

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4363

FISCAL
NOTE

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KESSINGER, JENNINGS, SUMMERS, WAXMAN, MAYNARD,
SYPOLT AND ROWAN

[Introduced January 15, 2020; Referred to the Committee
on Pensions and Retirement then Finance]

1 A BILL to amend and reenact §5-10-17 of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §5-10D-1 of said code; to amend and reenact §7-14D-5 of said code; to
 3 amend and reenact §8-22A-6 of said code; to amend and reenact §16-5V-6 of said code;
 4 and to amend said code by adding thereto a new article, designated §20-17-1, §20-17-2,
 5 §20-17-3, §20-17-4, §20-17-5, §20-17-6, §20-17-7, §20-17-8, §20-17-9, §20-17-10, §20-
 6 17-11, §20-17-12, §2-17-13, §20-17-14, §20-17-15, §20-17-16, §20-17-17, §20-17-18,
 7 §20-17-19, §20-17-20, §20-17-21, §20-17-22, §20-17-23, §20-17-24, §20-17-25, §20-17-
 8 26, §20-17-27, §20-17-28, §20-17-29, §20-17-30, §20-17-31, §20-17-32, §20-17-33, §20-
 9 17-34, §20-17-35 and §20-17-36, all relating to establishing the West Virginia Division of
 10 Natural Resources Police Officer Retirement System; providing for additional members of
 11 the Consolidated Public Retirement Board; and providing for criminal offense of defrauding
 12 the system and penalties therefor.

Be it enacted by the Legislature of West Virginia:

**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.

§5-10-17. Retirement system membership.

1 The membership of the retirement system consists of the following persons:
 2 (a) All employees, as defined in section two of this article, who are in the employ of a
 3 political subdivision the day preceding the date it becomes a participating public employer and
 4 who continue in the employ of the participating public employer on and after that date shall
 5 become members of the retirement system; and all persons who become employees of a

6 participating public employer on or after that date shall thereupon become members of the
7 system; except as provided in subdivisions (b), (c) and (d) of this section.

8 (b) The membership of the Public Employees Retirement System ~~shall~~ may not include
9 any person who is an active contributing member of, or who has been retired by, any of the state
10 Teachers retirement systems, the Judges Retirement System, any Retirement System of the
11 West Virginia State Police, the Deputy Sheriff Retirement System, the Natural Resources Police
12 Officer Retirement System or any municipal retirement system for either, or both, police or
13 firefighter; and the Bureau of Employment Programs, by the Commissioner of the Bureau, may
14 elect whether its employees will accept coverage under this article or be covered under the
15 authorization of a separate enactment: *Provided*, That the exclusions of membership do not apply
16 to any member of the State Legislature, the Clerk of the House of Delegates, the Clerk of the
17 State Senate or to any member of the legislative body of any political subdivision provided he or
18 she once becomes a contributing member of the retirement system: *Provided, however*, That any
19 retired member of the State Police Death, Disability and Retirement Fund, the West Virginia State
20 Police Retirement System, the Deputy Sheriff Retirement System, the Natural Resources Police
21 Officer Retirement System and any retired member of any municipal retirement system for either,
22 or both, police or firefighter may on and after the effective date of this section become a member
23 of the retirement system as provided in this article, without receiving credit for prior service as a
24 municipal police officer or firefighter or as a member of the State Police Death, Disability and
25 Retirement Fund, the West Virginia State Police Retirement System or the Deputy Sheriff
26 Retirement System, or the Natural Resources Police Officer Retirement System: *Provided further*,
27 That any retired member of the State Police Death, Disability and Retirement Fund, the West
28 Virginia State Police Retirement System, the Deputy Sheriff Retirement System, the Natural
29 Resources Police Officer Retirement System and any retired member of any municipal retirement
30 system for either, or both, police or firefighters, who begins participation in the retirement system
31 established in this article on or after July1,2005, may not receive a combined retirement benefit

32 in excess of 105 percent of the member's highest annual salary earned while either a member of
33 the retirement system established in this article or while a member of the other retirement system
34 or systems from which he or she previously retired when adding the retirement benefit from the
35 retirement system created in this article to the retirement benefit received by that member from
36 the other retirement system or systems set forth herein from which he or she previously retired:
37 *And provided further*, That the membership of the retirement system does not include any person
38 who becomes employed by the Pretera Center for Mental Health Services, Valley
39 Comprehensive Mental Health Center, Westbrook Health Services or Eastern Panhandle Mental
40 Health Center on or after July1,1997, *And provided further*, That membership of the retirement
41 system does not include any person who becomes a member of the federal Railroad Retirement
42 Act on or after July1, 2000.

43 (c) Any member of the State Legislature, the Clerk of the House of Delegates, the Clerk
44 of the State Senate, and any employee of the State Legislature whose employment is otherwise
45 classified as temporary and who is employed to perform services required by the Legislature for
46 its regular sessions or during the interim between regular sessions and who has been or is
47 employed during regular sessions or during the interim between sessions in seven consecutive
48 calendar years, as certified by the Clerk of the House in which the employee served, or any
49 member of the legislative body of any other political subdivision shall become a member of the
50 retirement system provided he or she notifies the retirement system in writing of his or her
51 intention to be a member of the system and files a membership enrollment form as prescribed by
52 the Board of Trustees, and each person, upon filing his or her written notice to participate in the
53 retirement system, shall by that act authorize the Clerk of the House of Delegates or the Clerk of
54 the State Senate or such person or legislative agency as the legislative body of any other political
55 subdivision shall designate to deduct the member's contribution, as provided in subsection (b),
56 section 29 of this article, and after the deductions have been made from the member's
57 compensation, the deductions shall be forwarded to the retirement system.

58 (d) Any employee, as defined in section two of this article, who has concurrent employment
59 in an additional job or jobs which would require the employee to be a member of the West Virginia
60 Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and Firefighters
61 Retirement System or the West Virginia Emergency Medical Services Retirement System shall
62 abide by the concurrent employment statutory provisions of said retirement system and shall
63 participate in only one retirement system administered by the board.

64 (e) If question arises regarding the membership status of any employee, the Board of
65 Trustees has the final power to decide the question.

66 (f) Any individual who is a leased employee is not eligible to participate in the system. For
67 the purposes of this article, the term "leased employee" means any individual who performs
68 services as an independent contractor or pursuant to an agreement with an employee leasing
69 organization or other similar organization. If a question arises regarding the status of an individual
70 as a leased employee, the board has final authority to decide the question.

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-1. Consolidated Public Retirement Board continued; members; vacancies; investment of plan funds.

1 (a) The Consolidated Public Retirement Board is continued to administer all public
2 retirement plans in this state. It shall administer the Public Employees Retirement System
3 established in §5-10-1 *et seq.* of this code; the Teachers Retirement System established in §18-
4 7A-1 *et seq.* of this code; the Teachers' Defined Contribution Retirement System created by §18-
5 7B-1 *et seq.* of this code; the West Virginia State Police Death, Disability, and Retirement Fund
6 created by §15-2-1 *et seq.* of this code; the West Virginia State Police Retirement System created
7 by §15-2A-1 *et seq.* of this code; the Deputy Sheriff Death, Disability, and Retirement Fund
8 created by §7-14D-1 *et seq.* of this code; the Judges' Retirement System created under §51-9-1
9 *et seq.* of this code; the Emergency Medical Services Retirement System established in §16-5V-
10 1 *et seq.* of this code; and the Municipal Police Officers and Firefighters Retirement System

11 established in §8-22A-1 *et seq.* of this code, and the West Virginia Division of Natural Resources
12 Retirement System created by §20-17-1 *et seq.* of this code.

13 (b) The membership of the Consolidated Public Retirement Board consists of:

14 (1) The Governor or his or her designee;

15 (2) The State Treasurer or his or her designee;

16 (3) The State Auditor or his or her designee;

17 (4) The Secretary of the Department of Administration or his or her designee;

18 (5) Four residents of the state, who are not members, retirants, or beneficiaries of any of
19 the public retirement systems, to be appointed by the Governor, with the advice and consent of
20 the Senate; and

21 (6) A member, annuitant, or retirant of the Public Employees Retirement System who is
22 or was a state employee; a member, annuitant, or retirant of the Public Employees Retirement
23 System who is not or was not a state employee; a member, annuitant, or retirant of the Teachers
24 Retirement System; a member, annuitant, or retirant of the West Virginia State Police Death,
25 Disability, and Retirement Fund; a member, annuitant, or retirant of the West Virginia State Police
26 Retirement System; a member, annuitant, or retirant of the Deputy Sheriff Death, Disability, and
27 Retirement Fund; a member, annuitant, or retirant of the Teachers' Defined Contribution
28 Retirement System; a member, annuitant, or retirant of the Emergency Medical Services
29 Retirement System; ~~and beginning as soon as practicable after January 1, 2010, one person who~~
30 ~~is a member, annuitant, or retirant of a municipal policemen's or firemen's pension and relief fund~~
31 ~~or the West Virginia Municipal Police Officers and Firefighters Retirement System, and beginning~~
32 ~~as soon as practicable after January 1, 2022, one person who is a member, annuitant or retirant~~
33 ~~of the West Virginia Division of Natural Resources Police Officer Retirement System.~~ all to be
34 appointed by the Governor, with the advice and consent of the Senate. The Governor shall choose
35 the member representing the municipal policemen's or firemen's pension and relief fund or the
36 West Virginia Municipal Police Officers and Firefighters Retirement System from two names

37 submitted by the state's largest organization of professional police officers and two names
38 submitted by the state's largest organization of professional firefighters. Representation of the
39 municipal police officers and firefighters shall alternate after each term on the board between
40 persons having police officer and firefighter affiliation so that each professional group is
41 represented on the board every other term.

42 All appointees to the board shall have recognized competence or significant experience
43 in pension management or administration, actuarial analysis, institutional management, or
44 accounting. Those members appointed prior to January 1, 2010, shall be considered to have met
45 these qualifications. One trustee shall be an attorney experienced in finance and pension matters
46 and one trustee shall be a certified public accountant. Each member of the board must complete
47 annual fiduciary training and timely complete any conflict of interest forms required to serve as a
48 trustee.

49 (c) The appointed members of the board shall serve five-year terms. A member appointed
50 pursuant to subdivision (6), subsection (b) of this section ceases to be a member of the board if
51 he or she ceases to be a member of the represented system. If a vacancy occurs in the appointed
52 membership, the Governor, within 60 days, shall fill the vacancy by appointment for the unexpired
53 term. No more than six appointees may be of the same political party.

54 (d) The Consolidated Public Retirement Board has all the powers, duties, responsibilities,
55 and liabilities of the Public Employees Retirement System established pursuant to §5-10-1 *et seq.*
56 of this code; the Teachers Retirement System established pursuant to §18-7A-1 *et seq.* of this
57 code; the Teachers' Defined Contribution Retirement System established pursuant to §18-7B-1
58 *et seq.* of this code; the West Virginia State Police Death, Disability, and Retirement Fund created
59 pursuant to §15-2-1 *et seq.* of this code; the West Virginia State Police Retirement System created
60 by §15-2A-1 *et seq.* of this code; the Deputy Sheriff Death, Disability, and Retirement Fund
61 created pursuant to §7-14D-1 *et seq.* of this code; the Judges' Retirement System created
62 pursuant to §51-9-1 *et seq.* of this code; the Emergency Medical Services Retirement System

63 established in §16-5V-1 *et seq.* of this code; and the Municipal Police Officers and Firefighters
64 Retirement System created pursuant to §8-22A-1 *et seq.* of this code, and the West Virginia
65 Division of Natural Resources Police Officers Retirement System created and established
66 pursuant to article §20-17-1 *et seq.* of this code and their appropriate governing boards.

67 (e) The Consolidated Public Retirement Board may propose rules for legislative approval,
68 in accordance with §29A-3-1 *et seq.* of this code, necessary to effectuate its powers, duties, and
69 responsibilities: *Provided*, That the board may adopt any or all of the rules, previously
70 promulgated, of a retirement system which it administers.

71 (f) (1) The Consolidated Public Retirement Board shall continue to transfer all funds
72 received for the benefit of the retirement systems, including, but not limited to, all employer and
73 employee contributions, to the West Virginia Investment Management Board: *Provided*, That the
74 employer and employee contributions of the Teachers' Defined Contribution Retirement System,
75 established in §18-7B-3 of this code, and voluntary deferred compensation funds invested by the
76 West Virginia Consolidated Public Retirement Board pursuant to §5-10B-5 of this code may not
77 be transferred to the West Virginia Investment Management Board.

