

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 529

(Senators Gaunch and Carmichael, *original sponsors*)

[Passed March 18, 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, 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; for a limited time permitting certain members of the Teachers Retirement System who transferred from the Teachers' Defined Contribution System to buy, with interest, their full service credit 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, §18-7A-25 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §18-7A-17a and §18-7A-25b; and that §18-7D-6 of said code be amended and reenacted, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,

SECRETARY OF STATE AND ATTORNEY GENERAL;

BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,

COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.

1 Unless a different meaning is clearly indicated by the 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

1 Consolidated Public Retirement System;

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

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

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

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

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

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

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

1 and Section 401 (a) (17) of the Internal Revenue Code: *Provided, however,* That the provisions of
2 section twenty-two-h of this article are not applicable to the amendments made to this subdivision
3 during the 2011 regular session of the Legislature;

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

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

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

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

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

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

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

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

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

1 Employees Retirement System after July 1, 2000;

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

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

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

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

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

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

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

22 (27) "Service" means personal service rendered to a participating public employer by an

1 employee of a participating public employer; and

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

3 **§5-10-14. Service credit; retroactive provisions.**

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

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

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

22 (3) Service may be credited to a member who was employed by a political subdivision if his

1 or her employment occurred within a period of thirty years immediately preceding the date the
2 political subdivision became a participating public employer.

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

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

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

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

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

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

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

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

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

14 (f) Any employee may purchase retroactive service credit for periods of employment in which
15 contributions were not deducted from the employee's pay. In the purchase of service credit for
16 employment prior to 1989 in any department, including the Legislature, which operated from the
17 General Revenue Fund and which was not expressly excluded from budget appropriations in which
18 blanket appropriations were made for the state's share of public employees' retirement coverage in
19 the years prior to 1989, the employee shall pay the employee's share. Other employees shall pay the
20 state's share and the employee's share to purchase retroactive service credit. Where an employee
21 purchases service credit for employment which occurred after 1988, that employee shall pay for the
22 employee's share and the employer shall pay its share for the purchase of retroactive service credit:

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

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

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

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

1 (i) The provisions of section twenty-two-h of this article are not applicable to the
2 amendments made to this section during the 2006 regular session.

3 **§5-10-15. Military service credit; qualified military service.**

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

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

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

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

17 If a member of the retirement system enters the active service of the armed forces of the
18 United States, the member's contributions to the retirement system are suspended during the period
19 of the active service and until the member's return to the employ of a participating public employer,
20 and any credit balance remaining in the member's deposit fund shall accumulate regular interest:
21 *Provided*, That notwithstanding any provision in this article to the contrary, if an employee of a
22 participating political subdivision serving on active duty in the military has accumulated credited

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

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

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

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

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

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

1 participating public employer and contributing to the retirement system: *Provided*, That any
2 employee who ceases employment with a participating public employer before completing the
3 required actuarial reserve purchase amount in full shall not be eligible to purchase the military
4 service.

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

18 (3) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first
19 becomes an employee of a participating public employer on or after July 1, 2015, as an elected
20 official, shall be considered to have met the requirement of paragraph (A), subdivision (1) of this
21 subsection after remaining employed for the first twelve consecutive months of his or her term and
22 first becoming an employee, regardless of whether a salary is paid to the employee for each such

1 month. An elected official who does not elect to begin participating in the retirement system upon
2 first becoming an employee of a participating public employer as an elected official is not eligible
3 to purchase military service credit pursuant to subdivision (1) of this subsection.

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

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

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

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

1 in service and completes at least twelve consecutive months of contributory service and while he or
2 she continues to be in the employ of a participating public employer and contributing to the
3 retirement system.

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

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

1 salary is paid to the employee for each such month. Such an individual must elect to begin
2 participating in the retirement system immediately upon again becoming an employee of a
3 participating public employer after the period of active military duty and break in service.

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

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

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

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

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

22 (E) "Purchase accrued benefit" means two percent times the purchase military service times

1 the purchase average monthly salary.

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

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

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

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

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

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

1 honorable conditions discharge, an entry-level separation discharge, an other than honorable
2 conditions discharge or a dishonorable discharge, shall disqualify the member from receiving
3 military service credit for the period of service.

