant who elected option A, his or her reduced annuity shall  
15 be continued throughout the life of and paid to the beneficiary,  
16 having an insurable interest in the retirant's life, whom the  
17 retirant nominated by written designation duly executed and filed  
18 with the Board of Trustees prior to the effective date of his or  
19 her retirement; or

20 *Option B -- Modified joint and survivor annuity.* -- Upon the  
21 death of a retirant who elected option B, one half of his or her  
22 reduced annuity shall be continued throughout the life of and paid  
23 to the beneficiary, having an insurable interest in the retirant's  
24 life, whom the retirant nominated by written designation duly  
25 executed and filed with the Board of Trustees prior to the  
26 effective date of his or her retirement.

1           (b) Upon the death of a spouse, a retirant may elect any of  
2 the retirement options offered by the provisions of this section in  
3 an amount adjusted on a fair basis to be of equal actuarial value  
4 as the annuity prospectively in effect relative to the retirant at  
5 the time the new option is elected.

6           (c) Upon divorce, a retirant may elect to change any of the  
7 retirement benefit options offered by the provisions of this  
8 section to a life annuity in an amount adjusted on a fair basis to  
9 be of equal actuarial value of the annuity prospectively in effect  
10 relative to the retirant at the time the option is elected:  
11 *Provided*, That the retirant furnishes to the board satisfactory  
12 proof of entry of a final decree of divorce or annulment:  
13 *Provided, however*, That the retirant certifies under penalty of  
14 perjury that no qualified domestic relations order, final decree of  
15 divorce, or other court order that would restrict the election is  
16 in effect: *Provided further*, That no cause of action against the  
17 board may then arise or be maintained on the basis of having  
18 permitted the retirant to name a new spouse as annuitant for any of  
19 the survivorship retirement benefit options.

20           (d) Upon remarriage, a retirant may name the new spouse as an  
21 annuitant for any of the retirement benefit options offered by the  
22 provisions of this section: *Provided*, That the retirant shall  
23 furnish to the board proof of marriage: *Provided, however*, That  
24 the retirant certifies under penalty of perjury that no qualified  
25 domestic relations order, final decree of divorce or other court  
26 order that would restrict the designation is in effect: *Provided*

1 *further*, That no cause of action against the board may then arise  
2 or be maintained on the basis of having permitted the retirant to  
3 name a new spouse as annuitant for any of the survivorship  
4 retirement benefit options. The value of the new survivorship  
5 annuity shall be the actuarial equivalent of the retirant's benefit  
6 prospectively in effect at the time the new annuity is elected.

7 **§5-10-25. Disability retirement.**

8 (a) Upon the application of a member of the retirement system,  
9 or his or her present or past employing authority, any member who  
10 is in the employ of a participating public employer or was in the  
11 employ of a participating public employer on a date which is twelve  
12 months or less from the date upon which the member became  
13 incapacitated, who has ten or more years of credited service of  
14 which three years is contributing service, and who becomes totally  
15 and permanently incapacitated for employment, by reason of a  
16 personal injury or disease, may be retired by the board if after a  
17 medical examination of the member made by or under the direction of  
18 a medical committee consisting of two physicians, one of whom shall  
19 be named by the board, and one by the member, the medical committee  
20 reports, in writing, to the board that the member is physically or  
21 mentally totally incapacitated for employment, that the incapacity  
22 will probably be permanent, and that the member should be retired.  
23 In the event the two above-mentioned examining physicians do not  
24 agree in their findings, then the board may, at its discretion,  
25 appoint a third physician to examine the member and, based upon the  
26 third physician's report in writing, the board may retire the

1 member. A member who was not in the employ of a participating  
2 public employer on a date which is twelve months or less from the  
3 date upon which the member became incapacitated may receive  
4 disability retirement under the provisions of this subsection if,  
5 in the opinion of the medical committee, the incapacity occurred  
6 during the time that the member was employed by a participating  
7 public employer and the incapacity otherwise qualifies the member  
8 for retirement under this subsection.

9 (b) A member with less than ten years of credited service  
10 shall have the service requirement provided in subsection (a) above  
11 (including the requirement of three years contributing service)  
12 waived in the event: (1) The board finds his or her total and  
13 permanent disability to be the natural and proximate result of a  
14 personal injury or disease arising out of and in the course of his  
15 or her actual performance of duty in the employ of a participating  
16 public employer; and (2) he or she is receiving or has received  
17 workers' compensation benefits on account of the physical or  
18 mental disability.

