

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 529

(Senators Gaunch and Carmichael, *original sponsors*)

[Passed March 14, 2015; in effect from passage.]

AN ACT to amend and reenact §5-10-2, §5-10-14, §5-10-15, §5-10-15a, §5-10-20, §5-10-21 and §5-10-29 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5-10-21a; to amend and reenact §5-13-2 of said code; to amend and reenact §5-16-13 of said code; to amend and reenact §15-2A-21 of said code; to amend and reenact §18-7A-17, §18-7A-23 and §18-7A-25 of said code; to amend said code by adding thereto two new sections, designated §18-7A-17a and §18-7A-25b; and to amend and reenact §18-7D-6 of said code, all relating generally to benefits and costs for certain members of the West Virginia Public Employees Retirement System, State Police Retirement System and Teachers Retirement System; calculating final average salary and service credit for certain public employees; authorizing purchase of military service for certain members of the West Virginia Public Employees Retirement System and Teachers Retirement System; providing military service credit for certain members of the West Virginia Public Employees Retirement System; increasing contribution rate and years of contributing service required

for certain public employees to qualify for certain annuities; providing for determination of years of service; providing that accrued annual and sick leave of certain employees participating in the West Virginia Public Employees Retirement System, the State Police Retirement System and the Teachers Retirement System may not be applied for retirement service credit; allowing certain persons to buy service credit and interest into the West Virginia Public Employees Retirement System for service in the Teachers Retirement System; and revising the reciprocal retirement provisions for certain members of the teachers and the public employees system.

Be it enacted by the Legislature of West Virginia:

That §5-10-2, §5-10-14, §5-10-15, §5-10-15a, §5-10-20, §5-10-21 and §5-10-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §5-10-21a; that §5-13-2 of said code be amended and reenacted; that §5-16-13 of said code be amended and reenacted; that §15-2A-21 of said code be amended and reenacted; that §18-7A-17, §18-7A-23 and §18-7A-25 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §18-7A-17a and §18-7A-25b, 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 context, the following words and
2 phrases as used in this article have the following meanings:

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

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

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

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

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

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

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

1 (8) "Compensation" means the remuneration paid a member by a participating public
2 employer for personal services rendered by the member to the participating public employer. In the
3 event a member's remuneration is not all paid in money, his or her participating public employer
4 shall fix the value of the portion of the remuneration which is not paid in money. Any lump sum or
5 other payments paid to members that do not constitute regular salary or wage payments are not
6 considered compensation for the purpose of withholding contributions for the system or for the
7 purpose of calculating a member's final average salary. These payments include, but are not limited
8 to, attendance or performance bonuses, one-time flat fee or lump sum payments, payments paid as
9 a result of excess budget, or employee recognition payments. The board shall have final power to
10 decide whether the payments shall be considered compensation for purposes of this article;

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

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

17 (11) "Employee" means any person who serves regularly as an officer or employee, full time,
18 on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the
19 service of, and whose compensation is payable, in whole or in part, by any political subdivision, or
20 an officer or employee whose compensation is calculated on a daily basis and paid monthly or on
21 completion of assignment, including technicians and other personnel employed by the West Virginia
22 National Guard whose compensation, in whole or in part, is paid by the federal government:

1 *Provided*, That an employee of the Legislature whose term of employment is otherwise classified
2 as temporary and who is employed to perform services required by the Legislature for its regular
3 sessions or during the interim between regular sessions and who has been or is employed during
4 regular sessions or during the interim between regular sessions in seven or more consecutive
5 calendar years, as certified by the clerk of the house in which the employee served, is an employee,
6 any provision to the contrary in this article notwithstanding, and is entitled to credited service in
7 accordance with provisions of section fourteen of this article: *Provided, however*, That members of
8 the legislative body of any political subdivision and judges of the state Court of Claims are
9 employees receiving one year of service credit for each one-year term served and prorated service
10 credit for any partial term served, anything contained in this article to the contrary notwithstanding.
11 In any case of doubt as to who is an employee within the meaning of this article, the board of trustees
12 shall decide the question;

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

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

1 section twenty-two-h of this article are not applicable to the amendments made to this subdivision
2 during the 2011 regular session of the Legislature;

3 (A) The average of the highest annual compensation received by a member, including a
4 member of the Legislature who participates in the retirement system in the year 1971 or thereafter,
5 during any period of three consecutive years of credited service contained within the member's
6 fifteen years of credited service immediately preceding the date his or her employment with a
7 participating public employer last terminated: *Provided*, That for persons who were first hired on
8 or after July 1, 2015, any period of five consecutive years of contributing service contained within
9 the member's fifteen years of credited service immediately preceding the date his or her employment
10 with a participating public employer last terminated ; or

11 (B) If the member has less than five years of credited service, the average of the annual rate
12 of compensation received by the member during his or her total years of credited service; and in
13 determining the annual compensation, under either paragraph (A) or (B) of this subdivision, of a
14 member of the Legislature who participates in the retirement system as a member of the Legislature
15 in the year 1971, or in any year thereafter, his or her actual legislative compensation (the total of all
16 compensation paid under sections two, three, four and five, article two-a, chapter four of this code),
17 in the year 1971, or in any year thereafter, plus any other compensation he or she receives in any year
18 from any other participating public employer including the State of West Virginia, without any
19 multiple in excess of one times his or her actual legislative compensation and other compensation,
20 shall be used: *Provided*, That final average salary for any former member of the Legislature or for
21 any member of the Legislature in the year 1971 who, in either event, was a member of the
22 Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on November

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

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

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

22 (16) "Member" means any person who has accumulated contributions standing to his or her

1 credit in the members' deposit fund;

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

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

9 (19) "Political subdivision" means the State of West Virginia, a county, city or town in the
10 state; a school corporation or corporate unit; any separate corporation or instrumentality established
11 by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality
12 supported in most part by counties, cities or towns; and any public corporation charged by law with
13 the performance of a governmental function and whose jurisdiction is coextensive with one or more
14 counties, cities or towns: *Provided*, That any mental health agency participating in the Public
15 Employees Retirement System before July 1, 1997, is considered a political subdivision solely for
16 the purpose of permitting those employees who are members of the Public Employees Retirement
17 System to remain members and continue to participate in the retirement system at their option after
18 July 1, 1997: *Provided, however*, That the Regional Community Policing Institute which
19 participated in the Public Employees Retirement System before July 1, 2000, is considered a political
20 subdivision solely for the purpose of permitting those employees who are members of the Public
21 Employees Retirement System to remain members and continue to participate in the Public
22 Employees Retirement System after July 1, 2000;

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

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

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

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

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

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

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

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

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

2 **§5-10-14. Service credit; retroactive provisions.**

3 (a) The board of trustees shall credit each member with the prior service and contributing
4 service to which he or she is entitled based upon rules adopted by the board of trustees and based
5 upon the following:

6 (1) In no event may less than ten days of service rendered by a member in any calendar month
7 be credited as a month of service: *Provided*, That for employees of the state Legislature whose term
8 of employment is otherwise classified as temporary and who are employed to perform services
9 required by the Legislature for its regular sessions or during the interim between regular sessions and
10 who have been or are so employed during regular sessions or during the interim between regular
11 sessions in seven consecutive calendar years, service credit of one month shall be awarded for each
12 ten days employed in the interim between regular sessions, which interim days shall be cumulatively
13 calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any
14 award of one month of service credit;

15 (2) Except for hourly employees, and those persons who first become members of the
16 retirement system on or after July 1, 2015, ten or more months of service credit earned in any
17 calendar year shall be credited as a year of service: *Provided*, That no more than one year of service
18 may be credited to any member for all service rendered by him or her in any calendar year and no
19 days may be carried over by a member from one calendar year to another calendar year where the
20 member has received a full-year credit for that year; and

21 (3) Service may be credited to a member who was employed by a political subdivision if his
22 or her employment occurred within a period of thirty years immediately preceding the date the

1 political subdivision became a participating public employer.

2 (b) The board of trustees shall grant service credit to employees of boards of health, the Clerk
3 of the House of Delegates and the Clerk of the State Senate or to any former and present member
4 of the State Teachers Retirement System who have been contributing members for more than three
5 years, for service previously credited by the State Teachers Retirement System and shall require the
6 transfer of the member's contributions to the system and shall also require a deposit, with interest,
7 of any withdrawals of contributions any time prior to the member's retirement. Repayment of
8 withdrawals shall be as directed by the board of trustees.

9 (c) Court reporters who are acting in an official capacity, although paid by funds other than
10 the county commission or State Auditor, may receive prior service credit for time served in that
11 capacity.

12 (d) Active members who previously worked in Comprehensive Employment and Training
13 Act (CETA) may receive service credit for time served in that capacity: *Provided*, That in order to
14 receive service credit under the provisions of this subsection the following conditions must be met:

15 (1) The member must have moved from temporary employment with the participating employer to
16 permanent full-time employment with the participating employer within one hundred twenty days
17 following the termination of the member's CETA employment; (2) the board must receive evidence
18 that establishes to a reasonable degree of certainty as determined by the board that the member
19 previously worked in CETA; and (3) the member shall pay to the board an amount equal to the
20 employer and employee contribution plus interest at the amount set by the board for the amount of
21 service credit sought pursuant to this subsection: *Provided, however*, That the maximum service
22 credit that may be obtained under the provisions of this subsection is two years: *Provided further*,

1 That a member must apply and pay for the service credit allowed under this subsection and provide
2 all necessary documentation by March 31, 2003: *And provided further*, That the board shall exercise
3 due diligence to notify affected employees of the provisions of this subsection.