78 (2) The board may recover from a participating employer that fails to pay any amount due
79 a retirement system in a timely manner the contribution due and an additional amount not to
80 exceed interest or other earnings lost as a result of the untimely payment, or a reasonable
81 minimum fee, whichever is greater, as provided by legislative rule promulgated pursuant to the
82 provisions of §29A-3-1 *et seq.* of this code. Any amounts recovered shall be administered in the
83 same manner in which the amount due is required to be administered.

84 (g) Notwithstanding any provision of this code or any legislative rule to the contrary, all
85 assets of the public retirement plans set forth in subsection (a) of this section shall be held in trust.
86 The Consolidated Public Retirement Board is a trustee for all public retirement plans, except with
87 regard to the investment of funds: *Provided*, That the Consolidated Public Retirement Board is a
88 trustee with regard to the investments of the Teachers' Defined Contribution Retirement System

89 and any other assets of the public retirement plans administered by the Consolidated Public
90 Retirement Board as set forth in subsection (a) of this section for which no trustee has been
91 expressly designated in this code.

92 (h) The board may employ the West Virginia Investment Management Board to provide
93 investment management consulting services for the investment of funds in the Teachers' Defined
94 Contribution Retirement System.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-5. Members.

1 (a) Any deputy sheriff first employed by a county in covered employment after the effective
2 date of this article shall be a member of this retirement system and does not qualify for
3 membership in any other retirement system administered by the board, so long as he or she
4 remains employed in covered employment: *Provided*, That any deputy sheriff who has concurrent
5 employment in an additional job or jobs which would require the deputy sheriff to be a member of
6 the West Virginia Municipal Police Officers and Firefighters Retirement System,~~or~~ the West
7 Virginia Emergency Medical Services Retirement System or the West Virginia Natural Resources
8 Police Officers Retirement System shall participate in only one retirement system administered
9 by the board, and the retirement system applicable to the concurrent employment for which the
10 employee has the earliest date of hire shall prevail. The membership of any person in the plan
11 ceases: (1) Upon the withdrawal of accumulated contributions after the cessation of service; (2)
12 upon retirement; (3) at death; or (4) upon the date, if any, when after the cessation of service, the
13 outstanding balance of any loan obtained by the member pursuant to section 23 of the article,
14 plus accrued interest, equals or exceeds the accumulated contributions of the member.

15 (b) Any deputy sheriff employed in covered employment on the effective date of this article
16 shall within six months of that effective date notify in writing both the county commission in the

17 county in which he or she is employed and the board, of his or her desire to become a member
18 of the plan: *Provided*, That this time period is extended to January 30, 1999, in accordance with
19 the decision of the Supreme Court of Appeals in *West Virginia Deputy Sheriffs' Association, et al*
20 *v. James L. Sims, et al*, No. 25212: *Provided, however*, That any deputy sheriff employed in
21 covered employment on the effective date of this article has an additional time period consisting
22 of the 10-day period following the day after which the amended provisions of this section become
23 law to notify in writing both the county commission in the county in which he or she is employed
24 and the board of his or her desire to become a member of the plan. Any deputy sheriff who elects
25 to become a member of the plan ceases to be a member or have any credit for covered
26 employment in any other retirement system administered by the board and shall continue to be
27 ineligible for membership in any other retirement system administered by the board so long as
28 the deputy sheriff remains employed in covered employment in this plan: *Provided further*, That
29 any deputy sheriff who elects during the time period from July 1, 1998 to January 30, 1999 or who
30 so elects during the 10-day time period occurring immediately following the day after the day the
31 amendments made during the 1999 legislative session become law, to transfer from the Public
32 Employees Retirement System to the plan created in this article shall contribute to the plan
33 created in this article at the rate set forth in section seven of this article retroactive to July 1, 1998.
34 Any deputy sheriff who does not affirmatively elect to become a member of the plan continues to
35 be eligible for any other retirement system as is from time to time offered to other county
36 employees but is ineligible for this plan regardless of any subsequent termination of employment
37 and rehire.

38 (c) Any deputy sheriff employed in covered employment on the effective date of this article
39 who has timely elected to transfer into this plan as provided in subsection (b) of this section shall
40 be given credited service at the time of transfer for all credited service then standing to the deputy
41 sheriff's service credit in the Public Employees Retirement System regardless of whether the
42 credited service (as that term is defined in §5-10-2 of this code) was earned as a deputy sheriff.

43 All the credited service standing to the transferring deputy sheriff's credit in the Public Employees
44 Retirement Fund System at the time of transfer into this plan shall be transferred into the plan
45 created by this article, and the transferring deputy sheriff shall be given the same credit for the
46 purposes of this article for all service transferred from the Public Employees Retirement System
47 as that transferring deputy sheriff would have received from the Public Employees Retirement
48 System as if the transfer had not occurred. In connection with each transferring deputy sheriff
49 receiving credit for prior employment as provided in this subsection, a transfer from the Public
50 Employees Retirement System to this plan shall be made pursuant to the procedures described
51 in section eight of this article: *Provided*, That a member of this plan who has elected to transfer
52 from the Public Employees Retirement System into this plan pursuant to subsection (b) of this
53 section may not, after having transferred into and become an active member of this plan, reinstate
54 to his or her credit in this plan any service credit relating to periods of nondeputy sheriff service
55 which were withdrawn from the Public Employees Retirement System prior to his or her elective
56 transfer into this plan.

57 (d) Any deputy sheriff who was employed as a deputy sheriff prior to the effective date of
58 this article, but was not employed as a deputy sheriff on the effective date of this article, shall
59 become a member upon rehire as a deputy sheriff. For purposes of this subsection, the member's
60 years of service and credited service in the Public Employees Retirement System prior to the
61 effective date of this article shall not be counted for any purposes under this plan unless: (1) The
62 deputy sheriff has not received the return of his or her accumulated contributions in the Public
63 Employees Retirement System pursuant to §5-10-30 of this code; or (2) the accumulated
64 contributions returned to the member from the Public Employees Retirement System have been
65 repaid pursuant to section 13 of this article. If the conditions of subdivision (1) or (2) of this
66 subsection are met, all years of the deputy sheriff's covered employment shall be counted as
67 years of service for the purposes of this article.

68 (e) Once made, the election provided in this section is irrevocable. All deputy sheriffs first

69 employed after the effective date and deputy sheriffs electing to become members as described
 70 in this section shall be members as a condition of employment and shall make the contributions
 71 required by section seven of this article.

72 (f) Notwithstanding any other provisions of this article, any individual who is a leased
 73 employee is not eligible to participate in the plan. For purposes of this plan, a "leased employee"
 74 means any individual who performs services as an independent contractor or pursuant to an
 75 agreement with an employee leasing organization or similar organization. If a question arises
 76 regarding the status of an individual as a leased employee, the board has final power to decide
 77 the question.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-6. Members.

1 (a) A police officer or firefighter hired in covered employment after the effective date of this
 2 article by a municipality or municipal subdivision which has established and maintained a
 3 policemen's pension and relief fund or a firemen's pension and relief fund pursuant to ~~section~~
 4 ~~sixteen, article twenty-two of this chapter~~ §8-22-16 of this code and which is a participating
 5 employer or which is a participating public employer as authorized by section 33 of this article,
 6 shall be a member of this retirement plan: *Provided*, That any police officer or firefighter who has
 7 concurrent employment in an additional job or jobs which would require the police officer or
 8 firefighter to be a member of the West Virginia Deputy Sheriff Retirement System, ~~or~~ the West
 9 Virginia Emergency Medical Services Retirement System, or the West Virginia Natural Resources
 10 Police Officer Retirement System shall participate in only one retirement system administered by
 11 the board, and the retirement system applicable to the concurrent employment for which the
 12 employee has the earliest date of hire shall prevail.

13 (b) Except as provided in section 32 of this article, a police officer or firefighter who is a
14 member of the Municipal Police Officers and Firefighters Retirement System may not have credit
15 for covered employment in any other retirement system applied as service credit in the Municipal
16 Police Officers and Firefighters Retirement System.

17 (c) Notwithstanding any other provisions of this article, any individual who is a leased
18 employee is not eligible to participate in the plan. For purposes of this plan, a "leased employee"
19 means any individual who performs services as an independent contractor or pursuant to an
20 agreement with an employee leasing organization or similar organization. If a question arises
21 regarding the status of an individual as a leased employee, the board has final power to decide
22 the question.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT

§16-5V-6. Members.

1 (a) Any emergency medical services officer first employed by a county or political
2 subdivision in covered employment after the effective date of this article shall be a member of this
3 retirement plan as a condition of employment and upon membership does not qualify for
4 membership in any other retirement system administered by the board, so long as he or she
5 remains employed in covered employment: *Provided*, That any emergency medical services
6 officer who has concurrent employment in an additional job or jobs which would require the
7 emergency medical services officer to be a member of the West Virginia Deputy Sheriff
8 Retirement System ~~or~~ the West Virginia Municipal Police Officers and Firefighters Retirement
9 System or the West Virginia Natural Resources Police Officer Retirement System shall participate
10 in only one retirement system administered by the board, and the retirement system applicable to
11 the concurrent employment for which the employee has the earliest date of hire shall prevail.

12 (b) Any emergency medical services officer employed in covered employment by an

13 employer which is currently a participating public employer of the Public Employees Retirement
14 System shall notify in writing both the county commission in the county or officials in the political
15 subdivision in which he or she is employed and the board of his or her desire to become a member
16 of the plan by December 31, 2007. Any emergency medical services officer who elects to become
17 a member of the plan ceases to be a member or have any credit for covered employment in any
18 other retirement system administered by the board and shall continue to be ineligible for
19 membership in any other retirement system administered by the board so long as the emergency
20 medical services officer remains employed in covered employment by an employer which is
21 currently a participating public employer of this plan: *Provided*, That any emergency medical
22 services officer who does not affirmatively elect to become a member of the plan continues to be
23 eligible for any other retirement system as is, from time to time, offered to other county employees
24 but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

25 (c) Any emergency medical services officer who was employed as an emergency medical
26 services officer prior to the effective date, but was not employed on the effective date of this
27 article, shall become a member upon rehire as an emergency medical services officer. For
28 purposes of this section, the member's years of service and credited service prior to the effective
29 date shall not be counted for any purposes under this plan unless the emergency medical services
30 officer has not received the return of his or her accumulated contributions in the Public Employees
31 Retirement System pursuant to ~~section thirty, article ten, chapter five~~ §5-10-30 of this code. The
32 member may request in writing to have his or her accumulated contributions and employer
33 contributions from covered employment in the Public Employees Retirement System transferred
34 to the plan. If the conditions of this subsection are met, all years of the emergency medical
35 services officer's covered employment shall be counted as years of service for the purposes of
36 this article.

37 (d) Any emergency medical services officer employed in covered employment on the
38 effective date of this article who has timely elected to transfer into this plan as provided in

39 subsection (b) of this section shall be given credited service at the time of transfer for all credited
40 service then standing to the emergency medical services officer's service credit in the Public
41 Employees Retirement System regardless of whether the credited service (as that term is defined
42 in ~~section two, article ten, chapter five~~ §5-10-2 of this code) was earned as an emergency medical
43 services officer. All credited service standing to the transferring emergency medical services
44 officer's credit in the Public Employees Retirement System at the time of transfer into this plan
45 shall be transferred into the plan created by this article and the transferring emergency medical
46 services officer shall be given the same credit for the purposes of this article for all service
47 transferred from the Public Employees Retirement System as that transferring emergency
48 medical services officer would have received from the Public Employees Retirement System as
49 if the transfer had not occurred. In connection with each transferring emergency medical services
50 officer receiving credit for prior employment as provided in this subsection, a transfer from the
51 Public Employees Retirement System to this plan shall be made pursuant to the procedures
52 described in this article: *Provided*, That any member of this plan who has elected to transfer from
53 the Public Employees Retirement System into this plan pursuant to subsection (b) of this section
54 may not, after having transferred into and becoming an active member of this plan, reinstate to
55 his or her credit in this plan any service credit relating to periods in which the member was not in
56 covered employment as an emergency medical services officer and which service was withdrawn
57 from the Public Employees Retirement System prior to his or her elective transfer into this plan.

58 (e) Once made, the election made under this section is irrevocable. All emergency medical
59 services officers employed by an employer which is a participating public employer of the Public
60 Employees Retirement System after the effective date and emergency medical services officers
61 electing to become members as described in this section shall be members as a condition of
62 employment and shall make the contributions required by this article.