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

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

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

1 (12) Military service credit purchased pursuant to this subsection may not be considered
2 contributing service credit or contributory service for purposes of this article.

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

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

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

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

1 provisions of article three, chapter twenty-nine-a of this code.

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

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

13 (b) For those persons who first become members of the retirement system on or after July 1,
14 2015, accrued annual or sick days may not be applied to acquire additional credited service.

15 **§5-10-20. Voluntary retirement.**

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

1 all of which years shall be actual, contributory ones. Upon retirement, the member shall receive an
2 annuity provided for in section twenty-two of this article.

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

6 **§5-10-21. Deferred retirement and early retirement.**

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

20 (b) Any member who qualifies for deferred retirement benefits in accordance with subsection
21 (a) of this section and has ten or more years of credited service in force and who has attained age
22 fifty-five as of the date of his or her separation, may, prior to the effective date of his or her

1 retirement, but not thereafter, elect to receive the actuarial equivalent of his or her deferred
2 retirement annuity as a reduced annuity commencing on the first day of any calendar month between
3 his or her date of separation and his or her attainment of age sixty-two years and payable throughout
4 his or her life.

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

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

21 (e) Notwithstanding any of the other provisions of this section or of this article, except
22 sections twenty-seven-a and twenty-seven-b of this article, and except for a person who first becomes

1 a member of the retirement system on or after July 1, 2015, any member of the retirement system
2 may retire with full pension rights, without reduction of benefits, if he or she is at least fifty-five
3 years of age and the sum of his or her age plus years of contributing service and limited credited
4 service, as defined in section two of this article, equals or exceeds eighty: *Provided*, That on and
5 after July 1, 2011, any person who becomes a new member of this retirement system shall, in
6 qualifying for retirement under this subsection, have five or more years of service, all of which years
7 shall be actual, contributory ones. The member's annuity shall begin the first day of the calendar
8 month immediately following the calendar month in which his or her application for the annuity is
9 filed with the board.

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

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

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

1 the first day of the calendar month next following the month in which his or her application for same
2 is filed with the board of trustees on or after his or her attaining age sixty-three.

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

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

1 day of the calendar month next following the month in which his or her application for same is filed
2 with the board of trustees on or after his or her attaining age fifty-seven.

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

13 **§5-10-29. Members' deposit fund; members' contributions; forfeitures.**

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

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

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

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

19 (d) In addition to the contributions deducted from the compensations of a member, as
20 heretofore provided, a member shall deposit in the members' deposit fund, by a single contribution
21 or by an increased rate of contribution as approved by the board of trustees, the amounts he or she
22 may have withdrawn therefrom and not repaid thereto, together with regular interest from the date

1 of withdrawal to the date of repayment. In no case shall a member be given credit for service
2 rendered prior to the date he or she withdrew his or her contributions or accumulated contributions,
3 as the case may be, until he or she returns to the members' deposit fund all amounts due the said
4 fund by him or her.

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

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

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

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

20 **ARTICLE 13. PUBLIC EMPLOYEES' AND TEACHERS' RECIPROCAL SERVICE**
21 **CREDIT ACT.**

22 **§5-13-2. Definitions.**

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

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

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

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

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

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

19 (f) "Reciprocal service credit" for a member of the public system who subsequently becomes
20 a member of the teacher system, or vice versa, means the sum of his or her credited service in force
21 acquired as a member of the public system and his or her credited service in force acquired as a
22 member of the teacher system: *Provided*, That persons who first became members of the public

1 system or teacher system on or after July 1, 2015, must be employed and contributed for ten years
2 or more in each system to receive reciprocal service credit.

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

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

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

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

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

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

1 (a) *Cost-sharing.* -- The director shall provide under any contract or contracts entered into
2 under the provisions of this article that the costs of any group hospital and surgical insurance, group
3 major medical insurance, group prescription drug insurance, group life and accidental death
4 insurance benefit plan or plans shall be paid by the employer and employee.

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

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

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

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

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

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

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

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

1 Retirement System as provided in article seven-a, chapter eighteen of this code on or after July 1,
2 2015, accrued annual and sick leave of an employee participating in the plan may not be applied for
3 retirement service credit. However, the additional credited service shall not be used in meeting
4 initial eligibility for retirement criteria, but only as additional service credited in excess thereof.