4 (e) (1) Employees of the state Legislature whose terms of employment are otherwise
5 classified as temporary and who are employed to perform services required by the Legislature for
6 its regular sessions or during the interim time between regular sessions shall receive service credit
7 for the time served in that capacity in accordance with the following: For purposes of this section,
8 the term "regular session" means day one through day sixty of a sixty-day legislative session or day
9 one through day thirty of a thirty-day legislative session. Employees of the state Legislature whose
10 term of employment is otherwise classified as temporary and who are employed to perform services
11 required by the Legislature for its regular sessions or during the interim time between regular
12 sessions and who have been or are employed during regular sessions or during the interim time
13 between regular sessions in seven consecutive calendar years, as certified by the clerk of the house
14 in which the employee served, shall receive service credit of six months for all regular sessions
15 served, as certified by the clerk of the house in which the employee served, or shall receive service
16 credit of three months for each regular thirty-day session served prior to 1971: *Provided*, That
17 employees of the state Legislature whose term of employment is otherwise classified as temporary
18 and who are employed to perform services required by the Legislature for its regular sessions and
19 who have been or are employed during the regular sessions in thirteen consecutive calendar years
20 as either temporary employees or full-time employees or a combination thereof, as certified by the
21 clerk of the house in which the employee served, shall receive a service credit of twelve months for
22 each regular session served, as certified by the clerk of the house in which the employee served:

1 *Provided, however,* That the amendments made to this subsection during the 2002 regular session
2 of the Legislature only apply to employees of the Legislature who are employed by the Legislature
3 as either temporary employees or full-time employees as of January 1, 2002, or who become
4 employed by the Legislature as temporary or full-time employees for the first time after January 1,
5 2002. Employees of the State Legislature whose terms of employment are otherwise classified as
6 temporary and who are employed to perform services required by the Legislature during the interim
7 time between regular sessions shall receive service credit of one month for each ten days served
8 during the interim between regular sessions, which interim days shall be cumulatively calculated so
9 that any ten days, regardless of calendar month or year, shall be calculated toward any award of one
10 month of service credit: *Provided further,* That no more than one year of service may be credited
11 to any temporary legislative employee for all service rendered by that employee in any calendar year
12 and no days may be carried over by a temporary legislative employee from one calendar year to
13 another calendar year where the member has received a full year credit for that year. Service credit
14 awarded for legislative employment pursuant to this section shall be used for the purpose of
15 calculating that member's retirement annuity, pursuant to section twenty-two of this article, and
16 determining eligibility as it relates to credited service, notwithstanding any other provision of this
17 section. Certification of employment for a complete legislative session and for interim days shall
18 be determined by the clerk of the house in which the employee served, based upon employment
19 records. Service of fifty-five days of a regular session constitutes an absolute presumption of service
20 for a complete legislative session and service of twenty-seven days of a thirty-day regular session
21 occurring prior to 1971 constitutes an absolute presumption of service for a complete legislative
22 session. Once a legislative employee has been employed during regular sessions for seven

1 consecutive years or has become a full-time employee of the Legislature, that employee shall receive
2 the service credit provided in this section for all regular and interim sessions and interim days
3 worked by that employee, as certified by the clerk of the house in which the employee served,
4 regardless of when the session or interim legislative employment occurred: *And provided further,*
5 That regular session legislative employment for seven consecutive years may be served in either or
6 both houses of the Legislature.

7 (2) For purposes of this section, employees of the Joint Committee on Government and
8 Finance are entitled to the same benefits as employees of the House of Delegates or the Senate:
9 *Provided,* That for joint committee employees whose terms of employment are otherwise classified
10 as temporary, employment in preparation for regular sessions, certified by the legislative manager
11 as required by the Legislature for its regular sessions, shall be considered the same as employment
12 during regular sessions to meet service credit requirements for sessions served.

13 (f) Any employee may purchase retroactive service credit for periods of employment in which
14 contributions were not deducted from the employee's pay. In the purchase of service credit for
15 employment prior to 1989 in any department, including the Legislature, which operated from the
16 General Revenue Fund and which was not expressly excluded from budget appropriations in which
17 blanket appropriations were made for the state's share of public employees' retirement coverage in
18 the years prior to 1989, the employee shall pay the employee's share. Other employees shall pay the
19 state's share and the employee's share to purchase retroactive service credit. Where an employee
20 purchases service credit for employment which occurred after 1988, that employee shall pay for the
21 employee's share and the employer shall pay its share for the purchase of retroactive service credit:
22 *Provided,* That no legislative employee and no current or former member of the Legislature may be

1 required to pay any interest or penalty upon the purchase of retroactive service credit in accordance
2 with the provisions of this section where the employee was not eligible to become a member during
3 the years for which he or she is purchasing retroactive credit or had the employee attempted to
4 contribute to the system during the years for which he or she is purchasing retroactive service credit
5 and such contributions would have been refused by the board: *Provided, however,* That a legislative
6 employee purchasing retroactive credit under this section does so within twenty-four months of
7 becoming a member of the system or no later than December 31, 2008, whichever occurs last:
8 *Provided further,* That once a legislative employee becomes a member of the retirement system, he
9 or she may purchase retroactive service credit for any time he or she was employed by the
10 Legislature and did not receive service credit. Any service credit purchased shall be credited as six
11 months for each sixty-day session worked, three months for each thirty-day session worked or twelve
12 months for each sixty-day session for legislative employees who have been employed during regular
13 sessions in thirteen consecutive calendar years, as certified by the clerk of the house in which the
14 employee served, and credit for interim employment as provided in this subsection: *And provided*
15 *further,* That this legislative service credit shall also be used for months of service in order to meet
16 the sixty-month requirement for the payments of a temporary legislative employee member's
17 retirement annuity: *And provided further,* That no legislative employee may be required to pay for
18 any service credit beyond the actual time he or she worked regardless of the service credit which is
19 credited to him or her pursuant to this section: *And provided further,* That any legislative employee
20 may request a recalculation of his or her credited service to comply with the provisions of this
21 section at any time.

22 (g) (1) Notwithstanding any provision to the contrary, the seven consecutive calendar years

1 requirement and the thirteen consecutive calendar years requirement and the service credit
2 requirements set forth in this section shall be applied retroactively to all periods of legislative
3 employment prior to the passage of this section, including any periods of legislative employment
4 occurring before the seven consecutive and thirteen consecutive calendar years referenced in this
5 section: *Provided*, That the employee has not retired prior to the effective date of the amendments
6 made to this section in the 2002 regular session of the Legislature.

7 (2) The requirement of seven consecutive years and the requirement of thirteen consecutive
8 years apply retroactively to all legislative employment prior to the effective date of the 2006
9 amendments to this section.

10 (h) The board of trustees shall grant service credit to any former or present member of the
11 State Police Death, Disability and Retirement Fund who has been a contributing member of this
12 system for more than three years for service previously credited by the State Police Death, Disability
13 and Retirement Fund if the member transfers all of his or her contributions to the State Police Death,
14 Disability and Retirement Fund to the system created in this article, including repayment of any
15 amounts withdrawn any time from the State Police Death, Disability and Retirement Fund by the
16 member seeking the transfer allowed in this subsection: *Provided*, That there shall be added by the
17 member to the amounts transferred or repaid under this subsection an amount which shall be
18 sufficient to equal the contributions he or she would have made had the member been under the
19 Public Employees Retirement System during the period of his or her membership in the State Police
20 Death, Disability and Retirement Fund, excluding contributions on lump sum payment for annual
21 leave, plus interest at a rate determined by the board.

22 (i) The provisions of section twenty-two-h of this article are not applicable to the

1 amendments made to this section during the 2006 regular session.

2 **§5-10-15. Military service credit; qualified military service.**

3 (a) (1) The Legislature recognizes the men and women of this state who have served in the
4 armed forces of the United States during times of war, conflict and danger. It is the intent of this
5 subsection to confer military service credit upon persons who are eligible at any time for public
6 employees retirement benefits for any time served in active duty in the armed forces of the United
7 States, regardless of whether the person was a public employee at the time of entering the military
8 service.

9 (2) In addition to any benefit provided by federal law, any member of the retirement system
10 who has previously served in or enters the active service of the armed forces of the United States,
11 including active duty in the National Guard performed pursuant to Title 10 or Title 32 of the United
12 States Code, shall receive credited service for the time spent in the armed forces of the United States,
13 not to exceed five years, if the member:

14 (A) Has been honorably discharged from the armed forces; and

15 (B) Substantiates by appropriate documentation or evidence his or her active military service.

16 If a member of the retirement system enters the active service of the armed forces of the
17 United States, the member's contributions to the retirement system are suspended during the period
18 of the active service and until the member's return to the employ of a participating public employer,
19 and any credit balance remaining in the member's deposit fund shall accumulate regular interest:

20 *Provided*, That notwithstanding any provision in this article to the contrary, if an employee of a
21 participating political subdivision serving on active duty in the military has accumulated credited
22 service prior to the last entry into military service, in an amount that, added to the time in active

1 military service while an employee equals nine or more years, and the member is unable to resume
2 employment with a participating employer upon completion of duty due to death during or as a result
3 of active service, all time spent in active military service, up to and including a total of five years,
4 is considered to be credited service and death benefits are vested in the member: *Provided, however,*
5 That the active service during the time the member is an employee must be as a result of an order
6 or call to duty, and not as a result of volunteering for assignment or volunteering to extend the time
7 in service beyond the time required by order or call.

8 (b) Subsection (a) of this section does not apply to any member who first becomes an
9 employee of a participating public employer on or after July 1, 2015. This subsection does not apply
10 to any member who first became an employee of a participating public employer before July 1, 2015.

11 (1) A member who first becomes an employee of a participating public employer on or after
12 July 1, 2015, may purchase up to sixty months of military service credit for time served in active
13 military duty prior to first becoming an employee of a participating public employer if all of the
14 following conditions are met:

15 (A) The member has completed at least twelve consecutive months of contributory service
16 upon first becoming an employee of a participating public employer;

17 (B) The active military duty occurs prior to the date on which the member first becomes an
18 employee of a participating public employer; and

19 (C) The employee pays to the retirement system the actuarial reserve purchase amount within
20 forty-eight months after the date on which employer and employee contributions are first received
21 by the retirement system for the member and while he or she continues to be in the employ of a
22 participating public employer and contributing to the retirement system: *Provided, That any*

1 employee who ceases employment with a participating public employer before completing the
2 required actuarial reserve purchase amount in full shall not be eligible to purchase the military
3 service.

4 (2) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first
5 becomes an employee of a participating public employer on or after July 1, 2015, but who does not
6 remain employed and contributing to the retirement system for at least twelve consecutive months
7 after his or her initial employment, shall be considered to have met the requirement of paragraph (A),
8 subdivision (1) of this subsection the first time he or she becomes an employee of a participating
9 public employer and completes at least twelve consecutive months of contributing service. Such a
10 member shall be considered to have met the requirement of paragraph (C), subdivision (1) of this
11 subsection if he or she pays to the retirement system the actuarial reserve purchase amount within
12 forty-eight months after the date on which employer and employee contributions are first received
13 by the retirement system for the member the first time he or she becomes an employee of a
14 participating public employer and completes at least twelve consecutive months of contributing
15 service, and while he or she continues to be in the employ of a participating public employer and
16 contributing to the retirement system.