63 (f) Notwithstanding any other provisions of this article, any individual who is a leased
64 employee is not eligible to participate in the plan. For purposes of this plan, a "leased employee"

65 means any individual who performs services as an independent contractor or pursuant to an
 66 agreement with an employee leasing organization or similar organization. If a question arises
 67 regarding the status of an individual as a leased employee, the board has final power to decide
 68 the question.

CHAPTER 20. NATURAL RESOURCES.

**ARTICLE 17. WEST VIRGINIA DIVISION OF NATURAL RESOURCES POLICE
 OFFICER RETIREMENT SYSTEM.**

§20-17-1. Short title.

1 This article is known and may be cited as the “West Virginia Natural Resources Police
 2 Officers Retirement System Act.”

§20-17-2. Definitions.

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

3 (a) “Accrued benefit” means on behalf of any member two and one-quarter percent of the
 4 member’s final average salary multiplied by the member’s years of credited service: *Provided,*
 5 That members who retire after July 1, 2025, shall have an accrued benefit of two and one-half
 6 percent of the member’s final average salary multiplied by the member’s years of credited service.
 7 A member’s accrued benefit may not exceed the limits of Section 415 of the Internal Revenue
 8 Code and is subject to the provisions of §20-17-13 of this code.

9 (b) “Accumulated contributions” means the sum of all amounts deducted from the annual
 10 compensation of a member or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code,
 11 either pursuant to §20-17-8(a) or §5-10-29 of this code as a result of covered employment
 12 together with regular interest on the deducted amounts.

13 (c) “Active member” means a member who is active and contributing to the plan.

14 (d) “Active military duty” means full-time active duty with any branch of the armed forces

15 of the United States, including service with the National Guard or reserve military forces when the
16 member has been called to active full-time duty and has received no compensation during the
17 period of that duty from any board or employer other than the armed forces.

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

24 (f) "Annual compensation" means the wages paid to the member during covered
25 employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined
26 without regard to any rules that limit the remuneration included in wages based upon the nature
27 or location of employment or services performed during the plan year plus amounts excluded
28 under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense
29 allowances, cash or noncash fringe benefits or both, deferred compensation, and welfare benefits.
30 Annual compensation for determining benefits during any determination period may not exceed
31 the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of
32 this code and Section 401(a)(17) of the Internal Revenue Code.

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

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

37 (i) "Base salary" means a member's cash compensation exclusive of overtime from
38 covered employment during the last 12 months of employment. Until a member has worked 12
39 months, annualized base salary is used as base salary.

40 (j) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-

41 1 et seq. of this code.

42 (k) "Covered employment" means either: (1) Employment as a Natural Resources Police
43 Officer and the active performance of the duties required of a Natural Resources Police Officer;
44 (2) the period of time which active duties are not performed but disability benefits are received
45 under §20-17-21 or §20-17-22 of this code; or (3) concurrent employment by a Natural Resources
46 Police Officer in a job or jobs in addition to his or her employment as a Natural Resources Police
47 Officer where the secondary employment requires the Natural Resources Police Officer to be a
48 member of another retirement system which is administered by the Consolidated Public
49 Retirement Board pursuant to §5-10D-1 et seq. of this code: *Provided*, That the Natural
50 Resources Police Officer contributes to the fund created in §20-17-7 of this code the amount
51 specified as the Natural Resource Police Officer's contribution in §20-17-8 of this code.

52 (l) "Credited service" means the sum of a member's years of service, active military duty,
53 disability service, and annual leave service.

54 (m) "Dependent child" means either:

55 (1) An unmarried person under age 18 who is:

56 (A) A natural child of the member;

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

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

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

62 (2) Any unmarried child under age 23:

63 (A) Who is enrolled as a full-time student in an accredited college or university;

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

66 (C) Whose relationship with the member is described in subparagraph (A), (B), or (C),

67 paragraph (1) of this subdivision.

68 (n) "Dependent parent" means the father or mother of the member who was claimed as a
69 dependent by the member for Federal Income Tax purposes at the time of the member's death.

70 (o) "Director" means Director of the Division of Natural Resources.

71 (p) "Disability service" means service credit received by a member, expressed in whole
72 years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both,
73 during which time a member receives disability benefits under §20-17-21 or §20-17-22 of this
74 code.

75 (q) "Division of Natural Resources" or "division" means the West Virginia Division of
76 Natural Resources

77 (r) "Effective date" means January 1, 2021.

78 (s) "Employer error" means an omission, misrepresentation, or violation of relevant
79 provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant
80 provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the
81 participating public employer that has resulted in an underpayment or overpayment of
82 contributions required. A deliberate act contrary to the provisions of this section by a participating
83 public employer does not constitute employer error.

84 (t) "Final average salary" means the average of the highest annual compensation received
85 for covered employment by the member during any five consecutive plan years within the
86 member's last 10 years of service. If the member did not have annual compensation for the five
87 full plan years preceding the member's attainment of normal retirement age and during that period
88 the member received disability benefits under §20-17-21 or §20-17-22 of this code then "final
89 average salary" means the average of the monthly salary determined paid to the member during
90 that period determined as if the disability first commenced after the effective date of this article
91 with monthly compensation equal to that average monthly compensation which the member was
92 receiving in the plan year prior to the initial disability multiplied by 12.

93 (u) "Fund" means the West Virginia Natural Resources Police Officer Retirement Fund
94 created pursuant to §20-17-7 of this code.

95 (v) "Hour of service" means:

96 (1) Each hour for which a member is paid;

97 (2) Each hour for which a member is paid but where no duties are performed due to
98 vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of
99 absence, or any combination thereof, and without regard to whether the employment relationship
100 has terminated. Hours under this paragraph shall be calculated and credited pursuant to West
101 Virginia Division of Labor rules. A member will not be credited with any hours of service for any
102 period of time he or she is receiving benefits under §20-17-21 or §20-17-22 of this code; and

103 (3) Each hour for which back pay is either awarded or agreed to be paid by the Division of
104 Natural Resources, irrespective of mitigation of damages. The same hours of service may not be
105 credited both under this subdivision and subdivision (1) or (2) of this subsection. Hours under this
106 paragraph shall be credited to the member for the plan year or years to which the award or
107 agreement pertains rather than the plan year in which the award, agreement, or payment is made.

108 (w) "Member" means a person first hired as a Natural Resources Police Officer, as defined
109 in subsection (y) of this section, on or after January 1, 2021, or a Natural Resources Police Officer
110 first hired prior to the effective date and who elects to become a member pursuant to §20-17-6 of
111 this code. A member shall remain a member until the benefits to which he or she is entitled under
112 this article are paid or forfeited or until cessation of membership pursuant to §20-17-6 of this code.

113 (x) "Monthly salary" means the portion of a member's gross annual compensation which
114 is paid to him or her per month.

115 (y) "Natural Resources Police Officer" means any person regularly employed in the service
116 of the division as a law-enforcement officer on or after the effective date of this article, and who
117 is eligible to participate in the fund. The term shall not include Emergency Natural Resources
118 Police Officers as defined in §20-7-1(c) of this code, Special Natural Resources Police Officers

119 as defined in §20-7-1(d) of this code, Forestry Special Natural Resources Police Officers as
120 defined in §20-7-1(e) of this code, or Federal Law Enforcement Officer as defined in §20-7-1b of
121 this code.

122 (z) "Normal form" means a monthly annuity which is 1/12 of the amount of the member's
123 accrued benefit which is payable for the member's life. If the member dies before the sum of the
124 payments he or she receives equals his or her accumulated contributions on the annuity starting
125 date, the named beneficiary or beneficiaries shall receive in one lump sum the difference between
126 the accumulated contributions at the annuity starting date and the total of the retirement income
127 payments made to the member.

128 (aa) "Normal retirement age" means the first to occur of the following: (1) Attainment of
129 age 55 years and the completion of 15 or more years of service; (2) while still in covered
130 employment, attainment of at least age 55 years, and when the sum of current age plus years of
131 service equals or exceeds 70 years; or (3) attainment of at least age 62 years, and completion of
132 10 years of service: *Provided*, That any member shall in qualifying for retirement pursuant to this
133 article have 10 or more years of service, all of which years shall be actual, contributory ones.

134 (bb) "Partially disabled" means a member's inability to engage in the duties of a Natural
135 Resources Police Officer by reason of any medically determinable physical or mental impairment
136 that can be expected to result in death or that has lasted or can be expected to last for a
137 continuous period of not less than 12 months. A member may be determined partially disabled
138 for the purposes of this article and maintain the ability to engage in other gainful employment
139 which exists within the state but which ability would not enable him or her to earn an amount at
140 least equal to two thirds of the average annual compensation earned by all active members of
141 this plan during the plan year ending as of the most recent June 30, as of which plan data has
142 been assembled and used for the actuarial valuation of the plan.

143 (cc) "Plan" means the West Virginia Natural Resources Police Officers Retirement System
144 established by this article.

145 (dd) "Plan year" means the 12-month period commencing on July 1 of any designated
146 year and ending the following June 30.

147 (ee) "Public Employees Retirement System" means the West Virginia Public Employees
148 Retirement System created by §5-10-1 et seq. of this code.

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

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

156 (hh) "Required beginning date" means April 1 of the calendar year following the later of:
157 (i) The calendar year in which the member attains age 70 and 1/2; or (ii) the calendar year in
158 which he or she retires or otherwise separates from covered employment.

159 (ii) "Retirant" means any member who commences an annuity payable by the retirement
160 system.

161 (ij) "Retire" or "retirement" means a member's termination from the employ of a
162 participating public employer and the commencement of an annuity by the plan.

163 (kk) "Retirement income payments" means the annual retirement income payments
164 payable under the plan.

165 (ll) "Spouse" means the person to whom the member is legally married on the annuity
166 starting date.

167 (mm) "Substantial gainful employment" or "gainful employment" means employment is
168 which an individual may earn up to an amount that is determined by the United States Social
169 Security Administration as substantial gainful activity and still receive total disability benefits.

170 (nn) "Surviving spouse" means the person to whom the member was legally married at

171 the time of the member's death and who survived the member.

172 (oo) "Totally disabled" means a member's inability to engage in substantial gainful activity
173 by reason of any medically determined physical or mental impairment that can be expected to
174 result in death or that has lasted or can be expected to last for a continuous period of not less
175 than 12 months. For purposes of this subdivision:

176 (1) A member is totally disabled only if his or her physical or mental impairment or
177 impairments are so severe that he or she is not only unable to perform his or her previous work
178 as a Natural Resources Police Officer but also cannot, considering his or her age, education, and
179 work experience, engage in any other kind of substantial gainful employment which exists in the
180 state regardless of whether: (A) The work exists in the immediate area in which the member lives;
181 (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

182 (2) "Physical or mental impairment" is an impairment that results from an anatomical,
183 physiological, or psychological abnormality that is demonstrated by medically accepted clinical
184 and laboratory diagnostic techniques. A member's receipt of Social Security disability benefits
185 creates a rebuttable presumption that the member is totally disabled for purposes of this plan.
186 Substantial gainful employment rebuts the presumption of total disability.

187 (pp) "Year of service" A member shall, except in his or her first and last years of covered
188 employment, or within the plan year of the effective date, be credited with year of service credit,
189 based upon the hours of service performed as covered employment and credited to the member
190 during the plan year based upon the following schedule:

<u>Hours of Service</u>	<u>Years of Service Credited</u>
<u>Less than 500</u>	<u>0</u>
<u>500 to 999</u>	<u>1/3</u>
<u>1,000 to 1,499</u>	<u>2/3</u>
<u>1,500 or more</u>	<u>1</u>

196 During a member's first and last years of covered employment or within the plan year of

197 the effective date, the member shall be credited with 1/12 of a year of service for each month
198 during the plan year in which the member is credited with an hour of service. A member is not
199 entitled to credit for years of service for any time period during which he or she received disability
200 payments under §20-17-21 or §20-17-22 of this code. Except as specifically excluded, years of
201 service include covered employment prior to the effective date. Years of service which are
202 credited to a member prior to his or her receipt of accumulated contributions upon termination of
203 employment pursuant to §20-17-20 or §5-10-30 of this code, shall be disregarded for all purposes
204 under this plan unless the member repays the accumulated contributions with interest pursuant
205 to §20-17-20 of this code or had prior to the effective date made the repayment pursuant to §5-
206 10-18 of this code.

§20-17-3. Meaning of terms.

1 Any term used in this article has the same meaning as when used in a comparable context
2 in the laws of the United States, unless a different meaning is clearly required. Any reference in
3 this article to the Internal Revenue Code means the Internal Revenue Code of 1986, as it has
4 been amended.