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

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

22 (i) *Retiree participation.* -- All retirees under the provisions of this article, including those

1 defined in section two of this article; those retiring prior to April 21, 1972; and those hereafter
2 retiring are eligible to obtain health insurance coverage. The retired employee's premium
3 contribution for the coverage shall be established by the finance board.

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

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

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

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

10 **CHAPTER 18. EDUCATION.**

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

12 **§18-7A-17. Statement and computation of teachers' service.**

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

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

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

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

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

1 double the amount which he or she would have contributed in his or her regular assignment for a like
2 period of time.

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

18 (f) For service as a teacher in an elementary or secondary parochial school, located within
19 this state and fully accredited by the West Virginia Department of Education, the retirement board
20 shall grant credit to the member: *Provided*, That the member shall pay to the system twelve percent
21 of that member's gross salary earned during the first full year of current employment whether a
22 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 granted at the
3 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 the West Virginia public school system. Any purchase of parochial school
5 service, as provided in this section, may not be used to establish eligibility for a retirement allowance
6 and retirement board shall grant credit for the purchase as additional service only: *Provided,*
7 *however,* That a purchase of parochial school service is prohibited if the service is used to obtain a
8 retirement benefit from another retirement system.

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

1 of the provisions of this subsection.

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

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

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

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

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

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

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

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

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

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

22 (1) Any member may purchase up to sixty months of military service credit for time served

1 in active military duty prior to first becoming an employee of a participating public employer if all
2 of the following conditions are met:

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

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

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

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

1 fiscal year of contributing service, and while he or she continues to be in the employ of a
2 participating public employer and contributing to the retirement system.

3 (3) 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 a complete fiscal year of contributory service;

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

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

1 system.

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

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

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

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

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

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

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

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

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

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

1 months of the member's contract during his or her complete fiscal year of contributory service on
2 or after July 1, 2015.

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

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

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

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

1 maximum amount of military service credit he or she is eligible for in one-month increments.

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

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

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

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

22 (c) No period of military service shall be used to obtain credit in more than one retirement

1 system administered by the board and once used in any system, a period of military service may not
2 be used again in any other system.

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

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

15 **§18-7A-23. Withdrawal and death benefits.**

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

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

1 made: *Provided*, That the contributor, at the time of application, is then no longer under contract,
2 verbal or otherwise, to serve as a teacher; or

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

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

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

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

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

6 **§18-7A-25. Eligibility for retirement allowance.**

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

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

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

1 (d) The request for any annuity shall be made by the member in writing to the retirement
2 board, but in case of retirement for disability, the written request may be made by either the member
3 or the employer.

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

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

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

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

20 (f) Continuance of the disability of the retirant shall be established by medical examination,
21 as prescribed in subdivision (3), subsection (e) of this section, annually for five years after
22 retirement, and thereafter at such times required by the retirement board. Effective July 1,1998, a

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

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

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

22 (b) Any person who first becomes a member of the retirement system on or after July 1, 2015,

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

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

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

1 commenced at age sixty-two when he or she would have been entitled to full computation of benefit
2 without any reduction: *Provided*, That his or her annuity shall begin the first day of the calendar
3 month next following the month in which his or her application for same is filed with the board of
4 trustees on or after his or her attaining age sixty.

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

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

1 day of the calendar month next following the month in which his or her application for same is filed
2 with the board of trustees on or after his or her attaining age fifty-five.

1 **ARTICLE 7D. VOLUNTARY TRANSFER FROM TEACHERS' DEFINED**
2 **CONTRIBUTION RETIREMENT SYSTEM TO STATE**
3 **TEACHERS RETIREMENT SYSTEM.**

4 **§18-7D-6. Service credit in State Teachers Retirement System following transfer; conversion**
5 **of assets; adjustments.**

6 (a) Any member who has affirmatively elected to transfer to the State Teachers Retirement
7 System within the period provided in section seven of this article whose assets have been transferred
8 from the Teachers' Defined Contribution Retirement System to the State Teachers Retirement
9 System pursuant to the provisions of this article and who has not made any withdrawals or cash-outs
10 from his or her assets is, depending upon the percentage of actively contributing members
11 affirmatively electing to transfer, entitled to service credit in the State Teachers Retirement System
12 in accordance with the provisions of subsection (c) of this section.