17 (3) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first
18 becomes an employee of a participating public employer on or after July 1, 2015, as an elected
19 official, shall be considered to have met the requirement of paragraph (A), subdivision (1) of this
20 subsection after remaining employed for the first twelve consecutive months of his or her term and
21 first becoming an employee, regardless of whether a salary is paid to the employee for each such
22 month. An elected official who does not elect to begin participating in the retirement system upon

1 first becoming an employee of a participating public employer as an elected official is not eligible
2 to purchase military service credit pursuant to subdivision (1) of this subsection.

3 (4) A member who first becomes an employee of a participating public employer on or after
4 July 1, 2015, may purchase military service credit for active military duty performed on or after the
5 date he or she first becomes an employee of a participating public employer only if all of the
6 following conditions are met: *Provided*, That the maximum military service credit such member
7 may purchase shall take into account any military service credit purchased for active military duty
8 pursuant to subdivision (1) of this subsection in addition to any military service credit purchased
9 pursuant to this subdivision:

10 (A) The member was an employee of a participating public employer, terminated
11 employment and experienced a break in contributing service in the retirement system of one or more
12 months, performed active military service while not an employee of the participating public
13 employer and not contributing to the retirement system, then again becomes an employee of a
14 participating public employer and completes at least twelve consecutive months of contributory
15 service;

16 (B) The member does not qualify for military service credit for such active military duty
17 pursuant to subsection (d) of this section; and

18 (C) The member pays to the retirement system the actuarial reserve lump sum purchase
19 amount within forty-eight months after the date on which employer and employee contributions are
20 first received by the retirement system for the member after he or she again becomes an employee
21 of a participating public employer immediately following the period of active military duty and break
22 in service and completes at least twelve consecutive months of contributory service and while he or

1 she continues to be in the employ of a participating public employer and contributing to the
2 retirement system.

3 (5) Notwithstanding paragraph (A), subdivision (4) of this subsection, a member who
4 otherwise meets the requirements of said paragraph, but who does not remain employed and
5 contributing to the retirement system for at least twelve consecutive months when he or she first
6 becomes an employee of a participating public employer after the period of active military duty and
7 break in service, shall be considered to have met the requirement of paragraph (A), subdivision (4)
8 of this subsection the first time he or she again becomes an employee of a participating public
9 employer and completes at least twelve consecutive months of contributing service. Such a member
10 shall be considered to have met the requirement of paragraph (C), subdivision (4) of this subsection
11 if he or she pays to the retirement system the actuarial reserve lump sum purchase amount within
12 forty-eight months after the date on which employer and employee contributions are first received
13 by the retirement system for the member for the first time he or she again becomes an employee of
14 a participating public employer and completes at least twelve consecutive months of contributing
15 service, and while he or she continues to be in the employ of a participating public employer and
16 contributing to the retirement system.

17 (6) Notwithstanding paragraph (A), subdivision (4) of this subsection, a member who
18 becomes an employee of a participating public employer after such a period of active military duty
19 and break in service as an elected official shall be considered to have met the requirement of
20 paragraph (A), subdivision (4) of this subsection after remaining employed for the first twelve
21 consecutive months of his or her term after again becoming an employee, regardless of whether a
22 salary is paid to the employee for each such month. Such an individual must elect to begin

1 participating in the retirement system immediately upon again becoming an employee of a
2 participating public employer after the period of active military duty and break in service.

3 (7) For purposes of this subsection, the following definitions apply:

4 (A) "Active military duty" means full-time active duty in the armed forces of the United
5 States for a period of thirty or more consecutive calendar days. Active military duty does not include
6 inactive duty of any kind.

7 (B) "Actuarial reserve purchase amount" means the purchase annuity rate multiplied by the
8 purchase accrued benefit, calculated as of the calculation month, plus annual interest accruing at
9 seven and one-half percent from the calculation month through the purchase month, compounded
10 monthly: *Provided*, That if the employee elects to pay the full purchase amount on an installment
11 or partial payment basis, the actuarial reserve purchase amount will include the lump sum payment
12 plus additional interest accruing at seven and one-half percent until the purchase amount is paid in
13 full.

14 (C) "Armed forces of the United States" means the Army, Navy, Air Force, Marine Corps
15 and Coast Guard, the reserve components thereof, and the National Guard of the United States or
16 the National Guard of a state or territory when members of the same are on full-time active duty
17 pursuant to Title 10 or Title 32 of the United States Code.

18 (D) "Calculation month" means the month immediately following the month in which the
19 member completes the twelve consecutive months of contributory service with a participating public
20 employer required by this subsection, as applicable.

21 (E) "Purchase accrued benefit" means two percent times the purchase military service times
22 the purchase average monthly salary.

1 (F) "Purchase age" means the age of the employee in years and completed months as of the
2 first day of the calculation month.

3 (G) "Purchase annuity rate" means the actuarial lump sum annuity factor calculated as of the
4 calculation month based on the following actuarial assumptions: Interest rate of seven and one-half
5 percent; mortality of the 1971 group annuity mortality table, fifty percent blended male and female
6 rates, applied on a unisex basis to all members; if purchase age is under age sixty-two, a deferred
7 annuity factor with payments commencing at age sixty-two; and if purchase age is sixty-two or over,
8 an immediate annuity factor with payments starting at the purchase age.

9 (H) "Purchase average monthly salary" means the average monthly salary of the member
10 during the months two through twelve of the twelve consecutive month period required by this
11 subsection of this section, as applicable.

12 (I) "Purchase military service" means the amount of military service being purchased by the
13 employee in months up to the sixty-month maximum, calculated in accordance with subdivision (9)
14 of this subsection.

15 (J) "Purchase month" means the month in which the employee deposits the actuarial reserve
16 lump sum purchase amount in full payment of the service credit being purchased or makes the final
17 payment of the actuarial reserve purchase amount into the plan trust fund in full payment of the
18 service credit being purchased.

19 (8) A member may purchase military service credit for a period of active military duty
20 pursuant to this subsection only if the member received an honorable discharge for such period.
21 Anything other than an honorable discharge, including, but not limited to, a general or under
22 honorable conditions discharge, an entry-level separation discharge, an other than honorable

1 conditions discharge or a dishonorable discharge, shall disqualify the member from receiving
2 military service credit for the period of service.

3 (9) To calculate the amount of military service credit a member may purchase, the board shall
4 add the total number of days in each period of a member's active military duty eligible to be
5 purchased, divide the total by thirty, and round up or down to the nearest integer (fractions of 0.5
6 shall be rounded up), in order to yield the total number of months of military service credit a member
7 may purchase, subject to the sixty-month maximum. A member may purchase all or part of the
8 maximum amount of military service credit he or she is eligible for in one-month increments.

9 (10) To receive credit, a member must submit a request to purchase military service credit
10 to the board, on such form or in such other manner as shall be required by the board, within the
11 twelve consecutive month period required by this subsection, as applicable. The board shall then
12 calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the
13 member within the 48-month period required by this subsection, as applicable. A member
14 purchasing military service credit pursuant to this subsection must do so in a single, lump sum
15 payment: *Provided*, That the board may accept partial, installment or other similar payments if the
16 employee executes a contract with the board specifying the amount of military service to be
17 purchased and the payments required: *Provided, however*, That any failure to pay the contract
18 amount in accordance with this section shall be treated as an overpayment or excess contribution
19 subject to section forty-four of this article and no military service shall be credited.

20 (11) The board shall require a member requesting military service credit to provide official
21 documentation establishing that the requirements set forth in this subsection have been met.

22 (12) Military service credit purchased pursuant to this subsection may not be considered

1 contributing service credit or contributory service for purposes of this article.

2 (13) If a member who has purchased military service credit pursuant to this subsection is
3 eligible for and requests a withdrawal of accumulated contributions pursuant to the provisions of this
4 article, he or she shall also receive a refund of the actuarial reserve purchase amount he or she paid
5 to the retirement system to purchase military service credit, together with regular interest on such
6 amount.

7 (c) No period of military service may be used to obtain credit in more than one retirement
8 system administered by the board and once used in any system, a period of military service may not
9 be used again in any other system.

10 (d) Notwithstanding the preceding provisions of this section, contributions, benefits and
11 service credit with respect to qualified military service shall be provided in accordance with Section
12 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and
13 Reemployment Rights Act (USERRA), and regulations promulgated thereunder, as the same may
14 be amended from time to time. For purposes of this section, "qualified military service" has the same
15 meaning as in Section 414(u) of the Internal Revenue Code.

16 (e) In any case of doubt as to the period of service to be credited a member under the
17 provisions of this section, the board has final power to determine the period. Notwithstanding the
18 provisions of section three-a of this article, the provisions of this section are not subject to liberal
19 construction. The board is authorized to determine all questions and make all decisions relating to
20 this section and, pursuant to the authority granted to the board in section one, article ten-d of this
21 chapter, may propose rules to administer this section for legislative approval in accordance with the
22 provisions of article three, chapter twenty-nine-a of this code.

1 **§5-10-15a. Retirement credited service through member's use, as option, of accrued annual**
2 **or sick leave days.**

3 (a) Any member accruing annual leave or sick leave days may, after June 27, 1988, elect to
4 use the days at the time of retirement to acquire additional credited service in this retirement system.
5 Except as provided in subsection (b) of this section, the accrued days shall be applied on the basis
6 of two workdays credit granted for each one day of such accrued annual or sick leave days, with each
7 month of retirement service credit to equal twenty workdays and with any remainder of ten workdays
8 or more to constitute a full month of additional credit and any remainder of less than ten workdays
9 to be dropped and not used, notwithstanding any provisions of the code to the contrary, including
10 section twelve, article sixteen of this chapter. Such credited service shall be allowed and not deemed
11 to controvert the requirement of no more than twelve months credited service in any year's period.

12 (b) For those persons who first become members of the retirement system on or after July 1,
13 2015, accrued annual or sick days may not be applied to acquire additional credited service.