§20-17-4. Creation and administration of West Virginia Natural Resources Police Officers

Retirement System; specification of actuarial assumptions.

1 There is hereby created the West Virginia Natural Resources Police Officers Retirement
2 System. The purpose of this system is to provide for the orderly retirement of Natural Resources
3 Police Officers who become superannuated because of age or permanent disability and to provide
4 certain survivor death benefits, and it is contemplated that substantially all of the members of the
5 retirement system shall be qualified public safety employees as defined in §20-17-2 of this code.
6 The retirement system shall come into effect January 1, 2021: *Provided*, That if the number of
7 members in the system are fewer than 100 on July 1, 2022, then all of the provisions of this article
8 are void and of no force and effect, and memberships in the plan will be merged into the Public
9 Employees Retirement System created in §5-10-1 *et seq.* of this code. The retirement system

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

§20-17-5. Article to be liberally construed; supplements federal social security; federal qualification requirements.

1 (a) The provisions of this article shall be liberally construed to provide a general retirement
2 system for Natural Resources Police Officers eligible to retire under the provisions of this plan.
3 Nothing in this article may be construed to permit the state to substitute this plan for federal social
4 security now in force in West Virginia.

5 (b) The board shall administer the plan in accordance with its terms and may construe the
6 terms and determine all questions arising in connection with the administration, interpretation and
7 application of the plan. The board may sue and be sued, contract and be contracted with and
8 conduct all the business of the system in the name of the plan. The board may employ those
9 persons it considers necessary or desirable to administer the plan. All start-up costs to modify the
10 existing line of business computer system and all personnel salary, including benefits, shall be
11 paid by the plan to the Consolidated Public Retirement Board expense fund. The board shall
12 administer the plan for the exclusive benefit of the members and their beneficiaries subject to the
13 specific provisions of the plan.

14 (c) The plan is intended to meet the federal qualification requirements of Section 401(a)
15 and related sections of the Internal Revenue Code as applicable to governmental plans.
16 Notwithstanding any other provision of state law, the board shall administer the plan to fulfill this
17 intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article
18 referencing or relating to these federal qualification requirements shall be effective as of the date
19 required by federal law. The board may promulgate rules and amend or repeal conflicting rules in
20 accordance with the authority granted to the board pursuant to §5-10D-1 of this code to assure

21 compliance with the requirements of this section.

§20-17-6. Members.

1 (a) Any Natural Resources Police Officer first employed in covered employment after the
2 effective date of this article shall be a member of this retirement system and does not qualify for
3 membership in any other retirement system administered by the board, so long as he or she
4 remains employed in covered employment: *Provided*, That any Natural Resources Police Officer
5 who has concurrent employment in an additional job or jobs which would require the Natural
6 Resources Police Officer to be a member of the West Virginia Deputy Sheriff Retirement System,
7 West Virginia Municipal Police Officers and Firefighters Retirement System or the West Virginia
8 Emergency Medical Services Retirement System shall participate in only one retirement system
9 administered by the board, and the retirement system applicable to the concurrent employment
10 for which the employee has the earliest date of hire shall prevail. The membership of any person
11 in the plan ceases: (1) Upon the withdrawal of accumulated contributions after the cessation of
12 service; (2) upon retirement; or (3) at death.

13 (b) Any Natural Resources Police Officer employed in covered employment on July 1,
14 2020, shall notify in writing both the Division of Natural Resources and the board no later than
15 September 30, 2020, of his or her desire to become a member of the plan beginning January 1,
16 2021: *Provided*, That any Natural Resources Police Officer hired after July 1, 2020, but before
17 January 1, 2021, shall make this required notification to the division and the board no later than
18 30 days from receipt of the notice required by §20-17-11 of this code or September 30, 2020,
19 whichever is later. Any Natural Resources Police Officer who elects to become a member of the
20 plan ceases to be an active member in any other retirement system administered by the board
21 and shall continue to be ineligible for future membership in any other retirement system
22 administered by the board so long as the Natural Resources Police Officer remains employed in
23 covered employment in this plan; any Natural Resources Police Officer who does not affirmatively
24 elect to become a member of the plan continues to be eligible for any other retirement system as

25 is from time to time offered to other state employees but is ineligible for this plan regardless of
26 any subsequent termination of employment and rehire.

27 (c) Any Natural Resources Police Officer employed in covered employment on the
28 effective date of this article, who has timely elected to transfer into this plan as provided in
29 subsection (b) of this section, shall be given credited service at the time of transfer for all credited
30 service then standing to the Natural Resources Police Officer service credit in the Public
31 Employees Retirement System regardless of whether the credited service (as that term is defined
32 in §5-10-2 of this code) was earned as a Natural Resources Police Officer. All the credited service
33 standing to the transferring Natural Resources Police Officer's credit in the Public Employees
34 Retirement Fund System at the time of transfer into this plan shall be transferred into the plan
35 created by this article, and the transferring Natural Resources Police Officer shall be given the
36 same credit for the purposes of this article for all service transferred from the Public Employees
37 Retirement System, as that transferring Natural Resources Police Officer would have received
38 from the Public Employees Retirement System as if the transfer had not occurred. In connection
39 with each transferring Natural Resources Police Officer receiving credit for prior employment as
40 provided in this subsection, a transfer from the Public Employees Retirement System to this plan
41 shall be made pursuant to the procedures described in §20-17-10 of this code: *Provided, That a*
42 member of this plan who has elected to transfer from the Public Employees Retirement System
43 into this plan pursuant to subsection (b) of this section may not, after having transferred into and
44 become an active member of this plan, reinstate to his or her credit in this plan any service credit
45 relating to periods of nonNatural Resources Police Officer service which were withdrawn from the
46 Public Employees Retirement System prior to his or her elective transfer into this plan.

47 (d) Any Natural Resources Police Officer who was employed as a Natural Resources
48 Police Officer prior to the effective date of this article but was not employed as a Natural
49 Resources Police Officer on the effective date of this article, shall become a member upon rehire
50 as a Natural Resources Police Officer. For purposes of this subsection, the member's years of

51 service and credited service prior to the effective date shall not be counted for any purposes under
52 this plan unless the Natural Resources Police Officer has not received the return of his or her
53 accumulated contributions in the Public Employees Retirement System pursuant to §5-10-30 of
54 this code. The member may request in writing within one year of first becoming a member of the
55 plan to have his or her accumulated contributions and employer contributions from covered
56 employment in the Public Employees Retirement System transferred to the plan. If the conditions
57 of the subsection are met, all years of the Natural Resources Police Officer's covered employment
58 shall be counted as years of service for the purposes of this article.

59 (e) Once made, the election provided in this section is irrevocable. All Natural Resources
60 Police Officers first employed after the effective date and Natural Resources Police Officers
61 electing to become members as described in this section shall be members as a condition of
62 employment and shall make the contributions required by §20-17-8 of this code.

63 (f) Notwithstanding any other provisions of this article to the contrary, any individual who
64 is a leased employee is not eligible to participate in the plan. For purposes of this plan, a "leased
65 employee" means any individual who performs services as an independent contractor or pursuant
66 to an agreement with an employee leasing organization or similar organization. If a question
67 arises regarding the status of an individual as a leased employee, the board has final power to
68 decide the question. Additionally, any individual who is an Emergency Natural Resources Police
69 Officer as defined in §20-7-1(c) of this code, Special Natural Resources Police Officer as defined
70 in §20-7-1(d) of this code, Forestry Special Natural Resources Police Officer as defined in §20-7-
71 1(e) of this code, or Federal Law Enforcement Officer as defined in §20-7-1b of this code, is not
72 eligible to participate in the plan.

§20-17-7. Creation of fund; investments.

1 (a) There is hereby created the "West Virginia Natural Resources Police Officer
2 Retirement Fund" for the benefit of the members of the retirement system created pursuant to this
3 article and the dependents of any deceased or retired member of the system.

4 (b) All moneys paid into and accumulated in the fund, except such amounts as are
5 designated by the board for payment of benefits as provided in this article, shall be held in trust
6 and invested in the consolidated pensions fund as administered by the state Investment
7 Management Board as provided by law.

§20-17-8. Members' contributions; employer contributions.

1 (a) There shall be deducted from the monthly salary of each member and paid into the
2 fund an amount equal to nine and one-half percent of his or her monthly salary.

3 (b) An additional 12 percent of the monthly salary of each member shall be paid to the
4 fund by the employer.

5 (c) If the board finds that the benefits provided by this article can be actually funded with
6 a lesser contribution, then the board shall reduce the required member or employer contributions
7 or both. The sums withheld each pay date shall be paid to the fund no later than 15 days following
8 the end of the pay date.

9 (d) Any active member who has concurrent employment in an additional job or jobs and
10 the additional employment requires the Natural Resources Police Officer to be a member of
11 another retirement system which is administered by the Consolidated Public Retirement Board
12 pursuant to §5-10D-1 et seq. of this code shall make an additional contribution to the fund of eight
13 and one-half percent of his or her monthly salary earned from any additional employment which
14 requires the Natural Resources Police Officer to be a member of another retirement which is
15 administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 et seq. of this
16 code. An additional employer contribution shall be paid to the fund by the concurrent employer
17 for which the member is employed in an amount of 12 percent of his or her monthly salary. If the
18 board finds that the benefits provided by this article can be funded with a lesser contribution, then
19 the board shall reduce the required member, or employer contributions or both. The sums
20 withheld each calendar month shall be paid to the fund no later than 15 days following the end of
21 the calendar month.

§20-17-9. Correction of errors; underpayments; overpayments.

1 (a) General rule: Upon learning of errors, the board shall correct errors in the retirement
2 plan in a timely manner whether the individual, division or board was at fault for the error with the
3 intent of placing the affected individual, division and board in the position each would have been
4 in had the error not occurred.

5 (b) Underpayments to the plan: Any error resulting in an underpayment to the plan may
6 be corrected by the member or retirant remitting the required employee contribution or
7 underpayment and the division remitting the required employer contribution or underpayment.
8 Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement
9 board refund, reinstatement, retroactive service, loan and correction of error interest factors and
10 any accumulating interest owed on the employee and employer contributions or underpayments
11 resulting from an employer error is the responsibility of the division. The division may remit total
12 payment and the employee reimburse the division through payroll deduction over a period
13 equivalent to the time period during which the employer error occurred. If the correction of an
14 error involving an underpayment to the plan will result in the plan paying a retirant an additional
15 amount, this additional payment may be made only after the board receives full payment of all
16 required employee and employer contributions or underpayments, including interest.

17 (c) Overpayments to the plan by the division: When mistaken or excess employer
18 contributions or other employer overpayments have been made to the plan, the board shall credit
19 the division with an amount equal to the overpayment, to be offset against the employer's future
20 liability for employer contributions to the plan. If the division has no future liability for employer
21 contributions to the retirement system, the board shall refund the erroneous contributions directly
22 to the division. Earnings or interest may not be returned, offset or credited to the division under
23 any of the means used by the board for returning employer overpayments made to the plan.

24 (d) Overpayments to the plan by an employee: When mistaken or excess employee
25 contributions or overpayments have been made to the retirement system, the board has sole

26 authority for determining the means of return, offset or credit to or for the benefit of the individual
27 making the mistaken or excess employee contribution of the amounts, and may use any means
28 authorized or permitted under the provisions of section 401(a), et seq. of the Internal Revenue
29 Code and guidance issued thereunder applicable to governmental plans. Alternatively, the board
30 may require the division to pay the individual the amounts as wages, with the board crediting the
31 division with a corresponding amount to offset against its future contributions to the plan. If the
32 division has no future liability for employer contributions to the plan, the board shall refund said
33 amount directly to the division: *Provided*, That the wages paid to the individual shall not be
34 considered compensation for any purposes of this article. Earnings or interest shall not be
35 returned, offset, or credited under any of the means used by the board for returning employee
36 overpayments.

37 (e) Overpayments from the plan: If any error results in any member, retiree, beneficiary,
38 the division or other individual receiving from the system more than he or she would have been
39 entitled to receive had the error not occurred the board shall correct the error in a timely manner.
40 If correction of the error occurs after annuity payments to a retiree or beneficiary have
41 commenced, the board shall prospectively adjust the payment of the benefit to the correct amount.
42 In addition, the member, retiree, beneficiary, the division or other person who received the
43 overpayment from the plan shall repay the amount of any overpayment to the plan in any manner
44 permitted by the board. Interest shall not accumulate on any corrective payment made to the plan
45 pursuant to this subsection.

