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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2011

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**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 2939**

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

—●—  
Passed March 8, 2011

In Effect Ninety Days From Passage

HB 2939

FILED

2011 MAR 21 PM 4:25

**E N R O L L E D**

OFFICE OF THE CLERK  
SECRETARY OF STATE

COMMITTEE SUBSTITUTE

FOR

**H. B. 2939**

(BY DELEGATES PETHTEL, GIVENS, ENNIS, GUTHRIE,  
D. POLING, DUKE AND CANTERBURY)

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

AN ACT to amend and reenact §5-10-2, §5-10-18, §5-10-21, §5-10-24, §5-10-25, §5-10-44 and §5-10-48 of the Code of West Virginia, 1931, as amended, all relating to the Public Employees Retirement System; clarifying the definition of compensation for purposes of calculating required contributions to the system; changing definition of final average salary; clarifying when membership in the system terminates and how membership may be reinstated; providing that individuals first hired after July 1, 2011 must have at least five years of contributory service to retire under the “rule of eighty”; requiring retirants changing annuity options to certify that no final divorce decree or other court order prohibits the

same; clarifying that correction of errors provision applies to both employer errors and errors of the system's administrative body; providing that the correction of an error with respect to a retirant may be prospective only; and providing for reimbursement of mistaken contributions that ensures the plan's continued qualified status.

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

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

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

**§5-10-2. Definitions.**

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

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

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

12 (3) "Actuarial equivalent" means a benefit of equal value  
13 computed upon the basis of a mortality table and regular  
14 interest adopted by the board of trustees from time to time:  
15 *Provided*, That when used in the context of compliance with

16 the federal maximum benefit requirements of Section 415 of  
17 the Internal Revenue Code, "actuarial equivalent" shall be  
18 computed using the mortality tables and interest rates  
19 required to comply with those requirements;

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

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

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

32 (7) "Board of Trustees" or "board" means the Board of  
33 Trustees of the West Virginia Consolidated Public  
34 Retirement System;

35 (8) "Compensation" means the remuneration paid a  
36 member by a participating public employer for personal  
37 services rendered by the member to the participating public  
38 employer. In the event a member's remuneration is not all  
39 paid in money, his or her participating public employer shall  
40 fix the value of the portion of the remuneration which is not  
41 paid in money. Any lump sum or other payments paid to  
42 members that do not constitute regular salary or wage  
43 payments are not considered compensation for the purpose of  
44 withholding contributions for the system or for the purpose  
45 of calculating a member's final average salary. These  
46 payments include, but are not limited to, attendance or

47 performance bonuses, one-time flat fee or lump sum  
48 payments, payments paid as a result of excess budget, or  
49 employee recognition payments. The board shall have final  
50 power to decide whether the payments shall be considered  
51 compensation for purposes of this article;

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

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

61 (11) "Employee" means any person who serves regularly  
62 as an officer or employee, full time, on a salary basis, whose  
63 tenure is not restricted as to temporary or provisional  
64 appointment, in the service of, and whose compensation is  
65 payable, in whole or in part, by any political subdivision, or  
66 an officer or employee whose compensation is calculated on  
67 a daily basis and paid monthly or on completion of  
68 assignment, including technicians and other personnel  
69 employed by the West Virginia National Guard whose  
70 compensation, in whole or in part, is paid by the federal  
71 government: *Provided*, That an employee of the Legislature  
72 whose term of employment is otherwise classified as  
73 temporary and who is employed to perform services required  
74 by the Legislature for its regular sessions or during the  
75 interim between regular sessions and who has been or is  
76 employed during regular sessions or during the interim  
77 between regular sessions in seven or more consecutive  
78 calendar years, as certified by the clerk of the house in which  
79 the employee served, is an employee, any provision to the

80 contrary in this article notwithstanding, and is entitled to  
81 credited service in accordance with provisions of section  
82 fourteen, article ten, chapter five of this code and: *Provided,*  
83 *however,* That members of the legislative body of any  
84 political subdivision and judges of the State Court of Claims  
85 are employees receiving one year of service credit for each  
86 one-year term served and pro rated service credit for any  
87 partial term served, anything contained in this article to the  
88 contrary notwithstanding. In any case of doubt as to who is  
89 an employee within the meaning of this article, the Board of  
90 Trustees shall decide the question;

91 (12) “Employer error” means an omission,  
92 misrepresentation, or violation of relevant provisions of the  
93 West Virginia Code or of the West Virginia Code of State  
94 Regulations or the relevant provisions of both the West  
95 Virginia Code and of the West Virginia Code of State  
96 Regulations by the participating public employer that has  
97 resulted in an underpayment or overpayment of contributions  
98 required. A deliberate act contrary to the provisions of this  
99 section by a participating public employer does not constitute  
100 employer error.