13 (b) Any member who has made withdrawals or cash-outs will receive service credit based
14 upon the amounts transferred. The board shall make the appropriate adjustment to the service credit
15 the member will receive.

16 (c) More than seventy-five percent of actively contributing members of the Teachers' Defined
17 Contribution Retirement System affirmatively elected to transfer to the State Teachers Retirement
18 System within the period provided in section seven of this article. Therefore, any member of the
19 Teachers' Defined Contribution Retirement System who decides to transfer to the State Teachers
20 Retirement System calculates his or her service credit in the State Teachers Retirement System as

1 follows:

2 (1) For any member affirmatively electing to transfer, the member's State Teachers
3 Retirement System credit shall be seventy-five percent of the member's Teachers' Defined
4 Contribution Retirement System service credit, less any service previously withdrawn by the member
5 or due to a qualified domestic relations order and not repaid;

6 (2) To receive full credit in the State Teachers Retirement System for service in the Teachers'
7 Defined Contribution Retirement System for which assets are transferred, members who
8 affirmatively elected to transfer and who provided to the board a signed verification of cost for
9 service credit purchase form by the effective date of the amendments to this section enacted in the
10 2009 regular legislative session shall pay into the State Teachers Retirement System a one and one-
11 half percent contribution by no later than July 1, 2015, or no later than ninety days after the
12 postmarked date on a final and definitive contribution calculation from the board, whichever is later.
13 This contribution shall be calculated as one and one-half percent of the member's estimated total
14 earnings for which assets are transferred, plus interest of four percent per annum accumulated from
15 the date of the member's initial participation in the Teachers' Defined Contribution Retirement
16 System through June 30, 2009, and interest of seven and one-half percent per annum accumulated
17 from July 1, 2009, through July 1, 2015: *Provided*, That any member who transferred and provided
18 to the board a signed verification of cost for service credit purchase form by June 30, 2009, but was
19 unable to complete the purchase of the one and one-half percent contribution, or any member who
20 did not request a verification of cost letter but attempted to purchase the one and one-half percent
21 contribution and was denied in writing by the board on or before December 31, 2009, may request
22 the board on or before April 15, 2015, to recalculate the contribution for 2015. To receive full credit,

1 the member shall pay into the State Teachers Retirement System the recalculated purchase amount
2 by July 1, 2015, or no later than sixty days after the postmarked date on a contribution recalculation
3 from the board, whichever is later. The recalculated contribution shall include the interest loss at
4 the actuarial rate of seven and one-half percent. The board's executive director may correct clerical
5 errors.

6 (A) For a member contributing to the Teachers' Defined Contribution Retirement System at
7 any time during the 2008 fiscal year and commencing membership in the State Teachers Retirement
8 System on July 1, 2008, or August 1, 2008, as the case may be:

9 (i) The estimated total earnings shall be calculated based on the member's salary and the
10 member's age nearest birthday on June 30, 2008;

11 (ii) This calculation shall apply both an annual backward salary scale from that date for prior
12 years' salaries and a forward salary scale for the salary for the 2008 fiscal year.

13 (B) The calculations in paragraph (A) of this subdivision are based upon the salary scale
14 assumption applied in the West Virginia Teachers Retirement System actuarial valuation as of July
15 1, 2007, prepared for the Consolidated Public Retirement Board. This salary scale shall be applied
16 regardless of breaks in service.

17 (d) All service previously transferred from the State Teachers Retirement System to the
18 Teachers' Defined Contribution Retirement System is considered Teachers' Defined Contribution
19 Retirement System service for the purposes of this article.

20 (e) Notwithstanding any provision of this code to the contrary, the retirement of a member
21 who becomes eligible to retire after the member's assets are transferred to the State Teachers
22 Retirement System pursuant to the provisions of this article may not commence before September

1 1, 2008: *Provided*, That the Consolidated Public Retirement Board may not retire any member who
2 is eligible to retire during the calendar year 2008 unless the member has provided a written notice
3 to his or her county board of education by July 1, 2008, of his or her intent to retire.

4 (f) The provisions of section twenty-eight-e, article seven-a of this chapter do not apply to
5 the amendments to this section enacted during the 2009 regular legislative session or the 2015
6 regular legislative session.