14 **§5-10-20. Voluntary retirement.**

15 (a) Except as provided in subsection (b) of this section, any member who has attained or
16 attains age sixty years and has five or more years of credited service in force, at least one year of
17 which he or she was a contributing member of the retirement system, may retire upon his or her
18 written application filed with the board of trustees setting forth at what time, not less than thirty days
19 nor more than ninety days subsequent to the execution and filing thereof the member desires to be
20 retired: *Provided*, That on and after June 1, 1986, any person who becomes a new member of this
21 retirement system shall, in qualifying for retirement hereunder, have five or more years of service,
22 all of which years shall be actual, contributory ones. Upon retirement, the member shall receive an

1 annuity provided for in section twenty-two of this article.

2 (b) Any person who first becomes a member of the retirement system on or after July 1, 2015,
3 may retire upon written application as provided in subsection (a) of this section upon attaining the
4 age of sixty-two with ten or more years of service, all of which must be actual, contributing years.

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

6 (a) Except as provided in section twenty-one-a of this article, any member who first becomes
7 a member of the retirement system before July 1, 2015, and who has five or more years of credited
8 service in force, of which at least three years are contributing service, and who leaves the employ
9 of a participating public employer prior to his or her attaining age sixty years for any reason except
10 his or her disability retirement or death, is entitled to an annuity computed according to section
11 twenty-two of this article, as that section was in force as of the date of his or her separation from the
12 employ of a participating public employer: *Provided*, That he or she does not withdraw his or her
13 accumulated contributions from the members' deposit fund: *Provided, however*, That on and after
14 July 1, 2002, any person who becomes a new member of this retirement system shall, in qualifying
15 for retirement under this section, have five or more years of service, all of which years shall be
16 actual, contributory ones. His or her annuity shall begin the first day of the calendar month next
17 following the month in which his or her application for same is filed with the board of trustees on
18 or after his or her attaining age sixty-two years.

19 (b) Any member who qualifies for deferred retirement benefits in accordance with subsection
20 (a) of this section and has ten or more years of credited service in force and who has attained age
21 fifty-five as of the date of his or her separation, may, prior to the effective date of his or her
22 retirement, but not thereafter, elect to receive the actuarial equivalent of his or her deferred

1 retirement annuity as a reduced annuity commencing on the first day of any calendar month between
2 his or her date of separation and his or her attainment of age sixty-two years and payable throughout
3 his or her life.

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

9 (d) Notwithstanding any of the other provisions of this section or of this article, except
10 sections twenty-seven-a and twenty-seven-b of this article, and pursuant to rules promulgated by the
11 board, and except for a person who first becomes a member of the retirement system on or after July
12 1, 2015, any member who has thirty or more years of credited service in force, at least three of which
13 are contributing service, and who elects to take early retirement, which for the purposes of this
14 subsection means retirement prior to age sixty, whether an active employee or a separated employee
15 at the time of application, is entitled to the full computation of annuity according to section
16 twenty-two of this article, as that section was in force as of the date of retirement application, but
17 with the reduced actuarial equivalent of the annuity the member would have received if his or her
18 benefit had commenced at age sixty when he or she would have been entitled to full computation of
19 benefit without any reduction.

20 (e) Notwithstanding any of the other provisions of this section or of this article, except
21 sections twenty-seven-a and twenty-seven-b of this article, and except for a person who first becomes
22 a member of the retirement system on or after July 1, 2015, any member of the retirement system

1 may retire with full pension rights, without reduction of benefits, if he or she is at least fifty-five
2 years of age and the sum of his or her age plus years of contributing service and limited credited
3 service, as defined in section two of this article, equals or exceeds eighty: *Provided*, That on and
4 after July 1, 2011, any person who becomes a new member of this retirement system shall, in
5 qualifying for retirement under this subsection, have five or more years of service, all of which years
6 shall be actual, contributory ones. The member's annuity shall begin the first day of the calendar
7 month immediately following the calendar month in which his or her application for the annuity is
8 filed with the board.

9 **§5-10-21a. Deferred retirement and early retirement for new members as of July 1, 2015.**

10 (a) Any person who first becomes a member of the retirement system on or after July 1, 2015,
11 who has ten or more years of contributing service and who leaves the employ of a participating
12 public employer prior to attaining age sixty-two years for any reason except his or her disability or
13 death, is entitled to an annuity computed according to section twenty-two of this article, as that
14 section was in force as of the date of his or her separation from the employ of a participating public
15 employer: *Provided*, That he or she does not withdraw his or her accumulated contributions from
16 the members' deposit fund: *Provided, however*, That his or her annuity shall begin the first day of
17 the calendar month next following the month in which his or her application for same is filed with
18 the board of trustees on or after his or her attaining age sixty-four years.

19 (b) Any member who qualifies for deferred retirement benefits in accordance with subsection
20 (a) of this section and has twenty or more years of contributing service in force is entitled to an
21 annuity computed as in subsection (a) of this section: *Provided*, That his or her annuity shall begin
22 the first day of the calendar month next following the month in which his or her application for same

1 is filed with the board of trustees on or after his or her attaining age sixty-three.

2 (c) Notwithstanding any of the other provisions of this section or of this article, except
3 sections twenty-seven-a and twenty-seven-b of this article, and pursuant to rules promulgated by the
4 board, any member who first becomes a member of the retirement system on or after July 1, 2015,
5 has ten or more years of contributing service in force, is currently employed by a participating public
6 employer and who elects to take early retirement, which for the purposes of this subsection means
7 retirement following attainment of age sixty but prior to attaining age sixty-two, is entitled to the full
8 computation of annuity according to section twenty-two of this article but with the reduced actuarial
9 equivalent of the annuity the member would have received if his or her benefit had commenced at
10 age sixty-two when he or she would have been entitled to full computation of benefit without any
11 reduction: *Provided*, That his or her annuity shall begin the first day of the calendar month next
12 following the month in which his or her application for same is filed with the board of trustees on
13 or after his or her attaining age sixty.

14 (d) Any member who first becomes a member of the retirement system on or after July 1,
15 2015, and has twenty or more years of contributing service in force, is currently employed by a
16 participating public employer and who elects to take early retirement, which for the purposes of this
17 subsection means retirement following attainment of age fifty-seven but prior to attaining age
18 sixty-two, is entitled to the full computation of annuity according to section twenty-two of this article
19 but with the reduced actuarial equivalent of the annuity the member would have received if his or
20 her benefit had commenced at age sixty-two when he or she would have been entitled to full
21 computation of benefit without any reduction: *Provided*, That his or her annuity shall begin the first
22 day of the calendar month next following the month in which his or her application for same is filed

1 with the board of trustees on or after his or her attaining age fifty-seven.

2 (e) Any member who first becomes a member of the retirement system on or after July 1,
3 2015, and has thirty or more years of contributing service in force, and who elects to take early
4 retirement, which for the purposes of this subsection means retirement following attainment of age
5 fifty-five but prior to attaining age sixty-two, is entitled to the full computation of annuity according
6 to section twenty-two of this article but with the reduced actuarial equivalent of the annuity the
7 member would have received if his or her benefit had commenced at age sixty-two when he or she
8 would have been entitled to full computation of benefit without any reduction: *Provided*, That his
9 or her annuity shall begin the first day of the calendar month next following the month in which his
10 or her application for same is filed with the board of trustees on or after his or her attaining age
11 fifty-five.

12 **§5-10-29. Members' deposit fund; members' contributions; forfeitures.**

13 (a) The members' deposit fund is hereby created. It shall be the fund in which shall be
14 accumulated, at regular interest, the contributions deducted from the compensation of members, and
15 from which refunds of accumulated contributions shall be paid and transfers made as provided in
16 this section.

17 (b) The contributions of a member to the retirement system (including any member of the
18 Legislature, except as otherwise provided in subsection (g) of this section) shall be a sum of not less
19 than three and five-tenths percent of his or her annual compensation but not more than four and
20 five-tenths percent of his or her annual compensation, as determined by the board of trustees:
21 *Provided*, That for persons who first become members of the retirement system on or after July 1,
22 2015, the contributions to the system shall be six percent of his or her annual compensation

1 beginning July 1, 2015. The said contributions shall be made notwithstanding that the minimum
2 salary or wages provided by law for any member shall be thereby changed. Each member shall be
3 deemed to consent and agree to the deductions made and provided for herein. Payment of a
4 member's compensation less said deductions shall be a full and complete discharge and acquittance
5 of all claims and demands whatsoever for services rendered by him or her to a participating public
6 employer, except as to benefits provided by this article.

7 (c) The officer or officers responsible for making up the payrolls for payroll units of the state
8 government and for each of the other participating public employers shall cause the contributions,
9 provided in subsection (b) of this section, to be deducted from the compensations of each member
10 in the employ of the participating public employer, on each and every payroll, for each and every
11 payroll period, from the date the member enters the retirement system to the date his or her
12 membership terminates. When deducted, each of said amounts shall be paid by the participating
13 public employer to the retirement system; said payments to be made in such manner and form, and
14 in such frequency, and shall be accompanied by such supporting data, as the board of trustees shall
15 from time to time prescribe. When paid to the retirement system, each of said amounts shall be
16 credited to the members' deposit fund account of the member from whose compensations said
17 contributions were deducted.

18 (d) In addition to the contributions deducted from the compensations of a member, as
19 heretofore provided, a member shall deposit in the members' deposit fund, by a single contribution
20 or by an increased rate of contribution as approved by the board of trustees, the amounts he or she
21 may have withdrawn therefrom and not repaid thereto, together with regular interest from the date
22 of withdrawal to the date of repayment. In no case shall a member be given credit for service

1 rendered prior to the date he or she withdrew his or her contributions or accumulated contributions,
2 as the case may be, until he or she returns to the members' deposit fund all amounts due the said
3 fund by him or her.

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

7 (f) In the event an employee's membership in the retirement system terminates and no
8 annuity becomes or will become payable on his or her account, any accumulated contributions
9 standing to his or her credit in the members' deposit fund, unclaimed by the said employee, or his
10 or her legal representative, within three years from and after the date his or her membership
11 terminated, shall be transferred to the income fund.

12 (g) Any member of the Legislature who is a member of the retirement system and with
13 respect to whom the term "final average salary" includes a multiple of eight, pursuant to the
14 provisions of subdivision (13), section two of this article, shall contribute to the retirement system
15 on the basis of his or her legislative compensation the sum of \$540 each year he or she participates
16 in the retirement system as a member of the Legislature.