46 (f) Underpayments from the plan: If any error results in any member, retiree, beneficiary,
47 the division or other individual receiving from the plan less than he or she would have been entitled
48 to receive had the error not occurred, the board, upon learning of the error, shall correct the error
49 in a timely manner. If correction of the error occurs after annuity payments to a retiree or
50 beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to
51 the correct amount. In addition, the board shall pay the amount of such underpayment to the

52 member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any
53 corrective payment made by the plan pursuant to this subsection.

54 (g) Eligibility errors: If the board finds that an individual is not eligible to participate, the
55 board shall notify the individual and the division of the determination and terminate his or her
56 participation in the plan. Any erroneous payments to the retirement system shall be returned to
57 the division and individual in accordance with the methods described in subsections (c) and (d)
58 of this section and any erroneous payments from the plan to such individual shall be returned to
59 the plan in accordance with the methods described in subsection (e) of this section. Any erroneous
60 service credited to the individual shall be removed. If the board determines that an individual has
61 not been participating in the plan, but was eligible to and required to be participating in the plan,
62 the board shall as soon as practicable notify the individual and the division of the determination,
63 and the individual shall prospectively commence participation in the plan as soon as practicable.
64 Service credit for service prior to the date on which the individual prospectively commences
65 participation in the plan shall be granted only if the board receives the required employer and
66 employee contributions for such service, in accordance with subsection (b) of this section,
67 including interest.

§20-17-10. Transfer from Public Employees Retirement System.

1 (a) The Consolidated Public Retirement Board shall, within 90 days of the effective date
2 transfer assets from the Public Employees Retirement System trust fund into the West Virginia
3 Natural Police Officers Retirement trust fund.

4 (b) The amount of assets to be transferred for each transferring Natural Resources Police
5 Officer shall be computed as of January 1, 2021, using the actuarial valuation assumptions in
6 effect for July 1, 2020, actuarial valuation of Public Employees Retirement System, and updated
7 with seven and one-half percent annual interest to the date of the actual asset transfer. The
8 market value of the assets of the transferring Natural Resources Police Officer in the Public
9 Employees Retirement System shall be determined as of the end of the month preceding the

10 actual transfer. To determine the computation of the asset share to be transferred the board shall:

11 (1) Compute the market value of the Public Employees Retirement System assets;

12 (2) Compute the accrued liability for all Public Employees Retirement System retirees,
13 beneficiaries, disabled retirees and terminated inactive members;

14 (3) Reduce the market value of Public Employees Retirement System assets by the
15 accrued liability determined in subdivision (2) of this subsection;

16 (4) Compute the entry age method accrued liability for all active Public Employees
17 Retirement System members;

18 (5) Compute the share of accrued liability as determined pursuant to subdivision (4) of this
19 subsection, that is attributable to those Natural Resources Police Officers in Public Employees
20 Retirement System who have elected to transfer to the plan;

21 (6) Compute the percentage of active's accrued liability computed to the Natural
22 Resources Police Officers by dividing subdivision (5) by subdivision (4) of this subsection;

23 (7) Determine the asset share to be transferred from Public Employees Retirement
24 System to the plan by multiplying subdivision (3) times subdivision(6) of this subsection.

25 (c) Once a Natural Resources Police Officer has elected to transfer from the Public
26 Employees Retirement System, transfer of that amount as calculated in accordance with the
27 provisions of subsection (b) of this section by the Public Employees Retirement System shall
28 operate as a complete bar to any further liability to the transferring from the Public Employees
29 Retirement System, and constitutes an agreement whereby the transferring Natural Resources
30 Police Officer forever indemnifies and holds harmless the Public Employees Retirement System
31 from providing him or her any form of retirement benefit whatsoever until such time as that Natural
32 Resources Police Officer obtains other employment which would make him or her eligible to
33 reenter the Public Employees Retirement System with no credit whatsoever for the amounts
34 transferred to the Natural Resources Police Officer retirement system.

§20-17-11. Notice requirements.

1 (a) The Division of Natural Resources shall prepare a written notice no later than August
2 1, 2020, to be delivered to each Natural Resources Police Officer actively employed by the
3 division: *Provided*, That the division shall also deliver this notice on the first day of employment to
4 any Natural Resources Police Officer hired after July 1, 2020, but before January 1, 2021. This
5 notice shall clearly and accurately explain the benefits, financial implications and consequences
6 to a Natural Resources Police Officer of electing to participate in the retirement plan created in
7 this article, including the consequences and financial implications in regard to the benefits under
8 the public employees insurance plan as set forth in §5-16-1 *et seq.* of this code. This notice shall
9 be distributed to each Natural Resources Police Officer and the West Virginia Division of Natural
10 Resources shall obtain a signed receipt from each Natural Resources Police Officer
11 acknowledging that the Natural Resources Police Officer was provided a copy of the notice
12 required in this subsection. If a Natural Resources Police Officer makes the election provided for
13 in §20-17-6 of this code, he or she shall be considered to have made a voluntary, informed
14 decision in regard to the election to participate in the retirement system created in this article.

15 (b) Nothing in this section may be construed to alter, affect or change any of the rights and
16 benefits of any Natural Resources Police Officer who has insurance coverage under §5-16-1 *et*
17 *seq.* of this code as a result of being a spouse or dependent of a participant who is the primary
18 insured under §5-16-1 *et seq.* of this code.

19 (c) Nothing contained in this section may be construed to affect or pertain to any life
20 insurance coverage under §5-16-1 *et seq.* of this code.

§20-17-12. Retirement; commencement of benefits.

1 A member may retire and commence to receive retirement income payments on the first
2 day of the calendar month following the board's receipt of the member's voluntary written
3 application for retirement or the required beginning date, if earlier. Before receiving retirement
4 income payments, the member shall have ceased covered employment and reached normal
5 retirement age. The retirement income payments shall be in an amount as provided under §20-

6 17-18 of this code: *Provided*, That retirement income payments under this plan shall be subject
7 to the provisions of this article. Upon receipt of a request for estimation of benefits, the board shall
8 promptly provide the member with an explanation of his or her optional forms of retirement
9 benefits and the estimated gross monthly annuity. Upon receipt of properly executed retirement
10 application forms from the member, the board shall process the member's request and commence
11 payments as soon as administratively feasible.

§20-17-13. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or state law, the board shall administer
2 the retirement system in compliance with the limitations of Section 415 of the Internal Revenue
3 Code and regulations under that section, to the extent applicable to governmental plans (hereafter
4 sometimes referred to as the "415 limitation(s)" or "415 dollar limitation(s)"), so that the annual
5 benefit payable under this system to a member may not exceed those limitations. Any annual
6 benefit payable under this system shall be reduced or limited, if necessary, to an amount which
7 does not exceed those limitations. The extent to which any annuity or other annual benefit payable
8 under this retirement system shall be reduced, as compared to the extent to which an annuity,
9 contributions or other benefits under any other defined benefit plans or defined contribution plans
10 required to be taken into consideration under Section 415 of the Internal Revenue Code shall be
11 reduced, shall be proportional on a percentage basis to the reductions made in such other plans
12 administered by the board and required to be so taken into consideration under Section 415,
13 unless a disproportionate reduction is determined by the board to maximize the aggregate
14 benefits payable to the member. If the reduction is under this retirement system, the board shall
15 advise affected members of any additional limitation on the annuities or other annual benefit
16 required by this section. For purposes of the 415 limitations, the "limitation year" shall be the
17 calendar year. The 415 limitations are incorporated herein by reference, except to the extent the
18 following provisions may modify the default provisions thereunder:

19 (a) The annual adjustment to the 415 dollar limitations made by Section 415(d) of the

20 Internal Revenue Code and the regulations thereunder shall apply for each limitation year. The
21 annual adjustments to the dollar limitations under Section 415(d) of the Internal Revenue Code
22 which become effective: (i) After a retirant's severance from employment with the employer; or (ii)
23 after the annuity starting date in the case of a retirant who has already commenced receiving
24 benefits, shall apply with respect to a retirant's annual benefit in any limitation year. A retirant's
25 annual benefit payable in any limitation year from this retirement system may not be greater than
26 the limit applicable at the annuity starting date, as increased in subsequent years pursuant to
27 Section 415(d) of the Internal Revenue Code and the regulations thereunder.

28 (b) For purposes of this section, the "annual benefit" means a benefit that is payable
29 annually in the form of a straight life annuity. Except as provided below, where a benefit is payable
30 in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent
31 straight life annuity that begins at the same time as such other form of benefit, using factors
32 prescribed in the 415 limitation regulations, before applying the 415 limitations. No actuarial
33 adjustment to the benefit shall be made for: (1) Survivor benefits payable to a surviving spouse
34 under a qualified joint and survivor annuity to the extent such benefits would not be payable if the
35 member's benefit were paid in another form; (2) benefits that are not directly related to retirement
36 benefits (such as a qualified disability benefit, preretirement incidental death benefits, and post-
37 retirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit
38 increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal
39 Revenue Code and would otherwise satisfy the limitations of this article, and the plan provides
40 that the amount payable under the form of benefit in any limitation year shall not exceed the limits
41 of this article applicable at the annuity starting date, as increased in subsequent years pursuant
42 to Section 415(d) of the Internal Revenue Code. For this purpose, an automatic benefit increase
43 feature is included in a form of benefit if the form of benefit provides for automatic, periodic
44 increases to the benefits paid in that form.

45 (c) Adjustment for benefit forms not subject to Section 417(e)(3). -- The straight life annuity

46 that is actuarially equivalent to the member's form of benefit shall be determined under this
47 subsection if the form of the member's benefit is either: (1) A nondecreasing annuity (other than
48 a straight life annuity) payable for a period of not less than the life of the member (or, in the case
49 of a qualified preretirement survivor annuity, the life of the surviving spouse); or (2) an annuity
50 that decreases during the life of the member merely because of: (i) The death of the survivor
51 annuitant (but only if the reduction is not below 50 percent of the benefit payable before the death
52 of the survivor annuitant); or (ii) the cessation or reduction of Social Security supplements or
53 qualified disability payments (as defined in Section 411(a)(9) of the Internal Revenue Code). The
54 actuarially equivalent straight life annuity is equal to the greater of: (I) The annual amount of the
55 straight life annuity (if any) payable to the member under the plan commencing at the same
56 annuity starting date as the member's form of benefit; and (II) the annual amount of the straight
57 life annuity commencing at the same annuity starting date that has the same actuarial present
58 value as the member's form of benefit, computed using a five percent interest rate assumption
59 and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue
60 Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of
61 Revenue Ruling 2001-62) for that annuity starting date.

62 (d) Adjustment for benefit forms subject to Section 417(e)(3). -- The straight life annuity
63 that is actuarially equivalent to the member's form of benefit shall be determined under this
64 subsection if the form of the member's benefit is other than a benefit form described in subdivision
65 (c) of this section. The actuarially equivalent straight life annuity shall be determined as follows:
66 The actuarially equivalent straight life annuity is equal to the greatest of: (1) The annual amount
67 of the straight life annuity commencing at the same annuity starting date that has the same
68 actuarial present value as the member's form of benefit, computed using the interest rate specified
69 in this retirement system and the mortality table (or other tabular factor) specified in this retirement
70 system for adjusting benefits in the same form; (2) the annual amount of the straight life annuity
71 commencing at the same annuity starting date that has the same actuarial present value as the

72 member's form of benefit, computed using a five and a half percent interest rate assumption and
73 the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling
74 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue
75 Ruling 2001-62) for that annuity starting date; and (3) the annual amount of the straight life annuity
76 commencing at the same annuity starting date that has the same actuarial present value as the
77 member's form of benefit, computed using the applicable interest rate defined in Treasury
78 Regulation §1.417(e)-1(d)(3) and the applicable mortality table defined in Treasury Regulation
79 §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent
80 Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

81 (e) Benefits payable prior to age 62:

82 (1) Except as provided in paragraphs (2) and (3) of this subdivision, if the member's
83 retirement benefits become payable before age 62, the 415 dollar limitation prescribed by this
84 section shall be reduced in accordance with regulations issued by the Secretary of the Treasury
85 pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that the limitation
86 (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins)
87 which is equivalent to an annual benefit in the amount of the applicable dollar limitation of Section
88 415(b)(1)(A) of the Internal Revenue Code (as adjusted pursuant to Section 415(d) of the Internal
89 Revenue Code) beginning at age 62.