101 (13) “Final average salary” means either of the following:  
102 *Provided,* That salaries for determining benefits during any  
103 determination period may not exceed the maximum  
104 compensation allowed as adjusted for cost of living in  
105 accordance with section seven, article ten-d, chapter five of  
106 this code and Section 401(a)(17) of the Internal Revenue  
107 Code: *Provided, however,* That the provisions of section  
108 twenty-two-h of this article are not applicable to the  
109 amendments made to this subdivision during the 2011 regular  
110 session of the Legislature.

111 (A) The average of the highest annual compensation  
112 received by a member (including a member of the Legislature

113 who participates in the retirement system in the year 1971 or  
114 thereafter), during any period of three consecutive years of  
115 credited service contained within the member's fifteen years  
116 of credited service immediately preceding the date his or her  
117 employment with a participating public employer last  
118 terminated; or

119 (B) If the member has less than five years of credited  
120 service, the average of the annual rate of compensation  
121 received by the member during his or her total years of  
122 credited service; and in determining the annual  
123 compensation, under either paragraph (A) or (B) of this  
124 subdivision, of a member of the Legislature who participates  
125 in the retirement system as a member of the Legislature in the  
126 year 1971, or in any year thereafter, his or her actual  
127 legislative compensation (the total of all compensation paid  
128 under sections two, three, four and five, article two-a, chapter  
129 four of this code), in the year 1971, or in any year thereafter,  
130 plus any other compensation he or she receives in any year  
131 from any other participating public employer including the  
132 State of West Virginia, without any multiple in excess of one  
133 times his or her actual legislative compensation and other  
134 compensation, shall be used: *Provided*, That "final average  
135 salary" for any former member of the Legislature or for any  
136 member of the Legislature in the year 1971, who, in either  
137 event, was a member of the Legislature on November 30,  
138 1968, or November 30, 1969, or November 30, 1970, or on  
139 November 30 in any one or more of those three years and  
140 who participated in the retirement system as a member of the  
141 Legislature in any one or more of those years means: (I)  
142 Either (notwithstanding the provisions of this subdivision  
143 preceding this proviso) \$1,500 multiplied by eight, plus the  
144 highest other compensation the former member or member  
145 received in any one of the three years from any other  
146 participating public employer including the State of West  
147 Virginia; or (ii) "final average salary" determined in

148 accordance with paragraph (A) or (B) of this subdivision,  
149 whichever computation produces the higher final average  
150 salary (and in determining the annual compensation under  
151 subparagraph (ii) of this proviso, the legislative compensation  
152 of the former member shall be computed on the basis of  
153 \$1,500 multiplied by eight, and the legislative compensation  
154 of the member shall be computed on the basis set forth in the  
155 provisions of this subdivision immediately preceding this  
156 proviso or on the basis of \$1,500 multiplied by eight,  
157 whichever computation as to the member produces the higher  
158 annual compensation);

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

162 (15) "Limited credited service" means service by  
163 employees of the West Virginia Educational Broadcasting  
164 Authority, in the employment of West Virginia University,  
165 during a period when the employee made contributions to  
166 another retirement system, as required by West Virginia  
167 University, and did not make contributions to the Public  
168 Employees Retirement System: *Provided*, That while limited  
169 credited service can be used for the formula set forth in  
170 subsection (e), section twenty-one of this article, it may not  
171 be used to increase benefits calculated under section twenty-  
172 two of this article;

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

176 (17) "Participating public employer" means the State of  
177 West Virginia, any board, commission, department,  
178 institution or spending unit, and includes any agency created  
179 by rule of the Supreme Court of Appeals having full-time