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

19 **ARTICLE 13. PUBLIC EMPLOYEES' AND TEACHERS' RECIPROCAL SERVICE**

20 **CREDIT ACT.**

21 **§5-13-2. Definitions.**

22 The following words and phrases as used in this article, unless a different meaning is clearly

1 indicated by the context, shall have the following meanings:

2 (a) "Accumulated contributions" means the sum of the amounts deducted from the
3 compensation of a member and credited to his or her individual account in a state system, together
4 with interest, if any, credited thereto.

5 (b) "Annuity" means the annuity payable by a state system.

6 (c) "Member" means a member of either the West Virginia Public Employees Retirement
7 System or the State Teachers Retirement System. The term "member" does not include any person
8 who has retired under either state system.

9 (d) "Public final average salary" means a member's final average salary computed according
10 to the law governing the public system. In computing his or her public final average salary, the
11 compensation, if any, received by the member for services rendered in positions covered by the
12 teacher system shall be used in the same manner as if the compensation were received for services
13 covered by the public system: *Provided*, That for persons who first became members of the
14 retirement system on or after July 1, 2015, no compensation for services rendered in positions
15 covered by the teacher system may be used to compute his or her public system final average salary.

16 (e) "Public system" means the West Virginia Public Employees Retirement System
17 established in article ten of this chapter.

18 (f) "Reciprocal service credit" for a member of the public system who subsequently becomes
19 a member of the teacher system, or vice versa, means the sum of his or her credited service in force
20 acquired as a member of the public system and his or her credited service in force acquired as a
21 member of the teacher system: *Provided*, That persons who first became members of the public
22 system or teacher system on or after July 1, 2015, must be employed and contributed for ten years

1 or more in each system to receive reciprocal service credit.

2 (g) "State system" means the West Virginia Public Employees Retirement System and the
3 State Teachers Retirement System.

4 (h) "Teacher final average salary" means a member's final average salary computed according
5 to the law governing the teacher system. In computing his or her teacher final average salary, the
6 compensation, if any, received by the member for services rendered in positions covered by the
7 public system shall be used in the same manner as if the compensation were received for services
8 covered by the teacher system: *Provided*, That for persons who first became members of the
9 retirement system on or after July 1, 2015, no compensation for services rendered in positions
10 covered by the public system may be used to compute his or her teacher system final average salary.

11 (i) "Teacher system" means the State Teachers Retirement System established in article
12 seven-a, chapter eighteen of this code.

13 (j) The masculine gender includes the feminine, and words of the singular number with
14 respect to persons include the plural number, and vice versa.

15 **ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

16 **§5-16-13. Payment of costs by employer and employee; spouse and dependent coverage;**
17 **involuntary employee termination coverage; conversion of annual leave and sick**
18 **leave authorized for health or retirement benefits; authorization for retiree**
19 **participation; continuation of health insurance for surviving dependents of**
20 **deceased employees; requirement of new health plan, limiting employer**
21 **contribution.**

22 (a) *Cost-sharing.* -- The director shall provide under any contract or contracts entered into

1 under the provisions of this article that the costs of any group hospital and surgical insurance, group
2 major medical insurance, group prescription drug insurance, group life and accidental death
3 insurance benefit plan or plans shall be paid by the employer and employee.

4 (b) *Spouse and dependent coverage.* -- Each employee is entitled to have his or her spouse
5 and dependents included in any group hospital and surgical insurance, group major medical
6 insurance or group prescription drug insurance coverage to which the employee is entitled to
7 participate: *Provided,* That the spouse and dependent coverage is limited to excess or secondary
8 coverage for each spouse and dependent who has primary coverage from any other source. For
9 purposes of this section, the term "primary coverage" means individual or group hospital and surgical
10 insurance coverage or individual or group major medical insurance coverage or group prescription
11 drug coverage in which the spouse or dependent is the named insured or certificate holder. For the
12 purposes of this section, "dependent" includes an eligible employee's unmarried child or stepchild
13 under the age of twenty-five if that child or stepchild meets the definition of a "qualifying child" or
14 a "qualifying relative" in Section 152 of the Internal Revenue Code. The director may require proof
15 regarding spouse and dependent primary coverage and shall adopt rules governing the nature,
16 discontinuance and resumption of any employee's coverage for his or her spouse and dependents.

17 (c) *Continuation after termination.* -- If an employee participating in the plan is terminated
18 from employment involuntarily or in reduction of work force, the employee's insurance coverage
19 provided under this article shall continue for a period of three months at no additional cost to the
20 employee and the employer shall continue to contribute the employer's share of plan premiums for
21 the coverage. An employee discharged for misconduct shall not be eligible for extended benefits
22 under this section. Coverage may be extended up to the maximum period of three months, while

1 administrative remedies contesting the charge of misconduct are pursued. If the discharge for
2 misconduct be upheld, the full cost of the extended coverage shall be reimbursed by the employee.
3 If the employee is again employed or recalled to active employment within twelve months of his or
4 her prior termination, he or she shall not be considered a new enrollee and may not be required to
5 again contribute his or her share of the premium cost, if he or she had already fully contributed such
6 share during the prior period of employment.

7 (d) *Conversion of accrued annual and sick leave for extended insurance coverage upon*
8 *retirement for employees who elected to participate in the plan before July, 1988.* -- Except as
9 otherwise provided in subsection (g) of this section, when an employee participating in the plan, who
10 elected to participate in the plan before July 1, 1988, is compelled or required by law to retire before
11 reaching the age of sixty-five, or when a participating employee voluntarily retires as provided by
12 law, that employee's accrued annual leave and sick leave, if any, shall be credited toward an
13 extension of the insurance coverage provided by this article, according to the following formulae:
14 The insurance coverage for a retired employee shall continue one additional month for every two
15 days of annual leave or sick leave, or both, which the employee had accrued as of the effective date
16 of his or her retirement. For a retired employee, his or her spouse and dependents, the insurance
17 coverage shall continue one additional month for every three days of annual leave or sick leave, or
18 both, which the employee had accrued as of the effective date of his or her retirement.

19 (e) *Conversion of accrued annual and sick leave for extended insurance coverage upon*
20 *retirement for employees who elected to participate in the plan after June, 1988.* -- Notwithstanding
21 subsection (d) of this section, and except as otherwise provided in subsections (g) and (l) of this
22 section, when an employee participating in the plan who elected to participate in the plan on and

1 after July 1, 1988, is compelled or required by law to retire before reaching the age of sixty-five, or
2 when the participating employee voluntarily retires as provided by law, that employee's annual leave
3 or sick leave, if any, shall be credited toward one half of the premium cost of the insurance provided
4 by this article, for periods and scope of coverage determined according to the following formulae:
5 (1) One additional month of single retiree coverage for every two days of annual leave or sick leave,
6 or both, which the employee had accrued as of the effective date of his or her retirement; or (2) one
7 additional month of coverage for a retiree, his or her spouse and dependents for every three days of
8 annual leave or sick leave, or both, which the employee had accrued as of the effective date of his
9 or her retirement. The remaining premium cost shall be borne by the retired employee if he or she
10 elects the coverage. For purposes of this subsection, an employee who has been a participant under
11 spouse or dependent coverage and who reenters the plan within twelve months after termination of
12 his or her prior coverage shall be considered to have elected to participate in the plan as of the date
13 of commencement of the prior coverage. For purposes of this subsection, an employee shall not be
14 considered a new employee after returning from extended authorized leave on or after July 1, 1988.

15 (f) *Increased retirement benefits for retired employees with accrued annual and sick leave.*

16 -- In the alternative to the extension of insurance coverage through premium payment provided in
17 subsections (d) and (e) of this section, the accrued annual leave and sick leave of an employee
18 participating in the plan may be applied, on the basis of two days' retirement service credit for each
19 one day of accrued annual and sick leave, toward an increase in the employee's retirement benefits
20 with those days constituting additional credited service in computation of the benefits under any state
21 retirement system: *Provided*, That for a person who first becomes a member of the Teachers
22 Retirement System as provided in article seven-a, chapter eighteen of this code on or after July 1,

1 2015, accrued annual and sick leave of an employee participating in the plan may not be applied for
2 retirement service credit. However, the additional credited service shall not be used in meeting
3 initial eligibility for retirement criteria, but only as additional service credited in excess thereof.

4 (g) *Conversion of accrued annual and sick leave for extended insurance coverage upon*
5 *retirement for certain higher education employees.* – Except as otherwise provided in subsection (l)
6 of this section, when an employee, who is a higher education full-time faculty member employed on
7 an annual contract basis other than for twelve months, is compelled or required by law to retire
8 before reaching the age of sixty-five, or when such a participating employee voluntarily retires as
9 provided by law, that employee's insurance coverage, as provided by this article, shall be extended
10 according to the following formulae: The insurance coverage for a retired higher education full-time
11 faculty member, formerly employed on an annual contract basis other than for twelve months, shall
12 continue beyond the effective date of his or her retirement one additional year for each three and
13 one-third years of teaching service, as determined by uniform guidelines established by the
14 University of West Virginia Board of Trustees and the board of directors of the state college system,
15 for individual coverage, or one additional year for each five years of teaching service for family
16 coverage.

17 (h) Any employee who retired prior to April 21, 1972, and who also otherwise meets the
18 conditions of the "retired employee" definition in section two of this article, shall be eligible for
19 insurance coverage under the same terms and provisions of this article. The retired employee's
20 premium contribution for any such coverage shall be established by the finance board.

21 (i) *Retiree participation.* -- All retirees under the provisions of this article, including those
22 defined in section two of this article; those retiring prior to April 21, 1972; and those hereafter

1 retiring are eligible to obtain health insurance coverage. The retired employee's premium
2 contribution for the coverage shall be established by the finance board.

3 (j) *Surviving spouse and dependent participation.* -- A surviving spouse and dependents of
4 a deceased employee, who was either an active or retired employee participating in the plan just prior
5 to his or her death, are entitled to be included in any comprehensive group health insurance coverage
6 provided under this article to which the deceased employee was entitled, and the spouse and
7 dependents shall bear the premium cost of the insurance coverage. The finance board shall establish
8 the premium cost of the coverage.