90 (2) The limitation reduction provided in paragraph (1) of this subdivision may not apply if
91 the member commencing retirement benefits before age 62 is a qualified participant. A qualified
92 participant for this purpose is a participant in a defined benefit plan maintained by a state, or any
93 political subdivision of a state, with respect to whom the service taken into account in determining
94 the amount of the benefit under the defined benefit plan includes at least 15 years of service: (i)
95 As a full-time employee of any police or fire department organized and operated by the state or
96 political subdivision maintaining the defined benefit plan to provide police protection, fire-fighting
97 services or emergency medical services for any area within the jurisdiction of such state or political

98 subdivision; or (ii) as a member of the armed forces of the United States.

99 (3) The limitation reduction provided in paragraph (1) of this subdivision is not applicable
100 to preretirement disability benefits or preretirement death benefits.

101 (4) For purposes of adjusting the 415 dollar limitation for benefit commencement before
102 age 62 or after age 65 (if the plan provides for such adjustment), no adjustment is made to reflect
103 the probability of a member's death: (i) After the annuity starting date and before age 62; or (ii)
104 after age 65 and before the annuity starting date.

105 (f) Adjustment when member has less than 10 years of participation. -- if a member has
106 less than 10 years of participation in the retirement system (within the meaning of Treasury
107 Regulation §1.415(b)-1(g)(1)(ii)), the 415 dollar limitation (as adjusted pursuant to Section 415(d)
108 of the Internal Revenue Code and subdivision (e) of this section) shall be reduced by multiplying
109 the otherwise applicable limitation by a fraction, the numerator of which is the number of years of
110 participation in the plan (or one, if greater), and the denominator of which is 10. This adjustment
111 is not applicable to preretirement disability benefits or preretirement death benefits.

112 (g) The application of the provisions of this section may not cause the maximum annual
113 benefit provided to a member to be less than the member's accrued benefit as of December 31,
114 2008 (the end of the limitation year that is immediately prior to the effective date of the final
115 regulations for this retirement system as defined in Treasury Regulation §1.415(a)-1(g)(2)), under
116 provisions of the retirement system that were both adopted and in effect before April 5, 2007,
117 provided that these provisions satisfied the applicable requirements of statutory provisions,
118 regulations, and other published guidance relating to Section 415 of the Internal Revenue Code
119 in effect as of December 31, 2008, as described in Treasury Regulation §1.415(a)-1(g)(4). If
120 additional benefits are accrued for a member under this retirement system after January 1, 2009,
121 then the sum of the benefits described under the first sentence of this subsection and benefits
122 accrued for a member after January 1, 2009, shall satisfy the requirements of Section 415, taking
123 into account all applicable requirements of the final 415 Treasury Regulations.

§20-17-14. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution of a member's or beneficiary's
2 interest and take precedence over any inconsistent provisions of this plan. This section applies to
3 plan years beginning after December 31, 1986. Notwithstanding anything in the plan to the
4 contrary, the payment of benefits under this article shall be determined and made in accordance
5 with Section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated
6 thereunder as applicable to governmental plans. Any term used in this article has the same
7 meaning as when used in a comparable context in Section 401(a)(9) of the Internal Revenue
8 Code and the federal regulations promulgated thereunder unless a different meaning is clearly
9 required by the context or definition in this article. The following provisions apply to payments of
10 benefits required under this article:

11 (a) The payment of benefits under the plan to any member shall be distributed to him or
12 her not later than the required beginning date, or be distributed to him or her commencing not
13 later than the required beginning date, in accordance with regulations prescribed under Section
14 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the
15 member and his or her beneficiary or over a period not extending beyond the life expectancy of
16 the member and his or her beneficiary: *Provided*, That the requirements of this section may not
17 be construed to grant a right to a form of benefit which is not otherwise available to a particular
18 member under this retirement system. Benefit payments under this section may not be delayed
19 pending, or contingent upon, receipt of an application for retirement from the member.

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

24 (c) If a member dies before distribution to him or her has commenced, then his or her
25 entire interest in the retirement system is to be distributed by December 31 of the calendar year

26 containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of
27 this section apply.

28 (d) If a member dies before distribution to him or her has commenced, and the member's
29 interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary,
30 distributions are to be made over the life of that beneficiary or over a period certain not greater
31 than the life expectancy of that beneficiary, commencing on or before the following:

32 (1) December 31 of the calendar year immediately following the calendar year in which
33 the member died; or

34 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
35 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
36 percent of the survivor benefit, distributions are to commence on or before the later of:

37 (A) December 31 of the calendar year in which the member would have attained age 70
38 and one-half; or

39 (B) December 31 of the calendar year immediately following the calendar year in which
40 the member died.

41 (e) If a member dies before distribution to him or her has commenced and the survivor
42 annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary
43 who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section
44 may elect to have life expectancy treatment apply to the distribution for purposes of determining
45 whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such
46 election may not delay the required distribution of the deceased member's entire interest in the
47 retirement system beyond December 31 of the calendar year containing the fifth anniversary of
48 the member's death as required by subsection (c) of this section: *Provided, however*, That the
49 election is timely made in a form acceptable to the board on or before the following:

50 (1) December 31 of the calendar year immediately following the calendar year in which
51 the member died; or

52 (2) If the member's sole designated beneficiary is either the surviving spouse or a former
53 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100
54 percent of the survivor benefit, election of life expectancy treatment must be made on or before
55 the earlier of (A) or (B) below:

56 (A) The later of: (i) December 31 of the calendar year immediately following the calendar
57 year in which the member died; or (ii) December 31 of the calendar year in which the member
58 would have attained age 70 and one-half; or

59 (B) October 31 of the calendar year containing the fifth anniversary of the member's death.

§20-17-15. Direct rollovers.

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

7 (1) "Eligible rollover distribution" means any distribution of all or any portion of the balance
8 to the credit of the distributee, except that an eligible rollover distribution does not include any of
9 the following: (A) Any distribution that is one of a series of substantially equal periodic payments
10 not less frequently than annually made for the life or life expectancy of the distributee or the joint
11 lives or the joint life expectancies of the distributee and the distributee's designated beneficiary,
12 or for a specified period of 10 years or more; (B) any distribution to the extent the distribution is
13 required under Section 401(a)(9) of the Internal Revenue Code; (C) the portion of any distribution
14 that is not includable in gross income determined without regard to the exclusion for net unrealized
15 appreciation with respect to employer securities; (D) any hardship distribution described in
16 Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. For distributions after December 31,
17 2001, a portion of a distribution may not fail to be an eligible rollover distribution merely because

18 the portion consists of after-tax employee contributions which are not includable in gross income.
19 However, this portion may be paid only to an individual retirement account or annuity described
20 in Section 408(a) or (b) of the Internal Revenue Code, or (for taxable years beginning before
21 January 1, 2007) to a qualified trust which is part of a defined contribution plan described in
22 Section 401(a) or (for taxable years beginning after December 31, 2006) to a qualified trust or to
23 an annuity contract described in Section 403(a) or (b) of the Internal Revenue Code that agrees
24 to separately account for amounts transferred (including interest or earnings thereon), including
25 separately accounting for the portion of the distribution which is includable in gross income and
26 the portion of the distribution which is not so includable, or (for taxable years beginning after
27 December 31, 2007) to a Roth IRA described in Section 408A of the Internal Revenue Code.

28 (2) "Eligible retirement plan" means an individual retirement account described in Section
29 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b)
30 of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue
31 Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts
32 the distributee's eligible rollover distribution: *Provided*, That in the case of an eligible rollover
33 distribution prior to January 1, 2002, to the surviving spouse, an eligible retirement plan is limited
34 to an individual retirement account or individual retirement annuity. For distributions after
35 December 31, 2001, an eligible retirement plan also means an annuity contract described in
36 Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the
37 Internal Revenue Code which is maintained by a state, political subdivision of a state, or any
38 agency or instrumentality of a state or political subdivision of a state and which agrees to
39 separately account for amounts transferred into the plan from this system. For distributions after
40 December 31, 2007, an eligible retirement plan also means a Roth IRA described in Section 408A
41 of the Internal Revenue Code: *Provided*, That in the case of an eligible rollover distribution after
42 December 31, 2007, to a designated beneficiary (other than a surviving spouse) as that term is
43 defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited

44 to an individual retirement account or individual retirement annuity which meets the conditions of
45 Section 402(c)(11) of the Internal Revenue Code.

46 (3) "Distributee" means an employee or former employee. In addition, the employee's or
47 former employee's surviving spouse and the employee's or former employee's spouse or former
48 spouse who is the alternate payee under a qualified domestic relations order, as defined in
49 Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees
50 with regard to the interest of the spouse or former spouse. For distributions after December 31,
51 2007, "distributee" also includes a designated beneficiary (other than a surviving spouse) as such
52 term is defined in Section 402(c)(11) of the Internal Revenue Code.

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

§20-17-16. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

1 (a) This section applies to rollovers and transfers as specified in this section made on or
2 after January 1, 2002. Notwithstanding any provision of this article to the contrary that would
3 otherwise prohibit or limit rollovers and plan transfers to this system, the retirement system shall
4 accept the following rollovers and plan transfers on behalf of a member solely for the purpose of
5 purchasing permissive service credit, in whole or in part, as otherwise provided in this article or
6 for the repayment of withdrawn or refunded contributions, in whole and in part, with respect to a
7 previous forfeiture of service credit as otherwise provided in this article: (i) One or more rollovers
8 within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual
9 retirement account described in Section 408(a) of the Internal Revenue Code or from an individual
10 retirement annuity described in Section 408(b) of the Internal Revenue Code; (ii) one or more
11 rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is
12 qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section
13 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16)
14 of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal

15 Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified
16 under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of
17 the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal
18 Revenue Code: *Provided*, That any rollovers or transfers pursuant to this section shall be
19 accepted by the system only if made in cash or other asset permitted by the board and only in
20 accordance with such policies, practices and procedures established by the board from time to
21 time. For purposes of this article, the following definitions and limitations apply:

22 (1) "Permissive service credit" means service credit which is permitted to be purchased
23 under the terms of the retirement system by voluntary contributions in an amount which does not
24 exceed the amount necessary to fund the benefit attributable to the period of service for which
25 the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal
26 Revenue Code: *Provided*, That no more than five years of "nonqualified service credit", as defined
27 in Section 415(n)(3)(C) of the Internal Revenue Code, may be included in the permissive service
28 credit allowed to be purchased (other than by means of a rollover or plan transfer), and no
29 nonqualified service credit may be included in any such purchase (other than by means of a
30 rollover or plan transfer) before the member has at least five years of participation in the retirement
31 system.

32 (2) "Repayment of withdrawn or refunded contributions" means the payment into the
33 retirement system of the funds required pursuant to this article for the reinstatement of service
34 credit previously forfeited on account of any refund or withdrawal of contributions permitted in this
35 article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

36 (3) Any contribution (other than by means of a rollover or plan transfer) to purchase
37 permissive service credit under any provision of this article must satisfy the special limitation rules
38 described in Section 415(n) of the Internal Revenue Code, and shall be automatically reduced,
39 limited, or required to be paid over multiple years if, necessary, to ensure such compliance. To
40 the extent any such purchased permissive service credit is qualified military service within the

41 meaning of Section 414(u) of the Internal Revenue Code, the limitations of Section 415 of the
42 Internal Revenue Code shall be applied to such purchase as described in Section 414(u)(1)(B) of
43 the Internal Revenue Code.

44 (4) For purposes of Section 415(b) of the Internal Revenue Code, the annual benefit
45 attributable to any rollover contribution accepted pursuant to this section shall be determined in
46 accordance with Treasury Regulation §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity
47 payments attributable to any rollover contribution provided under the retirement system over the
48 annual benefit so determined shall be taken into account when applying the accrued benefit
49 limitations of Section 415(b) of the Internal Revenue Code and §20-17-13 of this code.

50 (b) This section does not permit rollovers or transfers into this system or any other system
51 administered by the retirement board other than as specified in this section and no rollover or
52 transfer may be accepted into the system in an amount greater than the amount required for the
53 purchase of permissive service credit or repayment of withdrawn or refunded contributions.

54 (c) This section does not permit the purchase of service credit or repayment of withdrawn
55 or refunded contributions except as otherwise permitted in this article.

§20-17-17. Conversion of annual and sick leave authorized for health or retirement benefits.