180 employees, which for the purposes of this article is  
181 considered a department of state government; and any  
182 political subdivision in the state which has elected to cover its  
183 employees, as defined in this article, under the West Virginia  
184 Public Employees Retirement System;

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

187 (19) "Political subdivision" means the State of West  
188 Virginia, a county, city or town in the state; a school  
189 corporation or corporate unit; any separate corporation or  
190 instrumentality established by one or more counties, cities or  
191 towns, as permitted by law; any corporation or  
192 instrumentality supported in most part by counties, cities or  
193 towns; and any public corporation charged by law with the  
194 performance of a governmental function and whose  
195 jurisdiction is coextensive with one or more counties, cities  
196 or towns: *Provided*, That any mental health agency  
197 participating in the Public Employees Retirement System  
198 before July 1, 1997, is considered a political subdivision  
199 solely for the purpose of permitting those employees who are  
200 members of the Public Employees Retirement System to  
201 remain members and continue to participate in the retirement  
202 system at their option after July 1, 1997: *Provided, however*,  
203 That the Regional Community Policing Institute which  
204 participated in the Public Employees Retirement System  
205 before July 1, 2000, is considered a political subdivision  
206 solely for the purpose of permitting those employees who are  
207 members of the Public Employees Retirement System to  
208 remain members and continue to participate in the Public  
209 Employees Retirement System after July 1, 2000;

210 (20) "Prior service" means service rendered prior to July  
211 1, 1961, to the extent credited a member as provided in this  
212 article;

213 (21) “Regular interest” means the rate or rates of interest  
214 per annum, compounded annually, as the Board of Trustees  
215 adopts from time to time;

216 (22) “Required beginning date” means April 1 of the  
217 calendar year following the later of: (A) The calendar year in  
218 which the member attains age seventy and one-half years of  
219 age; or (B) the calendar year in which a member who has  
220 attained the age seventy and one-half years of age and who  
221 ceases providing service covered under this system to a  
222 participating employer;

223 (23) “Retirant” means any member who commences an  
224 annuity payable by the retirement system;

225 (24) “Retirement” means a member’s withdrawal from  
226 the employ of a participating public employer and the  
227 commencement of an annuity by the retirement system;

228 (25) “Retirement system” or “system” means the West  
229 Virginia Public Employees Retirement System created and  
230 established by this article;

231 (26) “Retroactive service” means: (1) Service between  
232 July 1, 1961, and the date an employer decides to become a  
233 participating member of the Public Employees Retirement  
234 System; (2) service prior to July 1, 1961, for which the  
235 employee is not entitled to prior service at no cost in  
236 accordance with 162 CSR 5.13; and (3) service of any  
237 member of a legislative body or employees of the State  
238 Legislature whose term of employment is otherwise  
239 classified as temporary for which the employee is eligible,  
240 but for which the employee did not elect to participate at that  
241 time;

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

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

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

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

24 (b) The Prestera Center for Mental Health Services,  
25 Valley Comprehensive Mental Health Center, Westbrook  
26 Health Services and Eastern Panhandle Mental Health  
27 Center, and their successors in interest, shall provide for their

28 employees a pension plan in lieu of the Public Employees  
29 Retirement System during the existence of the named mental  
30 health centers and their successors in interest.

31 (c) The administrative bodies of the Prestera Center for  
32 Mental Health Services, Valley Comprehensive Mental  
33 Health Center, Westbrook Health Services and Eastern  
34 Panhandle Mental Health Center shall, on or before May 1,  
35 1997, give written notice to each employee who is a member  
36 of the Public Employees Retirement System of the option to  
37 withdraw from or remain in the system. The notice shall  
38 include a copy of this section and a statement explaining the  
39 member's options regarding membership. The notice shall  
40 include a statement in plain language giving a full  
41 explanation and actuarial projection figures in support of the  
42 explanation regarding the individual member's current  
43 account balance, vested and nonvested, and his or her  
44 projected return upon remaining in the Public Employees  
45 Retirement System until retirement, disability or death, in  
46 comparison with the projected return upon withdrawing from  
47 the Public Employees Retirement System and joining a  
48 private pension plan provided by the Community Mental  
49 Health Center and remaining therein until retirement,  
50 disability or death. The administrative bodies shall keep in  
51 their respective records a permanent record of each  
52 employee's signature confirming receipt of the notice.