9 (k) *Elected officials.* -- In construing the provisions of this section or any other provisions
10 of this code, the Legislature declares that it is not now nor has it ever been the Legislature's intent
11 that elected public officials be provided any sick leave, annual leave or personal leave, and the
12 enactment of this section is based upon the fact and assumption that no statutory or inherent authority
13 exists extending sick leave, annual leave or personal leave to elected public officials and the very
14 nature of those positions preclude the arising or accumulation of any leave, so as to be thereafter
15 usable as premium paying credits for which the officials may claim extended insurance benefits.

16 (l) *Participation of certain former employees.* -- An employee, eligible for coverage under
17 the provisions of this article who has twenty years of service with any agency or entity participating
18 in the public employees insurance program or who has been covered by the public employees
19 insurance program for twenty years may, upon leaving employment with a participating agency or
20 entity, continue to be covered by the program if the employee pays one hundred five percent of the
21 cost of retiree coverage: *Provided,* That the employee shall elect to continue coverage under this
22 subsection within two years of the date the employment with a participating agency or entity is

1 The days shall be applied on the basis of two workdays' credit granted for each one day of accrued
2 annual or sick leave days, with each month of retirement service credit to equal twenty workdays and
3 with any remainder of ten workdays or more to constitute a full month of additional credit and any
4 remainder of less than ten workdays to be dropped and not used, notwithstanding any provisions of
5 the code to the contrary: *Provided*, That for a person who first becomes a member of the retirement
6 system on or after July 1, 2015, accrued annual and sick leave days may not be applied to acquire
7 additional credited service. The credited service shall be allowed and not considered to controvert
8 the requirement of no more than twelve months' credited service in any year's period.

9 **CHAPTER 18. EDUCATION.**

10 **ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

11 **§18-7A-17. Statement and computation of teachers' service.**

12 (a) Under rules adopted by the retirement board, each teacher and nonteaching member shall
13 file a detailed statement of his or her length of service as a teacher or nonteacher for which he or she
14 claims credit. The retirement board shall determine what part of a year is the equivalent of a year of
15 service. In computing the service, however, it shall credit no period of more than a month's duration
16 during which a member was absent without pay, nor shall it credit for more than one year of service
17 performed in any calendar year.

18 (b) For service as a teacher in the employment of the federal government, or a state or
19 territory of the United States, or a governmental subdivision of that state or territory, the retirement
20 board shall grant credit to the member: *Provided*, That the member shall pay to the system twelve
21 percent of that member's gross salary earned during the first full year of current employment whether
22 a member of the Teachers Retirement System or the Teachers' Defined Contribution Retirement

1 System, times the number of years for which credit is granted, plus interest at a rate to be determined
2 by the retirement board. The interest shall be deposited in the reserve fund and service credit granted
3 at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total
4 service as a teacher in West Virginia. Any purchase of out-of-state service, as provided in this article,
5 shall not be used to establish eligibility for a retirement allowance and the retirement board shall
6 grant credit for the purchased service as additional service only: *Provided, however,* That a purchase
7 of out-of-state service is prohibited if the service is used to obtain a retirement benefit from another
8 retirement system: *Provided further,* That salaries paid to members for service prior to entrance into
9 the retirement system shall not be used to compute the average final salary of the member under the
10 retirement system.

11 (c) No members shall be considered absent from service while serving as a member or
12 employee of the Legislature of the State of West Virginia during any duly constituted session of that
13 body or while serving as an elected member of a county commission during any duly constituted
14 session of that body.

15 (d) No member shall be considered absent from service as a teacher or nonteacher while
16 serving as an officer with a statewide professional teaching association, or who has served in that
17 capacity, and no retirant, who served in that capacity while a member, shall be considered to have
18 been absent from service as a teacher by reason of that service: *Provided,* That the period of service
19 credit granted for that service shall not exceed ten years: *Provided, however,* That a member or
20 retirant who is serving or has served as an officer of a statewide professional teaching association
21 shall make deposits to the Teachers Retirement System, for the time of any absence, in an amount
22 double the amount which he or she would have contributed in his or her regular assignment for a like

1 period of time.

2 (e) The Teachers Retirement System shall grant service credit to any former or present
3 member of the West Virginia Public Employees Retirement System who has been a contributing
4 member of the Teachers Retirement System for more than three years, for service previously credited
5 by the Public Employees Retirement System upon his or her written request and: (1) Shall require
6 the transfer of the member's Public Employees Retirement System accumulated contributions to the
7 Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn from the
8 Public Employees Retirement System, plus interest at a rate to be determined by the retirement
9 board, compounded annually from the date of withdrawal to the date of payment, any time prior to
10 the member's effective retirement date: *Provided*, That there shall be added by the member to the
11 amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the
12 contributions he or she would have made had the member been under the Teachers Retirement
13 System during the period of his or her membership in the Public Employees Retirement System, plus
14 interest at a rate determined by the retirement board, compounded annually from the date the
15 additional contribution would have been made had the member been under the Teachers Retirement
16 System to the date of payment. All interest paid or transferred shall be deposited in the reserve fund.

17 (f) For service as a teacher in an elementary or secondary parochial school, located within
18 this state and fully accredited by the West Virginia Department of Education, the retirement board
19 shall grant credit to the member: *Provided*, That the member shall pay to the system twelve percent
20 of that member's gross salary earned during the first full year of current employment whether a
21 member of the Teachers Retirement System or the Teachers' Defined Contribution Retirement
22 System, times the number of years for which credit is granted, plus interest at a rate to be determined

1 by the retirement board. The interest shall be deposited in the reserve fund and service granted at the
2 time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total
3 service as a teacher in the West Virginia public school system. Any purchase of parochial school
4 service, as provided in this section, may not be used to establish eligibility for a retirement allowance
5 and retirement board shall grant credit for the purchase as additional service only: *Provided,*
6 *however,* That a purchase of parochial school service is prohibited if the service is used to obtain a
7 retirement benefit from another retirement system.

8 (g) Active members who previously worked in Comprehensive Employment and Training
9 Act (CETA) may receive service credit for time served in that capacity: *Provided,* That in order to
10 receive service credit under the provisions of this subsection the following conditions must be met:

11 (1) The member must have moved from temporary employment with the participating employer to
12 permanent full-time employment with the participating employer within one hundred twenty days
13 following the termination of the member's CETA employment; (2) the retirement board must receive
14 evidence that establishes to a reasonable degree of certainty as determined by the retirement board
15 that the member previously worked in CETA; and (3) the member shall pay to the retirement board
16 an amount equal to the employer and employee contribution plus interest at the amount set by the
17 retirement board for the amount of service credit sought pursuant to this subsection: *Provided,*
18 *however,* That the maximum service credit that may be obtained under the provisions of this
19 subsection is two years: *Provided further,* That a member must apply and pay for the service credit
20 allowed under this subsection and provide all necessary documentation by March 31, 2003: *And*
21 *provided further,* That the retirement board shall exercise due diligence to notify affected employees
22 of the provisions of this subsection.

1 (h) If a member is not eligible for prior service credit or pension as provided in this article,
2 then his or her prior service shall not be considered a part of his or her total service.

3 (i) A member who withdrew from membership may regain his or her former membership
4 rights as specified in section thirteen of this article only in case he or she has served two years since
5 his or her last withdrawal.

6 (j) Subject to the provisions of subsections (a) through (k), inclusive, of this section, the
7 retirement board shall verify as soon as practicable the statements of service submitted. The
8 retirement board shall issue prior service certificates to all persons eligible for the certificates under
9 the provisions of this article. The certificates shall state the length of the prior service credit, but in
10 no case shall the prior service credit exceed forty years.

11 (k) Notwithstanding any provision of this article to the contrary, when a member is or has
12 been elected to serve as a member of the Legislature, and the proper discharge of his or her duties
13 of public office require that member to be absent from his or her teaching or administrative duties,
14 the time served in discharge of his or her duties of the legislative office are credited as time served
15 for purposes of computing service credit: *Provided*, That the retirement board may not require any
16 additional contributions from that member in order for the retirement board to credit him or her with
17 the contributing service credit earned while discharging official legislative duties: *Provided*,
18 *however*, That nothing in this section may be construed to relieve the employer from making the
19 employer contribution at the member's regular salary rate or rate of pay from that employer on the
20 contributing service credit earned while the member is discharging his or her official legislative
21 duties. These employer payments shall commence as of June 1,2000: *Provided further*, That any
22 member to which the provisions of this subsection apply may elect to pay to the retirement board an

1 amount equal to what his or her contribution would have been for those periods of time he or she was
2 serving in the Legislature. The periods of time upon which the member paid his or her contribution
3 shall then be included for purposes of determining his or her final average salary as well as for
4 determining years of service: *And provided further*, That a member using the provisions of this
5 subsection is not required to pay interest on any contributions he or she may decide to make.

6 (l) The Teachers Retirement System shall grant service credit to any former member of the
7 State Police Death, Disability and Retirement System who has been a contributing member for more
8 than three years for service previously credited by the State Police Death, Disability and Retirement
9 System; and: (1) Shall require the transfer of the member's contributions to the Teachers Retirement
10 System; or (2) shall require a repayment of the amount withdrawn any time prior to the member's
11 retirement: *Provided*, That the member shall add to the amounts transferred or repaid under this
12 paragraph an amount which is sufficient to equal the contributions he or she would have made had
13 the member been under the Teachers Retirement System during the period of his or her membership
14 in the State Police Death, Disability and Retirement System plus interest at a rate to be determined
15 by the retirement board compounded annually from the date of withdrawal to the date of payment.
16 The interest paid shall be deposited in the reserve fund.

17 **§18-7A-17a. Qualified military service.**

18 (a) Except as provided in subsection (b) of this section, for the purpose of this article, the
19 retirement board shall grant prior service credit to members of the retirement system who were
20 honorably discharged from active duty service in any of the armed forces of the United States in any
21 period of national emergency within which a federal Selective Service Act was in effect. For
22 purposes of this section, "armed forces" includes Women's Army Corps, women's appointed

1 volunteers for emergency service, Army Nurse Corps, SPARS, Women's Reserve and other similar
2 units officially part of the military service of the United States. The military service is considered
3 equivalent to public school teaching, and the salary equivalent for each year of that service is the
4 actual salary of the member as a teacher for his or her first year of teaching after discharge from
5 military service. Prior service credit for military service shall not exceed ten years for any one
6 member, nor shall it exceed twenty-five percent of total service at the time of retirement.
7 Notwithstanding the preceding provisions of this subsection, contributions, benefits and service
8 credit with respect to qualified military service shall be provided in accordance with Section 414(u)
9 of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same
10 meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to
11 determine all questions and make all decisions relating to this section and, pursuant to the authority
12 granted to the retirement board in section one, article ten-d, chapter five of this code, may
13 promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u)
14 of the Internal Revenue Code. No military service credit may be used in more than one retirement
15 system administered by the Consolidated Public Retirement Board.