1 (a) Any member, who was a member of the Public Employee Retirement System prior to
2 July 1, 2015, and who elected to become a member of this plan pursuant to §20-17-6 of this code
3 and who has accrued annual leave or sick leave days with the division may elect to use the days
4 at the time of retirement to acquire additional credited service in this retirement system. The
5 accrued days shall be applied on the basis of two workdays credit granted for each one day of
6 such accrued annual or sick leave days, with each month of retirement service credit to equal 20
7 workdays and with any remainder of 10 workdays or more to constitute a full month of additional
8 credit and any remainder of less than 10 workdays to be dropped and not used. Additional service
9 credited pursuant to the provisions of this section shall be allowed and not deemed to controvert

10 the requirement of no more than 12 months credited service in any year's period.

11 (b) Nothing in this article may be construed to change a member's eligibility to use accrued
12 annual or sick leave days for extended insurance coverage as authorized pursuant to the
13 provisions of §5-16-13 of this code. Any use of accrued annual or sick leave days for extended
14 insurance coverage shall be as authorized by the provisions of §5-16-13 of this code.

§20-17-18. Retirement benefits.

1 This section provides for a member's accrued benefit payable starting at the member's
2 annuity starting date which follows the completion of a written application for the commencement
3 of benefits. The member shall receive the accrued retirement benefit in the normal form or in an
4 actuarial equivalent amount in an optional form as provided under §20-17-19 of this code, subject
5 to reduction, if necessary to comply with the maximum benefit provisions of Section 415 of the
6 Internal Revenue Code and §20-17-13 of this code. The first day of the calendar month following
7 the calendar month of birth shall be used in lieu of any birth date that does not fall on the first day
8 of a calendar month.

9 (a) Normal retirement. -- A member whose annuity starting date is the date the member
10 attains normal retirement age or later is entitled to his or her accrued retirement benefit based on
11 years of service and final average salary at termination of employment.

12 (b) Retirement benefits shall be paid monthly in an amount equal to one twelfth of the
13 retirement income payments elected and at those times established by the board.

§20-17-19. Annuity options.

1 (a) Prior to the effective date of retirement, but not thereafter, except as provided in
2 subsection (c) of this section, a member may elect to receive retirement income payments in the
3 normal form, or the actuarial equivalent of the normal form from the following options:

4 (1) Joint and Survivor Annuity. -- A life annuity payable during the joint lifetime of the
5 retirant and his or her beneficiary who is a natural person with an insurable interest in the retirant's
6 life. Upon the death of the retirant, the benefit shall continue as a life annuity to the survivor in an

7 amount equal to 50 percent, 66 and two-thirds percent, 75 percent, or 100 percent of the amount
8 paid while both were living as selected by the member. If the beneficiary dies first, the monthly
9 amount of benefits may not be reduced, but shall be paid at the amount that was in effect before
10 the death of the beneficiary. If the retiring member is married, the spouse shall sign a waiver of
11 benefit rights if the beneficiary is to be other than the spouse.

12 (2) *Ten Years Certain and Life Annuity.* -- A life annuity payable during the retirant's
13 lifetime but in any event for a minimum of 10 years. If the retirant's dies before the expiration of
14 10 years, the remaining payments shall be made to a designated beneficiary, if any, or otherwise
15 to the member's estate.

16 (3) *Level Income Annuity.* -- A life annuity payable monthly in an increased amount "A"
17 from the time of retirement until the member is Social Security retirement age, and then a lesser
18 amount "B" payable for the retirant's lifetime thereafter, with these amounts computed actuarially
19 to satisfy the following two conditions:

20 (A) *Actuarial equivalence.* -- The actuarial present value at the date of retirement of the
21 retirant's annuity if taken in the normal form must equal the actuarial present value of the term life
22 annuity in amount "A" plus the actual present value of the deferred life annuity in amount "B"; and

23 (B) *Level income.* -- The amount "A" equals the amount "B" plus the amount of the retirant's
24 estimated monthly Social Security primary insurance amount that would commence at the date
25 amount "B" becomes payable. For this calculation, the primary insurance amount is estimated
26 when the member applies for retirement, using Social Security law then in effect, using
27 assumptions established by the board.

28 (b) If a retirant who has elected the options set forth in subdivision (1), subsection (a) of
29 this section, whose beneficiary dies prior to the retirant's death, the retirant may name an
30 alternative beneficiary. If an alternative beneficiary is named within 18 months following the death
31 of the prior beneficiary, the benefit shall be adjusted to be the actuarial equivalent of the benefit
32 the retirant is receiving just after the death of the retirant's named beneficiary. If the election is not

33 made until 18 months after the death of the prior beneficiary, the amount shall be reduced so that
34 it is only 90 percent of the actuarial equivalent of the benefit the retirant is receiving just after the
35 death of the retirant's named beneficiary.

36 (c) (1) If a retirant who has elected an option set forth in subdivision (1), subsection (a) of
37 this section, designated his or her spouse as beneficiary, upon divorce or annulment, the retirant
38 may elect to change the retirement benefit options offered by those subdivisions to a life annuity
39 in an amount adjusted on a fair basis to be of equal actuarial value of the annuity prospectively in
40 effect relative to the retirant at the time the option is elected: *Provided*, That the retirant furnishes
41 to the board satisfactory proof of entry of a final decree of divorce or annulment: *Provided*,
42 however, That the retirant certifies under penalty of perjury that no qualified domestic relations
43 order, final decree of divorce or other court order that would restrict the election is in effect:
44 *Provided further*, That no cause of action against the board arises or may be maintained on the
45 basis of having permitted the retirant to change the retirement benefit option pursuant to the
46 provisions of this subdivision.

47 (2) Upon remarriage, a retirant may name the new spouse as an annuitant for any of the
48 retirement benefit options offered by subdivision (1), subsection (a) of this section: *Provided*, That
49 the retirant shall furnish to the board proof of marriage: *Provided*, however, That the retirant
50 certifies under penalty of perjury that no qualified domestic relations order, final decree of divorce
51 or other court order that would restrict the designation is in effect: *Provided further*, That no cause
52 of action against the board arises or may be maintained on the basis of having permitted the
53 retirant to name a new spouse as annuitant for any of the survivorship retirement benefit options.
54 The value of the new survivorship annuity shall be the actuarial equivalent of the retirant's benefit
55 prospectively in effect at the time the new annuity is elected.

§20-17-20. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

1 (a) Any member who terminates covered employment and is not eligible to receive

2 disability or retirement income benefits under this article is, by written request filed with the board,
3 entitled to receive from the fund the member's accumulated contributions. Except as provided in
4 subsection (b) of this section, upon withdrawal the member shall forfeit his or her accrued benefit
5 and cease to be a member.

6 (b) Any member of this plan who ceases employment in covered employment and active
7 participation in this plan, and who thereafter becomes reemployed in covered employment may
8 not receive any credited service for any prior withdrawn accumulated contributions from either
9 this plan or the Public Employees Retirement System relating to the prior covered employment
10 unless following his or her return to covered employment and active participation in this plan, the
11 member redeposits in this plan the amount of the withdrawn accumulated contributions submitted
12 on salary earned while a Natural Resources Police Officer, together with interest on the
13 accumulated contributions at the rate determined by the board from the date of withdrawal to the
14 date of redeposit. Upon repayment he or she shall receive the same credit on account of his or
15 her former service in covered employment as if no refund had been made. The repayment
16 authorized by this subsection shall be made in a lump sum within 60 months of the Natural
17 Resources Police Officer's reemployment in covered employment or if later, within 60 months of
18 the effective date of this article.

19 (c) A member of this plan who has elected to transfer from the Public Employees
20 Retirement System into this plan pursuant to §20-17-6(b) of this code may not, after having
21 transferred into and become an active member of this plan, reinstate to his or her credit in this
22 plan any service credit relating to periods of non-Natural Resources Police Officer service which
23 were withdrawn from the Public Employees Retirement System plan prior to his or her elective
24 transfer into this plan.

25 (d) Any member of this plan who: (1) Was employed as a Natural Resource Police Officer
26 prior to the effective date of this article; and (2) was not employed as a Natural Resource Police
27 Officer on the effective date of this article; and (3) thereafter becomes reemployed in covered

28 employment, may not receive any credited service for any previously withdrawn accumulated
29 contributions from either this plan or the Public Employees Retirement System relating to the prior
30 covered employment unless, following his or her return to covered employment and active
31 participation in this plan, the member redeposits in this plan the amount of the withdrawn
32 accumulated contributions submitted on salary earned while a Natural Resources Police Officer,
33 together with interest on the accumulated contributions at the rate determined by the board from
34 the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same
35 credit for his or her former service in covered employment as if no refund had been made. The
36 repayment required by this subsection shall be made in a lump sum within 60 months of the
37 Natural Resource Police Officers reemployment in covered employment.

38 (e) Every member who completes 120 months of covered employment is eligible, upon
39 cessation of covered employment, to either withdraw his or her accumulated contributions in
40 accordance with subsection (a) of this section, or to choose not to withdraw his or her accumulated
41 contribution and to receive retirement income payments upon attaining normal retirement age.

42 (f) Notwithstanding any other provision of this article, forfeitures under the plan may not
43 be applied to increase the benefits any member would otherwise receive under the plan.

§20-17-21. Awards and benefits for disability -- Duty related.

1 (a) Any member who after the effective date of this article and during covered employment:

2 (1) Has been or becomes either totally or partially disabled by injury, illness or disease; and (2)
3 the disability is a result of an occupational risk or hazard inherent in or peculiar to the services
4 required of members; or (3) the disability was incurred while performing law-enforcement
5 functions during either scheduled work hours or at any other time; and (4) in the opinion of two
6 physicians, one of whom shall be named by the board and one by the member, the member is by
7 reason of the disability unable to perform adequately the duties required of a Natural Resources
8 Police Officer, is entitled to receive and shall be paid from the fund in monthly installments the
9 compensation under either subsection (b) or (c) of this section.

10 (b) If the member is totally disabled, the member shall receive 90 percent of his or her
11 average full monthly compensation for the 12-month contributory period preceding the member's
12 disability award, or the shorter period if the member has not worked 12 months.

13 (c) If the member is partially disabled, the member shall receive 45 percent of his or her
14 average full monthly compensation for the 12-month contributory period preceding the member's
15 disability award, or the shorter period if the member has not worked 12 months.

16 (d) If the member remains partially disabled until attaining 60 years of age, the member
17 shall then receive the retirement benefit provided in §20-17-18 and §20-17-19 of this code with
18 the accrued benefit being computed with the multiplier in effect as of his or her effective date of
19 retirement.

20 (e) The disability benefit payments will begin the first day of the month following
21 termination of employment and receipt of the disability retirement application by the Consolidated
22 Public Retirement Board.

§20-17-22. Awards and benefits for disability -- Due to other causes.

1 (a) Any member who after the effective date of this article and during covered employment:

2 (1) Has been or becomes totally or partially disabled from any cause other than those set forth in
3 §20-17-21 of this code and not due to vicious habits, intemperance, or willful misconduct on his
4 or her part; and (2) in the opinion of two physicians, one of whom shall be named by the board
5 and one by the member, he or she is by reason of the disability unable to perform adequately the
6 duties required of a Natural Resources Police Officer, is entitled to receive and shall be paid from
7 the fund in monthly installments the compensation set forth in either subsection (b) or (c) of this
8 section.

9 (b) If the member is totally disabled, he or she shall receive 66 and two-thirds percent of
10 his or her average full monthly compensation for the 12-month contributory period preceding the
11 disability award, or the shorter period, if the member has not worked 12 months.

12 (c) If the member is partially disabled, he or she shall receive 33 and one-third percent of

13 his or her average full monthly compensation for the 12-month contributory period preceding the
14 disability award, or the shorter period, if the member has not worked 12 months.

15 (d) If the member remains disabled until attaining 60 years of age, then the member shall
16 receive the retirement benefit provided in §20-17-18 and §20-17-19 of this code with the accrued
17 benefit being computed with the multiplier in effect as of his or her effective date of retirement.

18 (e) The board shall propose legislative rules for promulgation in accordance with the
19 provisions of §29A-3-1 et seq. of this code concerning member disability payments so as to
20 ensure that the payments do not exceed 100 percent of the average current salary for the position
21 last held by the member.

22 (f) The disability benefit payments will begin the first day of the month following termination
23 of employment and receipt of the disability retirement application by the Consolidated Public
24 Retirement Board.

§20-17-23. Awards and benefits for disability -- Physical examinations; termination of
disability.