53 (d) Effective the March 1, 2003, and ending December  
54 31, 2004, any member may purchase credited service  
55 previously forfeited by him or her and the credited service  
56 shall be restored to his or her credit: *Provided*, That he or she  
57 returns to the members' deposit fund the amount, if any, he  
58 or she withdrew from the fund, together with interest on the  
59 withdrawn amount from the date of withdrawal to the date of  
60 repayment at a rate to be determined by the board. The  
61 repayment under this section may be made by lump sum or

62 repaid over a period of time not to exceed sixty months.  
63 Where the member elects to repay the required amount other  
64 than by lump sum, the member is required to pay interest at  
65 the rate determined by the board until all sums are fully  
66 repaid.

67 (e) Effective July 1, 2005, and ending December 31, 2006,  
68 any emergency services personnel may purchase service  
69 credit for the time period beginning January 1, 1990, and  
70 ending December 31, 1995: *Provided*, That person was  
71 employed as an emergency service person in this state for  
72 that time period: *Provided, however*, That any person  
73 obtaining service credit under this subsection is required to  
74 pay the employee's share and the employer's share upon his  
75 or her actual salary for the years in question plus interest at  
76 the assumed actuarial rate of return for the plan year being  
77 repurchased.

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

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

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

1 (a) Any member who has five or more years of credited  
2 service in force, of which at least three years are contributing  
3 service, and who leaves the employ of a participating public  
4 employer prior to his or her attaining age sixty years for any  
5 reason except his or her disability retirement or death, is  
6 entitled to an annuity computed according to section twenty-

7 two of this article, as that section was in force as of the date  
8 of his or her separation from the employ of a participating  
9 public employer: *Provided*, That he or she does not withdraw  
10 his or her accumulated contributions from the members'  
11 deposit fund: *Provided, however*, That on and after July 1,  
12 2002, any person who becomes a new member of this  
13 retirement system shall, in qualifying for retirement under  
14 this section, have five or more years of service, all of which  
15 years shall be actual, contributory ones. His or her annuity  
16 shall begin the first day of the calendar month next following  
17 the month in which his or her application for same is filed  
18 with the Board of Trustees on or after his or her attaining age  
19 sixty-two years.

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

30 (c) Any member who qualifies for deferred retirement  
31 benefits in accordance with subsection (a) of this section and  
32 has twenty or more years of credited service in force may  
33 elect to receive the actuarial equivalent of his or her deferred  
34 retirement annuity as a reduced annuity commencing on the  
35 first day of any calendar month between his or her fifty-fifth  
36 birthday and his or her attainment of age sixty-two years and  
37 payable throughout his or her life.

38 (d) Notwithstanding any of the other provisions of this  
39 section or of this article, except sections twenty-seven-a and

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

54 (e) Notwithstanding any of the other provisions of this  
55 section or of this article, except sections twenty-seven-a and  
56 twenty-seven-b of this article, any member of the retirement  
57 system may retire with full pension rights, without reduction  
58 of benefits, if he or she is at least fifty-five years of age and  
59 the sum of his or her age plus years of contributing service  
60 and limited credited service, as defined in section two of this  
61 article, equals or exceeds eighty; *Provided*, That on and after  
62 July 1, 2011, any person who becomes a new member of this  
63 retirement system shall, in qualifying for retirement under  
64 this subsection, have five or more years of service, all of  
65 which years shall be actual, contributory ones. The member's  
66 annuity shall begin the first day of the calendar month  
67 immediately following the calendar month in which his or  
68 her application for the annuity is filed with the board.

#### §5-10-24. Annuity options.

1 (a) Prior to the effective date of his or her retirement, but  
2 not thereafter except upon the death of a spouse, a member  
3 may elect to receive his or her annuity as a straight life

4 annuity payable throughout his or her life, or he or she may  
5 elect to receive the actuarial equivalent, at the time, of his or  
6 her straight life annuity in a reduced annuity payable  
7 throughout his or her life, and nominate a beneficiary, in  
8 accordance with option A or B set forth below:

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

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

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

28       (c) Upon divorce, a retirant may elect to change any of  
29 the retirement benefit options offered by the provisions of  
30 this section to a life annuity in an amount adjusted on a fair  
31 basis to be of equal actuarial value of the annuity  
32 prospectively in effect relative to the retirant at the time the  
33 option is elected: *Provided*, That the retirant furnishes to the  
34 board satisfactory proof of entry of a final decree of divorce  
35 or annulment: *Provided, however*, That the retirant certifies

36 under penalty of perjury that no qualified domestic relations  
37 order, final decree of divorce, or other court order that would  
38 restrict the election is in effect: *Provided further*, That no  
39 cause of action against the board may then arise or be  
40 maintained on the basis of having permitted the retirant to  
41 name a new spouse as annuitant for any of the survivorship  
42 retirement benefit options.