16 (b) Subsection (a) of this section does not apply to any member who first becomes an
17 employee of a participating public employer on or after July 1, 2015. This subsection applies to any
18 member who first became an employee of a participating public employer on or after July 1, 2015,
19 and also applies to any member who became an employee of a participating public employer before
20 July 1, 2015, and is unable to meet the requirements of subsection (a) of this section.

21 (1) Any member may purchase up to sixty months of military service credit for time served
22 in active military duty prior to first becoming an employee of a participating public employer if all

1 of the following conditions are met:

2 (A) The member has completed a complete fiscal year of contributory service;

3 (B) The active military duty occurs prior to the date on which the member first becomes an
4 employee of a participating public employer; and

5 (C) The employee pays to the retirement system the actuarial reserve purchase amount within
6 forty-eight months after the date on which employer and employee contributions are first received
7 by the retirement system for the member and while he or she continues to be in the employ of a
8 participating public employer and contributing to the retirement system, or within forty-eight months
9 of July 1, 2015, whichever is later: *Provided*, That any employee who ceases employment with a
10 participating public employer before completing the required actuarial reserve purchase amount in
11 full shall not be eligible to purchase the military service.

12 (2) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first
13 becomes an employee of a participating public employer on or after July 1, 2015, but who does not
14 remain employed and contributing to the retirement system for at least a complete fiscal year after
15 his or her initial employment, shall be considered to have met the requirement of said paragraph the
16 first time he or she becomes an employee of a participating public employer and completes at least
17 a complete fiscal year of contributing service. Such a member shall be considered to have met the
18 requirement of paragraph (C) of said subdivision if he or she pays to the retirement system the
19 actuarial reserve purchase amount within forty-eight months after the date on which employer and
20 employee contributions are first received by the retirement system for the member the first time he
21 or she becomes an employee of a participating public employer and completes at least a complete
22 fiscal year of contributing service, and while he or she continues to be in the employ of a

1 participating public employer and contributing to the retirement system.

2 (3) A member who first becomes an employee of a participating public employer on or after
3 July 1, 2015, may purchase military service credit for active military duty performed on or after the
4 date he or she first becomes an employee of a participating public employer only if all of the
5 following conditions are met: *Provided*, That the maximum military service credit such member
6 may purchase shall take into account any military service credit purchased for active military duty
7 pursuant to subdivision (1) of this subsection in addition to any military service credit purchased
8 pursuant to this subdivision:

9 (A) The member was an employee of a participating public employer, terminated
10 employment and experienced a break in contributing service in the retirement system of one or more
11 months, performed active military service while not an employee of the participating public
12 employer and not contributing to the retirement system, then again becomes an employee of a
13 participating public employer and completes at least a complete fiscal year of contributory service;

14 (B) The member does not qualify for military service credit for such active military duty
15 pursuant to subsection (d) of this section; and

16 (C) The member pays to the retirement system the actuarial reserve purchase amount within
17 forty-eight months after the date on which employer and employee contributions are first received
18 by the retirement system for the member after he or she again becomes an employee of a
19 participating public employer immediately following the period of active military duty and break in
20 service and completes at least a complete fiscal year of contributory service, and while he or she
21 continues to be in the employ of a participating public employer and contributing to the retirement
22 system.

1 (4) Notwithstanding paragraph (A), subdivision (3) of this subsection, a member who
2 otherwise meets the requirements of said paragraph, but who does not remain employed and
3 contributing to the retirement system for at least a complete fiscal year when he or she first becomes
4 an employee of a participating public employer after the period of active military duty and break in
5 service, shall be considered to have met the requirement of said paragraph the first time he or she
6 again becomes an employee of a participating public employer and completes at least a complete
7 fiscal year of contributing service. Such a member shall be considered to have met the requirement
8 of paragraph (C) of said subdivision if he or she pays to the retirement system the actuarial reserve
9 purchase amount within forty-eight months after the date on which employer and employee
10 contributions are first received by the retirement system for the member for the first time he or she
11 again becomes an employee of a participating public employer and completes at least a complete
12 fiscal year of contributing service, and while he or she continues to be in the employ of a
13 participating public employer and contributing to the retirement system.

14 (5) For purposes of this subsection, the following definitions shall apply:

15 (A) "Active military duty" means full-time active duty in the armed forces of the United
16 States for a period of thirty or more consecutive calendar days. Active military duty does not include
17 inactive duty of any kind.

18 (B) "Actuarial reserve purchase amount" means the purchase annuity rate multiplied by the
19 purchase accrued benefit, calculated as of the calculation month, plus annual interest accruing at
20 seven and one-half percent from the calculation month through the purchase month, compounded
21 monthly.

22 (C) "Armed forces of the United States" means the Army, Navy, Air Force, Marine Corps,

1 and Coast Guard, the reserve components thereof, and the National Guard of the United States or
2 the National Guard of a state or territory when members of the same are on full-time active duty
3 pursuant to Title 10 or Title 32 of the United States Code.

4 (D) "Calculation month" means the month immediately following the month in which the
5 member completes a complete fiscal year of contributory service with a participating public
6 employer required by subdivision (1), (2), (3) or (4) of this subsection, as applicable.

7 (E) "Purchase accrued benefit" means two percent times the purchase military service times
8 the purchase average monthly salary.

9 (F) "Purchase age" means the age of the employee in years and completed months as of the
10 first day of the calculation month.

11 (G) "Purchase annuity rate" means the actuarial lump sum annuity factor calculated as of the
12 calculation month based on the following actuarial assumptions: Interest rate of seven and one-half
13 percent; mortality of the 1971 group annuity mortality table, fifty percent blended male and female
14 rates, applied on a unisex basis to all members; if purchase age is under age sixty-two, a deferred
15 annuity factor with payments commencing at age sixty-two; and if purchase age is sixty-two or over,
16 an immediate annuity factor with payments starting at the purchase age.

17 (H) "Purchase average monthly salary" means the average monthly salary of the member
18 during the number of months of the member's contract during the fiscal year of contributory service
19 required by subdivisions (1), (2), (3) and (4) of this subsection, as applicable. For any member who
20 first became an employee of a participating public employer before July 1, 2015, the purchase
21 average monthly salary means the average monthly salary of the member during the number of
22 months of the member's contract during his or her complete fiscal year of contributory service on

1 or after July 1, 2015.

2 (I) "Purchase military service" means the amount of military service being purchased by the
3 employee in months up to the sixty-month maximum, calculated in accordance with subdivision (7)
4 of this subsection.

5 (J) "Purchase month" means the month in which the employee deposits the actuarial reserve
6 lump sum purchase amount into the plan trust fund in full payment of the service credit being
7 purchased or makes the final payment of the actuarial reserve purchase amount into the plan trust
8 fund in full payment of the service credit being purchased.

9 (6) A member may purchase military service credit for a period of active military duty
10 pursuant to this subsection only if the member received an honorable discharge for the period.
11 Anything other than an honorable discharge, including, but not limited to, a general or under
12 honorable conditions discharge, an entry-level separation discharge, an other than honorable
13 conditions discharge or a dishonorable discharge, shall disqualify the member from receiving
14 military service credit for the period of service. The board shall require a member requesting
15 military service credit to provide official documentation establishing that the requirements set forth
16 in this subsection have been met.

17 (7) To calculate the amount of military service credit a member may purchase, the board shall
18 add the total number of days in each period of a member's active military duty eligible to be
19 purchased, divide the total by thirty, and round up or down to the nearest integer (fractions of 0.5
20 shall be rounded up), in order to yield the total number of months of military service credit a member
21 may purchase, subject to the sixty-month maximum. A member may purchase all or part of the
22 maximum amount of military service credit he or she is eligible for in one-month increments.

1 (8) To receive credit, a member must submit a request to purchase military service credit to
2 the board, on such form or in such other manner as shall be required by the board, within the
3 complete fiscal year period required by subdivision (1), (2), (3) or (4) of this subsection, as
4 applicable. The board shall then calculate the actuarial reserve lump sum purchase amount, which
5 amount must be paid by the member within the 48-month period required by said subdivisions, as
6 applicable. A member purchasing military service credit pursuant to this subsection must do so in
7 a single, lump sum payment: *Provided* , That the board may accept partial, installment or other
8 similar payments if the employee executes a contract with the board specifying the amount of
9 military service to be purchased and the payments required: *Provided, however*, That any failure to
10 pay the contract amount in accordance with this section shall be treated as an overpayment or excess
11 contribution subject to section forty-four of this article and no military service shall be credited.

12 (9) The board shall require a member requesting military service credit to provide official
13 documentation establishing that the requirements set forth in this subsection have been met.

14 (10) Military service credit purchased pursuant to this subsection shall not be considered
15 contributing service credit or contributory service for purposes of this article.

16 (11) If a member who has purchased military service credit pursuant to this subsection is
17 eligible for and requests a withdrawal of accumulated contributions pursuant to the provisions of this
18 article, he or she shall also receive a refund of the actuarial reserve purchase amount he or she paid
19 to the retirement system to purchase military service credit, together with regular interest on such
20 amount.

21 (c) No period of military service shall be used to obtain credit in more than one retirement
22 system administered by the board and once used in any system, a period of military service may not

1 be used again in any other system.

2 (d) Notwithstanding the preceding provisions of this section, contributions, benefits and
3 service credit with respect to qualified military service shall be provided in accordance with Section
4 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and
5 Reemployment Rights Act (USERRA), and regulations promulgated thereunder, as the same may
6 be amended from time to time. For purposes of this section, "qualified military service" has the same
7 meaning as in Section 414(u) of the Internal Revenue Code.