19 (c) For any member retiring and any member retired, as of  
20 March 1, 1970, he or she shall receive a straight life annuity  
21 computed according to section twenty-two hereof and he or she shall  
22 have the right to elect an option provided in section twenty-four  
23 hereof: *Provided*, That his or her straight life annuity payable to  
24 his or her attainment of age sixty-five years may not be less than  
25 fifty percent of his or her final average salary; and his or her  
26 straight life annuity payable from and after his or her attainment

1 of age sixty-five years may not be less than twenty percent of his  
2 or her final average salary: *Provided, however,* That his or her  
3 annuity shall be subject to section twenty-six hereof.

4 **§5-10-44. Correction of errors; underpayments; overpayments.**

5 (a) General rule: If any change or employer error in the  
6 records of any participating public employer or the retirement  
7 system results in any member, retirant or beneficiary receiving  
8 from the system more or less than he or she would have been  
9 entitled to receive had the records been correct, the board shall  
10 correct the error. If correction of the error occurs after the  
11 effective retirement date of a retirant, and as far as is  
12 practicable, the board shall adjust the payment of the benefit in  
13 a manner that the actuarial equivalent of the benefit to which the  
14 retirant was correctly entitled shall be paid.

15 (b) Underpayments: Any error resulting in an underpayment to  
16 the retirement system of required contributions may be corrected by  
17 the member or retirant remitting the required employee contribution  
18 and the participating public employer remitting the required  
19 employer contribution. Interest shall accumulate in accordance with  
20 the Legislative Rule 162 CSR 7 concerning retirement board refund,  
21 reinstatement and loan interest factors and any accumulating  
22 interest owed on the employee and employer contributions resulting  
23 from an employer error shall be the responsibility of the  
24 participating public employer. The participating public employer  
25 may remit total payment and the employee reimburse the  
26 participating public employer through payroll deduction over a

1 period equivalent to the time period during which the employer  
2 error occurred. If the correction of an error involving an  
3 underpayment of required contributions to the retirement system  
4 will result in increased payments to a retirant, including  
5 increases to payments already made, any adjustments shall be made  
6 only after the board receives full payment of all required employee  
7 and employer contributions, including interest.

8 (c) Overpayments: (1) When mistaken or excess employer  
9 contributions, including any overpayments, have been made to the  
10 retirement system by a participating public employer, due to error  
11 or other reason, the board shall credit the participating public  
12 employer with an amount equal to the erroneous contributions, to be  
13 offset against the participating public employer's future liability  
14 for employer contributions to the system. Earnings or interest  
15 shall not be credited to the employer.

16 (2) When mistaken or excess employee contributions, including  
17 any overpayments, have been made to the retirement system, due to  
18 error or other reason, the board shall have sole authority for  
19 determining the means of return, offset or credit to or for the  
20 benefit of the employee of the amounts, and may use any means  
21 authorized or permitted under the provisions of Section 401(a), *et*  
22 *seq.* of the Internal Revenue Code and guidance issued thereunder  
23 applicable to governmental plans. Alternatively, in its full and  
24 complete discretion, the board may require the participating public  
25 employer to pay the employee the amounts as wages, with the board  
26 crediting the participating public employer with a corresponding

1 amount to offset against its future contributions to the plan:  
2 *Provided*, That the wages paid to the employee shall not be  
3 considered compensation for any purposes under this article.  
4 Earnings or interest shall not be returned, offset, or credited  
5 under any of the means utilized by the board for returning mistaken  
6 or excess employee contributions, including any overpayments, to an  
7 employee.

8 **§5-10-48. Reemployment after retirement; options for holder of**  
9 **elected public office.**

10 (a) The Legislature finds that a compelling state interest  
11 exists in maintaining an actuarially sound retirement system and  
12 that this interest necessitates that certain limitations be placed  
13 upon an individual's ability to retire from the system and to then  
14 later return to state employment as an employee with a  
15 participating public employer while contemporaneously drawing an  
16 annuity from the system. The Legislature hereby further finds and  
17 declares that the interests of the public are served when persons  
18 having retired from public employment are permitted, within certain  
19 limitations, to render post-retirement employment in positions of  
20 public service, either in elected or appointed capacities. The  
21 Legislature further finds and declares that it has the need for  
22 qualified employees and that in many cases an employee of the  
23 Legislature will retire and be available to return to work for the  
24 Legislature as a per diem employee. The Legislature further finds  
25 and declares that in many instances these employees have  
26 particularly valuable expertise which the Legislature cannot find

1 elsewhere. The Legislature further finds and declares that  
2 reemploying these persons on a limited per diem basis after they  
3 have retired is not only in the best interests of this state, but  
4 has no adverse effect whatsoever upon the actuarial soundness of  
5 this particular retirement system.