43 (d) Upon remarriage, a retirant may name the new spouse  
44 as an annuitant for any of the retirement benefit options  
45 offered by the provisions of this section: *Provided*, That the  
46 retirant shall furnish to the board proof of marriage:  
47 *Provided, however*, That the retirant certifies under penalty  
48 of perjury that no qualified domestic relations order, final  
49 decree of divorce or other court order that would restrict the  
50 designation is in effect: *Provided further*, That no cause of  
51 action against the board may then arise or be maintained on  
52 the basis of having permitted the retirant to name a new  
53 spouse as annuitant for any of the survivorship retirement  
54 benefit options. The value of the new survivorship annuity  
55 shall be the actuarial equivalent of the retirant's benefit  
56 prospectively in effect at the time the new annuity is elected.

**§5-10-25. Disability retirement.**

1 (a) Upon the application of a member of the retirement  
2 system, or his or her present or past employing authority, any  
3 member who is in the employ of a participating public  
4 employer or was in the employ of a participating public  
5 employer on a date which is twelve months or less from the  
6 date upon which the member became incapacitated, who has  
7 ten or more years of credited service of which three years is  
8 contributing service, and who becomes totally and  
9 permanently incapacitated for employment, by reason of a  
10 personal injury or disease, may be retired by the board if after  
11 a medical examination of the member made by or under the

12 direction of a medical committee consisting of two  
13 physicians, one of whom shall be named by the board, and  
14 one by the member, the medical committee reports, in  
15 writing, to the board that the member is physically or  
16 mentally totally incapacitated for employment, that the  
17 incapacity will probably be permanent, and that the member  
18 should be retired. In the event the two above-mentioned  
19 examining physicians do not agree in their findings, then the  
20 board may, at its discretion, appoint a third physician to  
21 examine the member and, based upon the third physician's  
22 report in writing, the board may retire the member. A  
23 member who was not in the employ of a participating public  
24 employer on a date which is twelve months or less from the  
25 date upon which the member became incapacitated may  
26 receive disability retirement under the provisions of this  
27 subsection if, in the opinion of the medical committee, the  
28 incapacity occurred during the time that the member was  
29 employed by a participating public employer and the  
30 incapacity otherwise qualifies the member for retirement  
31 under this subsection.

32 (b) A member with less than ten years of credited service  
33 shall have the service requirement provided in subsection (a)  
34 above (including the requirement of three years contributing  
35 service) waived in the event: (1) The board finds his or her  
36 total and permanent disability to be the natural and proximate  
37 result of a personal injury or disease arising out of and in the  
38 course of his or her actual performance of duty in the employ  
39 of a participating public employer; and (2) he or she is  
40 receiving or has received workers' compensation benefits on  
41 account of the physical or mental disability.

42 (c) For any member retiring and any member retired, as  
43 of March 1, 1970, he or she shall receive a straight life  
44 annuity computed according to section twenty-two hereof  
45 and he or she shall have the right to elect an option provided

46 in section twenty-four hereof: *Provided*, That his or her  
47 straight life annuity payable to his or her attainment of age  
48 sixty-five years may not be less than fifty percent of his or  
49 her final average salary; and his or her straight life annuity  
50 payable from and after his or her attainment of age sixty-five  
51 years may not be less than twenty percent of his or her final  
52 average salary: *Provided, however*, That his or her annuity  
53 shall be subject to section twenty-six hereof.

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

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

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

25 to the time period during which the employer error occurred.  
26 If the correction of an error involving an underpayment of  
27 required contributions to the retirement system will result in  
28 increased payments to a retirant, including increases to  
29 payments already made, any adjustments shall be made only  
30 after the board receives full payment of all required employee  
31 and employer contributions, including interest.