8 (e) In any case of doubt as to the period of service to be credited a member under the
9 provisions of this section, the board has final power to determine the period. The board is authorized
10 to determine all questions and make all decisions relating to this section and, pursuant to the
11 authority granted to the board in section one, article ten-d of this chapter, may propose rules to
12 administer this section for legislative approval in accordance with the provisions of article three,
13 chapter twenty-nine-a of this code.

14 **§18-7A-23. Withdrawal and death benefits.**

15 (a) Benefits upon withdrawal from service prior to retirement under the provisions of this
16 article shall be as follows:

17 (1) A contributor who withdraws from service for any cause other than death, disability or
18 retirement shall, upon application, be paid his or her accumulated contributions up to the end of the
19 fiscal year preceding the year in which application is made, after offset of any outstanding loan
20 balance, plus accrued loan interest, pursuant to section thirty-four of this article, but in no event shall
21 interest be paid beyond the end of five years following the year in which the last contribution was
22 made: *Provided*, That the contributor, at the time of application, is then no longer under contract,

1 verbal or otherwise, to serve as a teacher; or

2 (2) Except as provided in section twenty-five-b of this article, if the inactive member has
3 completed twenty years of total service, he or she may elect to receive at age sixty an annuity which
4 shall be computed as provided in this article: *Provided*, That if the inactive member has completed
5 at least five, but fewer than twenty, years of total service in this state, he or she may elect to receive
6 at age sixty-two an annuity which shall be computed as provided in this article. The inactive member
7 must notify the retirement board in writing concerning the election. If the inactive member has
8 completed fewer than five years of service in this state, he or she shall be subject to the provisions
9 as outlined in subdivision (1) of this subsection.

10 (b) Benefits upon the death of a contributor prior to retirement under the provisions of this
11 article shall be paid as follows:

12 (1) If the contributor was at least fifty years old and if his or her total service as a teacher or
13 nonteaching member was at least twenty-five years at the time of his or her death, then the surviving
14 spouse of the deceased, provided the spouse is designated as the sole primary refund beneficiary, is
15 eligible for an annuity computed as though the deceased were actually a retirant at the time of death
16 and had selected a survivorship option which pays the spouse the same monthly amount which
17 would have been received by the deceased; or

18 (2) If the facts do not permit payment under subdivision (1) of this subsection, then the
19 following sum shall be paid to the refund beneficiary of the contributor: (A) The contributor's
20 accumulated contributions up to the plan year of his or her death plus an amount equal to his or her
21 member contributions: *Provided*, That the latter sum shall emanate from the Employer's
22 Accumulation Fund; and (B) the refund beneficiary of any individual who became a member of the

1 retirement system as a result of the voluntary transfer contemplated in article seven-d of this chapter
2 shall also be paid the member contributions plus the vested portion of employer contributions made
3 on his or her behalf to the Teachers' Defined Contribution Retirement System, plus any earnings
4 thereon, as of June 30, 2008, as stated by the retirement board.

5 **§18-7A-25. Eligibility for retirement allowance.**

6 (a) Except for a person who first becomes a member of the retirement system on or after July
7 1, 2015, any actively contributing member who has attained the age of sixty years or any member
8 who has thirty-five years of total service as a teacher or nonteaching member in West Virginia,
9 regardless of age, is eligible for an annuity. No new entrant nor present member is eligible for an
10 annuity, however, if either has less than five years of service to his or her credit: *Provided*, That on
11 and after July 1, 2013, any person who becomes a new member of this retirement system shall, in
12 qualifying for retirement under this section, have five or more years of contributory service, all of
13 which shall be actual, contributory ones.

14 (b) Except for a person who first becomes a member of the retirement system on or after July
15 1, 2015, any member who has attained the age of fifty-five years and who has served thirty years as
16 a teacher or nonteaching member in West Virginia is eligible for an annuity.

17 (c) Except for a person who first becomes a member of the retirement system on or after July
18 1, 2015, any member who has served at least thirty but less than thirty-five years as a teacher or
19 nonteaching member in West Virginia and is less than fifty-five years of age is eligible for an
20 annuity, but the annuity shall be the reduced actuarial equivalent of the annuity the member would
21 have received if the member were age fifty-five at the time the annuity was applied for.

22 (d) The request for any annuity shall be made by the member in writing to the retirement

1 board, but in case of retirement for disability, the written request may be made by either the member
2 or the employer.

3 (e) A member is eligible for annuity for disability if he or she satisfies the conditions in either
4 subdivision (1) or (2) of this subsection and meets the conditions of subdivision (3) of this
5 subsection as follows:

6 (1) His or her service as a teacher or nonteaching member in West Virginia must total at least
7 ten years and service as a teacher or nonteaching member must have been terminated because of
8 disability, which disability must have caused absence from service for at least six months before his
9 or her application for disability annuity is approved.

10 (2) His or her service as a teacher or nonteaching member in West Virginia must total at least
11 five years and service as a teacher or nonteaching member must have been terminated because of
12 disability, which disability must have caused absence from service for at least six months before his
13 or her application for disability annuity is approved and the disability is a direct and total result of
14 an act of student violence directed toward the member.

15 (3) An examination by a physician or physicians selected by the retirement board must show
16 that the member is at the time mentally or physically incapacitated for service as a teacher or
17 nonteaching member, that for that service the disability is total and likely to be permanent and that
18 he or she should be retired in consequence of the disability.

19 (f) Continuance of the disability of the retirant shall be established by medical examination,
20 as prescribed in subdivision (3), subsection (e) of this section, annually for five years after
21 retirement, and thereafter at such times required by the retirement board. Effective July 1, 1998, a
22 member who has retired because of a disability may select an option of payment under the provisions

1 of section twenty-eight of this article: *Provided*, That any option selected under the provisions of
2 section twenty-eight of this article shall be in all respects the actuarial equivalent of the straight life
3 annuity benefit the disability retiree receives or would receive if the options under said section were
4 not available and that no beneficiary or beneficiaries of the disability retiree may receive a greater
5 benefit, nor receive any benefit for a greater length of time, than the beneficiary or beneficiaries
6 would have received had the disability retiree not made any election of the options available under
7 said section. In determining the actuarial equivalence, the retirement board shall take into account
8 the life expectancies of the member and the beneficiary: *Provided, however*, That the life
9 expectancies may at the discretion of the retirement board be established by an underwriting medical
10 director of a competent insurance company offering annuities. Payment of the disability annuity
11 provided in this article shall cease immediately if the retirement board finds that the disability of the
12 retiree no longer exists, or if the retiree refuses to submit to medical examination as required by
13 this section.

14 **§18-7A-25b. Withdrawal and eligibility for retirement allowance for a person who first**
15 **becomes a member of the retirement system on or after July 1, 2015.**

16 (a) A person who first becomes a member of the retirement system on or after July 1, 2015,
17 who has ten or more years of contributing service, and attains or has attained the age of sixty-two
18 years, may retire upon his or her written application filed with the board of trustees setting forth the
19 date on which the member desires to be retired. Upon retirement, the member shall receive an
20 annuity provided in section twenty-six of this article.

21 (b) Any person who first becomes a member of the retirement system on or after July 1, 2015,
22 who has ten or more years of contributing service and who leaves the employ of a participating

1 public employer prior to attaining age sixty-two years for any reason except his or her disability or
2 death, is entitled to an annuity computed according to section twenty-two of this article: *Provided,*
3 That he or she does not withdraw his or her accumulated contributions from the members' deposit
4 fund. His or her annuity shall begin the first day of the calendar month next following the month in
5 which his or her application for same is filed with the board of trustees on or after his or her attaining
6 age sixty-four years.

7 (c) Any member who qualifies for deferred retirement benefits in accordance with
8 subsections (a) and (b) of this section and has twenty or more years of contributing service in force
9 is entitled to an annuity computed as in subsection (a) of this section: *Provided,* That he or she does
10 not withdraw his or her accumulated contributions from the members' deposit fund: *Provided,*
11 *however,* That his or her annuity shall begin the first day of the calendar month next following the
12 month in which his or her application for same is filed with the board of trustees on or after his or
13 her attaining age sixty-three.

14 (d) Notwithstanding any of the other provisions of this section or of this article, except
15 sections twenty-eight-a and twenty-eight-b of this article, and pursuant to rules promulgated by the
16 board, any member who first becomes a member of the retirement system on or after July 1, 2015,
17 and has ten or more years of contributing service in force, is currently employed by a participating
18 public employer and who elects to take early retirement, which for the purposes of this subsection
19 means retirement following attainment of age sixty but prior to attaining age sixty-two, is entitled
20 to the full computation of annuity according to section twenty-two of this article but with the reduced
21 actuarial equivalent of the annuity the member would have received if his or her benefit had
22 commenced at age sixty-two when he or she would have been entitled to full computation of benefit

1 without any reduction: *Provided*, That his or her annuity shall begin the first day of the calendar
2 month next following the month in which his or her application for same is filed with the board of
3 trustees on or after his or her attaining age sixty.

4 (e) Any member who first becomes a member of the retirement system on or after July 1,
5 2015, and has twenty or more years of contributing service in force, is currently employed by a
6 participating public employer and who elects to take early retirement, which for the purposes of this
7 subsection means retirement following attainment of age fifty-seven but prior to attaining age
8 sixty-two, is entitled to the full computation of annuity according to section twenty-two of this article
9 but with the reduced actuarial equivalent of the annuity the member would have received if his or
10 her benefit had commenced at age sixty-two when he or she would have been entitled to full
11 computation of benefit without any reduction: *Provided*, That his or her annuity shall begin the first
12 day of the calendar month next following the month in which his or her application for same is filed
13 with the board of trustees on or after his or her attaining age fifty-seven.

14 (f) Any member who first becomes a member of the retirement system on or after July 1,
15 2015, and has thirty or more years of contributing service in force, is currently employed by a
16 participating public employer and who elects to take early retirement, which for the purposes of this
17 subsection means retirement following attainment of age fifty-five but prior to attaining age
18 sixty-two, is entitled to the full computation of annuity according to section twenty-two of this article
19 but with the reduced actuarial equivalent of the annuity the member would have received if his or
20 her benefit had commenced at age sixty-two when he or she would have been entitled to full
21 computation of benefit without any reduction: *Provided*, That his or her annuity shall begin the first
22 day of the calendar month next following the month in which his or her application for same is filed

1 with the board of trustees on or after his or her attaining age fifty-five.