6 (b) For the purposes of this section: (1) "Regularly employed  
7 on a full-time basis" means employment of an individual by a  
8 participating public employer, in a position other than as an  
9 elected or appointed public official, which normally requires  
10 twelve months per year service and at least one thousand forty  
11 hours of service per year in that position; (2) "temporary  
12 full-time employment or temporary part-time employment" means  
13 employment of an individual on a temporary or provisional basis by  
14 a participating public employer, other than as an elected or  
15 appointed public official, in a position which does not otherwise  
16 render the individual as regularly employed; (3) "former employee  
17 of the Legislature" means any person who has retired from  
18 employment with the Legislature and who has at least ten years'  
19 contributing service with the Legislature; and (4) "reemployed by  
20 the Legislature" means a former employee of the Legislature who has  
21 been reemployed on a per diem basis not to exceed one hundred  
22 seventy-five days per calendar year.

23 (c) In the event a retirant becomes regularly employed on a  
24 full-time basis by a participating public employer, payment of his  
25 or her annuity shall be suspended during the period of his or her  
26 reemployment and he or she shall become a contributing member to

1 the retirement system. If his or her reemployment is for a period  
2 of one year or longer, his or her annuity shall be recalculated and  
3 he or she shall be granted an increased annuity due to the  
4 additional employment, the annuity to be computed according to  
5 section twenty-two of this article. A retirant may accept  
6 temporary full-time or temporary part-time employment from a  
7 participating employer without suspending his or her retirement  
8 annuity so long as he or she does not receive annual compensation  
9 in excess of \$15,000: *Provided*, That a retirant may be employed by  
10 the Legislature on a per diem basis without suspension of the  
11 retirement annuity if the retirant's annual compensation from the  
12 Legislature does not exceed \$20,000.

13 (d) In the event a member retires and is then subsequently  
14 elected to a public office or is subsequently appointed to hold an  
15 elected public office, or is a former employee of the Legislature  
16 who has been reemployed by the Legislature, he or she has the  
17 option, notwithstanding subsection (c) of this section, to either:

18 (1) Continue to receive payment of his or her annuity while  
19 holding public office or during any reemployment of a former  
20 employee of the Legislature on a per diem basis, in addition to the  
21 salary he or she may be entitled to as an office holder or as a per  
22 diem reemployed former employee of the Legislature; or

23 (2) Suspend the payment of his or her annuity and become a  
24 contributing member of the retirement system as provided in  
25 subsection (c) of this section. Notwithstanding the provisions of  
26 this subsection, a member who is participating in the system as an

1 elected public official may not retire from his or her elected  
2 position and commence to receive an annuity from the system and  
3 then be elected or reappointed to the same position unless and  
4 until a continuous twelve-month period has passed since his or her  
5 retirement from the position: *Provided*, That a former employee of  
6 the Legislature may not be reemployed by the Legislature on a per  
7 diem basis until at least sixty days after the employee has  
8 retired: *Provided, however*, That the limitation on compensation  
9 provided by subsection (c) of this section does not apply to the  
10 reemployed former employee: *Provided further*, That in no event may  
11 reemployment by the Legislature of a per diem employee exceed one  
12 hundred seventy-five days per calendar year.

13 (e) A member who is participating in the system simultaneously  
14 as both a regular, full-time employee of a participating public  
15 employer and as an elected or appointed member of the legislative  
16 body of the state or any political subdivision may, upon meeting  
17 the age and service requirements of this article, elect to retire  
18 from his or her regular full-time state employment and may commence  
19 to receive an annuity from the system without terminating his or  
20 her position as a member of the legislative body of the state or  
21 political subdivision: *Provided*, That the retired member shall  
22 not, during the term of his or her retirement and continued service  
23 as a member of the legislative body of a political subdivision, be  
24 eligible to continue his or her participation as a contributing  
25 member of the system and shall not continue to accrue any  
26 additional service credit or benefits in the system related to the

1 continued service.

2       (f) Notwithstanding the provisions of section twenty-seven-b  
3 of this article, any publicly elected member of the legislative  
4 body of any political subdivision or of the State Legislature, the  
5 Clerk of the House of Delegates and the Clerk of the Senate may  
6 elect to commence receiving in-service retirement distributions  
7 from this system upon attaining the age of seventy and one-half  
8 years: *Provided*, That the member is eligible to retire under the  
9 provisions of section twenty or twenty-one of this article:  
10 *Provided, however*, That the member elects to stop actively  
11 contributing to the system while receiving the in-service  
12 distributions.

13       (g) The provisions of section twenty-two-h of this article are  
14 not applicable to the amendments made to this section during the  
15 2006 regular session.