32 (c) Overpayments: (1) When mistaken or excess employer  
33 contributions, including any overpayments, have been made to the  
34 retirement system by a participating public employer, due to error  
35 or other reason, the board shall credit the participating public  
36 employer with an amount equal to the erroneous contributions, to  
37 be offset against the participating public employer's future liability  
38 for employer contributions to the system. Earnings or interest shall  
39 not be credited to the employer.

40 (2) When mistaken or excess employee contributions,  
41 including any overpayments, have been made to the  
42 retirement system, due to error or other reason, the board  
43 shall have sole authority for determining the means of return,  
44 offset or credit to or for the benefit of the employee of the  
45 amounts, and may use any means authorized or permitted  
46 under the provisions of Section 401(a), *et seq.* of the Internal  
47 Revenue Code and guidance issued thereunder applicable to  
48 governmental plans. Alternatively, in its full and complete  
49 discretion, the board may require the participating public  
50 employer to pay the employee the amounts as wages, with  
51 the board crediting the participating public employer with a  
52 corresponding amount to offset against its future  
53 contributions to the plan: *Provided*, That the wages paid to  
54 the employee shall not be considered compensation for any  
55 purposes under this article. Earnings or interest shall not be  
56 returned, offset, or credited under any of the means utilized  
57 by the board for returning mistaken or excess employee  
58 contributions, including any overpayments, to an employee.

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

1 (a) The Legislature finds that a compelling state interest  
2 exists in maintaining an actuarially sound retirement system  
3 and that this interest necessitates that certain limitations be  
4 placed upon an individual's ability to retire from the system  
5 and to then later return to state employment as an employee  
6 with a participating public employer while  
7 contemporaneously drawing an annuity from the system. The  
8 Legislature hereby further finds and declares that the interests  
9 of the public are served when persons having retired from  
10 public employment are permitted, within certain limitations,  
11 to render post-retirement employment in positions of public  
12 service, either in elected or appointed capacities. The  
13 Legislature further finds and declares that it has the need for  
14 qualified employees and that in many cases an employee of  
15 the Legislature will retire and be available to return to work  
16 for the Legislature as a per diem employee. The Legislature  
17 further finds and declares that in many instances these  
18 employees have particularly valuable expertise which the  
19 Legislature cannot find elsewhere. The Legislature further  
20 finds and declares that reemploying these persons on a  
21 limited per diem basis after they have retired is not only in  
22 the best interests of this state, but has no adverse effect  
23 whatsoever upon the actuarial soundness of this particular  
24 retirement system.

25 (b) For the purposes of this section: (1) "Regularly  
26 employed on a full-time basis" means employment of an  
27 individual by a participating public employer, in a position  
28 other than as an elected or appointed public official, which  
29 normally requires twelve months per year service and at least  
30 one thousand forty hours of service per year in that position;  
31 (2) "temporary full-time employment or temporary part-time  
32 employment" means employment of an individual on a

33 temporary or provisional basis by a participating public  
34 employer, other than as an elected or appointed public  
35 official, in a position which does not otherwise render the  
36 individual as regularly employed; (3) “former employee of  
37 the Legislature” means any person who has retired from  
38 employment with the Legislature and who has at least ten  
39 years’ contributing service with the Legislature; and (4)  
40 “reemployed by the Legislature” means a former employee  
41 of the Legislature who has been reemployed on a per diem  
42 basis not to exceed one hundred seventy-five days per  
43 calendar year.

44 (c) In the event a retirant becomes regularly employed on  
45 a full-time basis by a participating public employer, payment  
46 of his or her annuity shall be suspended during the period of  
47 his or her reemployment and he or she shall become a  
48 contributing member to the retirement system. If his or her  
49 reemployment is for a period of one year or longer, his or her  
50 annuity shall be recalculated and he or she shall be granted an  
51 increased annuity due to the additional employment, the  
52 annuity to be computed according to section twenty-two of  
53 this article. A retirant may accept temporary full-time or  
54 temporary part-time employment from a participating  
55 employer without suspending his or her retirement annuity so  
56 long as he or she does not receive annual compensation in  
57 excess of \$15,000: *Provided*, That a retirant may be  
58 employed by the Legislature on a per diem basis without  
59 suspension of the retirement annuity if the retirant’s annual  
60 compensation from the Legislature does not exceed \$20,000.