1 (a) The board may require any member who has applied for or any retirant who is receiving
2 disability benefits under this article to submit to a physical examination, mental examination or
3 both, by a physician or physicians selected or approved by the board and may cause all costs
4 incident to the examination and approved by the board to be paid from the fund. The costs may
5 include hospital, laboratory, X ray, medical, and physicians' fees. A report of the findings of any
6 physician shall be submitted in writing to the board for its consideration. If, from the report,
7 independent information, or from the report and any hearing on the report, the board is of the
8 opinion and finds that: (1) The member has become reemployed as a law-enforcement officer;
9 (2) two physicians who have examined the member have found that considering the opportunities
10 for law enforcement in West Virginia, the member could be so employed as a Natural Resources
11 Police Officer; or (3) other facts exist to demonstrate that the member is no longer totally disabled
12 or partially disabled as the case may be, then the disability benefits shall cease. If the member

13 was totally disabled and is found to have recovered, the board shall determine whether the
14 member continues to be partially disabled. If the board finds that the member is no longer totally
15 disabled but is partially disabled, then the member shall continue to receive partial disability
16 benefits in accordance with this article. Benefits shall cease once the member has been found to
17 be no longer either totally or partially disabled: *Provided*, That the board shall require
18 recertification for each partial or total disability at regular intervals.

19 (b) If from the report, or from the report and hearing on the report, the board is of the
20 opinion and finds that the disabled retirant has recovered from the disability to the extent that he
21 or she is able to perform adequately the duties of a law-enforcement officer, the board shall within
22 five working days provide written notice of the finding to the Director of the Division of Natural
23 Resources, who shall reinstate the retirant to active duty as a member of the department at his or
24 her rank or classification and assigned to his or her area of assignment prior to the disability
25 retirement within 45 days of the finding, unless the retirant declines to be reinstated.

26 (c) A disability retirant who is returned to active duty as a Natural Resources Police Officer
27 for the West Virginia Division of Natural Resources shall again become a member of the
28 retirement system in which he or she was enrolled and the retirant's credited service in force at
29 the time of retirement shall be restored.

30 (d) If a retirant refuses to submit to a medical examination or submit a statement by his or
31 her physician certifying continued disability in any period, his or her disability annuity may be
32 discontinued by the board until the retirant complies. If the refusal continues for one year, all the
33 retirant's rights in and to the annuity may be revoked by the board.

§20-17-24. Prior disability.

1 Any Natural Resources Police Officer who became totally disabled as a result of illness or
2 injury incurred in the line of duty prior to the effective date of this article may not be a member of
3 the Natural Resources Police Officer Retirement System.

§20-17-25. Awards and benefits to surviving spouse -- When member dies in performance

of duty, etc.

1 (a) The surviving spouse of any member who, after the effective date of this article while
2 in covered employment, has died or dies by reason of injury, illness or disease resulting from an
3 occupational risk or hazard inherent in or peculiar to the service required of members, while the
4 member was or is engaged in the performance of his or her duties as a Natural Resources Police
5 Officer, or the survivor spouse of a member who dies from any cause while receiving benefits
6 pursuant to §20-17-21 of this code, is entitled to receive and shall be paid from the fund benefits
7 as determined in subsection (b) of this section: To the surviving spouse annually, in equal monthly
8 installments during his or her lifetime an amount equal to the greater of: (i) Two thirds of the
9 annual compensation received in the preceding 12-month period by the deceased member; or (ii)
10 if the member dies after his or her normal retirement age, the monthly amount which the spouse
11 would have received had the member retired the day before his or her death, elected a 100
12 percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

13 (b) Benefits for a surviving spouse received under this section, §20-17-27 and §20-17-28
14 of this code, are in lieu of receipt of any other benefits under this article for the spouse, or any
15 other person, or under the provisions of any other state retirement system based upon the
16 member's covered employment.

§20-17-26. Awards and benefits to surviving spouse -- When member dies from nonservice-connected causes.

1 (a) In any case where a member who has been a member for at least 10 years, while in
2 covered employment after the effective date of this article, has died or dies from any cause other
3 than those specified in §20-17-25 of this code, and not due to vicious habits, intemperance, or
4 willful misconduct on his or her part, the fund shall pay annually in equal monthly installments to
5 the surviving spouse during his or her lifetime, a sum equal to the greater of: (i) One half of the
6 annual compensation received in the preceding 12-month employment period by the deceased
7 member; or (ii) if the member dies after his or her early or normal retirement age, the monthly

8 amount which the spouse would have received had the member retired the day before his or her
9 death, elected a 100 percent joint and survivor annuity with the spouse as the joint annuitant, and
10 then died.

11 (b) Benefits for a surviving spouse received under §20-17-27 and §20-17-28 of this code,
12 are in lieu of receipt of any other benefits under this article for the spouse or any other person or
13 under the provisions of any other state retirement system based upon the member's covered
14 employment.

§20-17-27. Additional death benefits and scholarships - Dependent children.

1 (a) In addition to the spouse death benefits in §20-17-25 and §20-17-26 of this code, the
2 surviving spouse is entitled to receive and there shall be paid to the spouse \$100 monthly for
3 each dependent child.

4 (b) If the surviving spouse dies or if there is no surviving spouse, the fund shall pay monthly
5 to each dependent child a sum equal to one fourth of the surviving spouse's entitlement under
6 either §20-7-25 or §20-17-26 of this code. If there is neither a surviving spouse nor a dependent
7 child, the fund shall pay in equal monthly installments to the dependent parents of the deceased
8 member during their joint lifetimes a sum equal to the amount which a surviving spouse, without
9 children, would have received: *Provided*, That when there is only one dependent parent surviving,
10 that parent is entitled to receive during his or her lifetime one-half the amount which both parents,
11 if living, would have been entitled to receive: *Provided, however*, That if there is no surviving
12 spouse, dependent child nor dependent parent of the deceased member the accumulated
13 contributions shall be paid to a named beneficiary or beneficiaries: *Provided further*, That if there
14 is no surviving spouse, dependent child, nor dependent parent of the deceased member, nor any
15 named beneficiary or beneficiaries then the accumulated contributions shall be paid to the estate
16 of the deceased member.

17 (c) Any person qualifying as a dependent child under this section, in addition to any other
18 benefits due under this or other sections of this article, is entitled to receive a scholarship to be

19 applied to the career development education of that person. This sum, up to but not exceeding
20 \$7,500 per year, shall be paid from the fund to any higher education institution in this state, career-
21 technical education provider in this state, or other entity in this state approved by the board, to
22 offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of
23 study at any of these institutions so long as the recipient makes application to the board on an
24 approved form and under such rules as the board may provide, and maintains scholastic eligibility
25 as defined by the institution or the board. The board may propose legislative rules for promulgation
26 in accordance with §29A-3-1 et seq. of this code which define age requirements, physical and
27 mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and
28 other requirements as necessary and not inconsistent with this section. Scholarship benefits
29 awarded pursuant to this subsection are not subject to division or payable to an alternate payee
30 by any Qualified Domestic Relations Order.

§20-17-28. Burial benefit.

1 Any member who dies as a result of any service related illness or injury after the effective
2 date is entitled to a lump sum burial benefit of \$5,000. If the member is married, the burial benefit
3 shall be paid to the member's spouse. If the member is not married, the burial benefit shall be
4 paid to the member's estate for the purposes of paying burial expenses, settling the member's
5 final affairs, or both. Any unspent balance shall be distributed as a part of the member's estate.
6 Burial benefits awarded pursuant to this section are not subject to division or payable to an
7 alternate payee by any Qualified Domestic Relations Order.

§20-17-29. Double death benefits prohibited.

1 A surviving spouse is not entitled to receive simultaneous death benefits under this article
2 as a result of the death of two or more members to whom the spouse was married. Any spouse
3 who becomes eligible for a subsequent death benefit under this article while receiving a death
4 benefit under this article shall receive the higher benefit, but not both.

§20-17-30. Return to covered employment by retired member.

1 The annuity of any member who retires under the provisions of this article and who
 2 resumes service in covered employment shall be suspended while the member continues in
 3 covered employment. The monthly annuity payment for the month in which the service resumes
 4 shall be prorated to the date of commencement of service, and the member shall again become
 5 a contributing member during resumption of service. At the conclusion of resumed service in
 6 covered employment the member shall have his or her annuity recalculated to take into account
 7 the entirety of service in covered employment.

§20-17-31. Exemption from garnishment and other process; exception for certain qualified domestic relations orders.

1 The moneys in the fund and the right of a member, spouse or other beneficiary to benefits
 2 under this article, to the return of contributions, or to any retirement, death, or disability payments
 3 under the provisions of this article are not subject to execution, garnishment, attachment, or any
 4 other process whatsoever with the exception that the benefits or contributions under the system
 5 shall be subject to "qualified domestic relations orders" as that term is defined in Section 414(p)
 6 of the Internal Revenue Code with respect to governmental plans, and are unassignable except
 7 as is provided in this article.

§20-17-32. Fraud; penalties; and repayment.

1 Any person who knowingly makes any false statement or who falsifies or permits to be
 2 falsified any record of the retirement system in any attempt to defraud that system is guilty of a
 3 misdemeanor and, upon conviction, shall be fined not to exceed \$1,000 or confined in jail not to
 4 exceed one year, or both fined and confined. Any increased benefit received by any person as a
 5 result of the falsification or fraud shall be returned to the fund upon demand by the board.

§20-17-33. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.

1 (a) Any member who has previously served on active military duty is entitled to receive

2 additional years of service for the purpose of determining his or her years of credited service for
3 a period equal to the active military duty not to exceed five years, subject to the following:

4 (1) That he or she has been honorably discharged from the armed forces;

5 (2) That he or she substantiates by appropriate documentation or evidence his or her
6 period of active military duty; and

7 (3) That he or she is receiving no benefits from any other retirement system for his or her
8 active military duty.

9 (b) In addition, any member who while in covered employment was commissioned,
10 enlisted or inducted into the armed forces of the United States or, being a member of the reserve
11 officers' corps, was called to active duty in the armed forces between September 1, 1940, and the
12 close of hostilities in World War II, or between the June 27, 1950, and the close of the armed
13 conflict in Korea on July 27, 1953, between August 1, 1964, and the close of the armed conflict
14 in Vietnam, or during any other period of armed conflict by the United States whether sanctioned
15 by a declaration of war by Congress or by executive or other order of the president, is entitled to
16 and shall receive credited service, for a period equal to the full time that he or she has or, pursuant
17 to that commission, enlistment, induction or call, shall have served with the armed forces subject
18 to the following:

19 (1) That he or she has been honorably discharged from the armed forces;

20 (2) That within 90 days after honorable discharge from the armed forces, he or she
21 presented himself or herself to the West Virginia Division of Natural Resources and offered to
22 resume service as a Natural Resources Police Officer; and

23 (3) That he or she has made no voluntary act, whether by reenlistment, waiver of
24 discharge, acceptance of commission or otherwise, to extend or participate in extension of the
25 period of service with the armed forces beyond the period of service for which he or she was
26 originally commissioned, enlisted, inducted or called.

27 (c) The total amount of service allowable under subsections (a) and (b) of this section may

28 not exceed five years.

29 (d) Any service credit allowed under this section may be credited one time only for each
30 Natural Resources Police Officer, regardless of any changes in job title or responsibilities.

31 (e) Notwithstanding the preceding provisions of this section, contributions, benefits, and
32 service credit with respect to qualified military service shall be provided in accordance with
33 Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military
34 service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement
35 board is authorized to determine all questions and make all decisions relating to this section and,
36 pursuant to the authority granted to the retirement board in §5-10D-1 of this code, may promulgate
37 rules relating to contributions, benefits and service credit to comply with Section 414(u) of the
38 Internal Revenue Code.

§20-17-34. Pro rata reduction of annuities.

1 Any provision in this article to the contrary notwithstanding, if at the end of any fiscal year
2 the total of the annuities paid from the retirement fund during the said fiscal year is more than 10
3 percent of the sum of the balances in the fund at the end of the said fiscal year, the said annuities
4 payable in the next ensuing fiscal year shall be reduced, pro rata, so that the sum of the annuities
5 so reduced shall not exceed 10 percent of the sum of the said balances in the fund. The said pro
6 rata reduction shall be applied to all annuities payable in the said ensuing fiscal year.

§20-17-35. Liability of participating public employer for delinquent retirement
contributions; liability of participating public employer's successor for delinquent
retirement contributions; lien for delinquent contributions; collection by suit.

1 The requirements for this section shall be the same as the requirements of §5-10D-11 of
2 this code.

§20-17-36. Benefits not forfeited if system terminates.

1 If the retirement system is terminated or contributions are completely discontinued, the
2 rights of all members to benefits accrued or contributions made to the date of such termination or

- 3 discontinuance, to the extent then funded, are not forfeited.

NOTE: The purpose of this bill is to establish the West Virginia Division of Natural Resources Police Officer Retirement System.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.