61 (d) In the event a member retires and is then subsequently  
62 elected to a public office or is subsequently appointed to hold  
63 an elected public office, or is a former employee of the  
64 Legislature who has been reemployed by the Legislature, he  
65 or she has the option, notwithstanding subsection (c) of this  
66 section, to either:

67 (1) Continue to receive payment of his or her annuity  
68 while holding public office or during any reemployment of a  
69 former employee of the Legislature on a per diem basis, in  
70 addition to the salary he or she may be entitled to as an office  
71 holder or as a per diem reemployed former employee of the  
72 Legislature; or

73 (2) Suspend the payment of his or her annuity and  
74 become a contributing member of the retirement system as  
75 provided in subsection (c) of this section. Notwithstanding  
76 the provisions of this subsection, a member who is  
77 participating in the system as an elected public official may  
78 not retire from his or her elected position and commence to  
79 receive an annuity from the system and then be elected or  
80 reappointed to the same position unless and until a  
81 continuous twelve-month period has passed since his or her  
82 retirement from the position: *Provided*, That a former  
83 employee of the Legislature may not be reemployed by the  
84 Legislature on a per diem basis until at least sixty days after  
85 the employee has retired: *Provided, however*, That the  
86 limitation on compensation provided by subsection (c) of this  
87 section does not apply to the reemployed former employee:  
88 *Provided further*, That in no event may reemployment by the  
89 Legislature of a per diem employee exceed one hundred  
90 seventy-five days per calendar year.

91 (e) A member who is participating in the system  
92 simultaneously as both a regular, full-time employee of a  
93 participating public employer and as an elected or appointed  
94 member of the legislative body of the state or any political  
95 subdivision may, upon meeting the age and service  
96 requirements of this article, elect to retire from his or her  
97 regular full-time state employment and may commence to  
98 receive an annuity from the system without terminating his or  
99 her position as a member of the legislative body of the state  
100 or political subdivision: *Provided*, That the retired member

101 shall not, during the term of his or her retirement and  
102 continued service as a member of the legislative body of a  
103 political subdivision, be eligible to continue his or her  
104 participation as a contributing member of the system and  
105 shall not continue to accrue any additional service credit or  
106 benefits in the system related to the continued service.

107 (f) Notwithstanding the provisions of section  
108 twenty-seven-b of this article, any publicly elected member  
109 of the legislative body of any political subdivision or of the  
110 State Legislature, the Clerk of the House of Delegates and the  
111 Clerk of the Senate may elect to commence receiving  
112 in-service retirement distributions from this system upon  
113 attaining the age of seventy and one-half years: *Provided,*  
114 That the member is eligible to retire under the provisions of  
115 section twenty or twenty-one of this article: *Provided,*  
116 *however,* That the member elects to stop actively contributing  
117 to the system while receiving the in-service distributions.

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

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

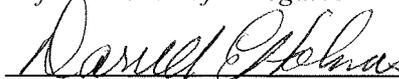
  
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Chairman, House Committee

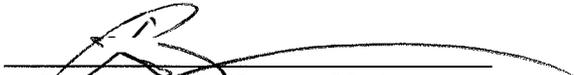
  
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Chairman, Senate Committee

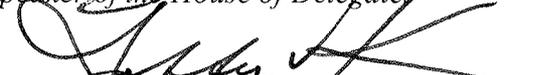
Originating in the House.

To take effect ninety days from passage.

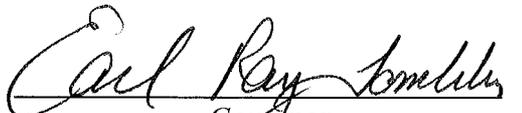
  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

  
\_\_\_\_\_  
Acting President of the Senate

The within is approved this the 21<sup>st</sup>  
day of March, 2011.

  
\_\_\_\_\_  
Governor

2011 MAR 21 PM 4:25  
OFFICE OF THE CLERK OF THE HOUSE OF DELEGATES

PRESENTED TO THE GOVERNOR

MAR 15 2011

Time 2:15 pm