

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

Introduced

### House Bill 4540

FISCAL  
NOTE

BY DELEGATES STORCH, EVANS, BATES, ANDERSON,

PETHTEL, AND GEARHEART

[BY REQUEST OF THE CONSOLIDATED PUBLIC

RETIREMENT BOARD]

[Introduced February 03, 2022; Referred to the Committee

on Pensions and Retirement then Finance]

1 A BILL to amend and reenact §5-10-2, §5-10-27b and §5-10-44 of the Code of West Virginia,  
 2 1931, as amended; to amend and reenact §7-14D-2, §7-14D-7a and §7-14D-9b; to amend  
 3 and reenact §8-22A-2, §8-22A-8a and §8-22A-11; to amend and reenact §15-2-25b, §15-  
 4 2-45 and §15-2-54; to amend and reenact §15-2A-2, §15-2A-6b and §15-2A-23; to amend  
 5 and reenact §16-5V-2, §16-5V-8a and §16-5V-13; to amend and reenact §18-7A-3, §18-  
 6 7A-14c and §18-7A-28b; to amend and reenact §18-7B-2, §18-7B-12a and §18-7B-21; to  
 7 amend and reenact §20-18-2, §20-18-9 and §20-18-14; and to amend and reenact §51-  
 8 9-1a, §51-9-12b and §51-9-18, all relating to updating provisions of the retirement and  
 9 pension benefits of the West Virginia Public Employees Retirement System, the Deputy  
 10 Sheriffs' Retirement System, the Municipal Police and Firefighters Retirement System, the  
 11 State Police Death, Disability and Retirement Fund, the West Virginia State Police  
 12 Retirement Fund, the Emergency Medical Services Retirement System, the Teachers  
 13 Retirement System, the Teachers' Defined Contribution Retirement System, the Natural  
 14 Resources Police Officers Retirement System and the Judges' Retirement Fund in order  
 15 to comply with federal law; changing age threshold for plan members born after June 30,  
 16 1949; clarifying provisions regarding correction of errors; and amending definitions for  
 17 each retirement system named here.

*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.**

**§5-10-2. Definitions.**

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

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

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

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

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

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

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

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

23 (8) "Compensation" means the remuneration paid a member by a participating public  
24 employer for personal services rendered by the member to the participating public employer. In  
25 the event a member's remuneration is not all paid in money, his or her participating public  
26 employer shall fix the value of the portion of the remuneration which is not paid in money:

27 *Provided*, That members hired in a position for the first time on or after July 1, 2014, who receive  
28 nonmonetary remuneration shall not have nonmonetary remuneration included in compensation  
29 for retirement purposes and nonmonetary remuneration may not be used in calculating a  
30 member's final average salary. Any lump sum or other payments paid to members that do not  
31 constitute regular salary or wage payments are not considered compensation for the purpose of  
32 withholding contributions for the system or for the purpose of calculating a member's final average  
33 salary. These payments include, but are not limited to, attendance or performance bonuses, one-  
34 time flat fee or lump sum payments, payments paid as a result of excess budget, or employee  
35 recognition payments. The board shall have final power to decide whether the payments shall be  
36 considered compensation for purposes of this article;

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

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

43 (11) "Employee" means any person who serves regularly as an officer or employee, full  
44 time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment,  
45 in the service of, and whose compensation is payable, in whole or in part, by any political  
46 subdivision, or an officer or employee whose compensation is calculated on a daily basis and  
47 paid monthly or on completion of assignment, including technicians and other personnel  
48 employed by the West Virginia National Guard whose compensation, in whole or in part, is paid  
49 by the federal government: *Provided*, That an employee of the Legislature whose term of  
50 employment is otherwise classified as temporary and who is employed to perform services  
51 required by the Legislature for its regular sessions or during the interim between regular sessions  
52 and who has been or is employed during regular sessions or during the interim between regular

53 sessions in seven or more consecutive calendar years, as certified by the clerk of the house in  
54 which the employee served, is an employee, any provision to the contrary in this article  
55 notwithstanding, and is entitled to credited service in accordance with provisions of §5-10-14 of  
56 this code: *Provided, however,* That members of the legislative body of any political subdivision  
57 and judges of the state Court of Claims are employees receiving one year of service credit for  
58 each one-year term served and prorated service credit for any partial term served, anything  
59 contained in this article to the contrary notwithstanding: *Provided further,* That only a  
60 compensated board member of a participating public employer appointed to a board of a  
61 nonlegislative body for the first time on or after July 1, 2014, who normally is required to work 12  
62 months per year and 1040 of service per year is an employee. In any case of doubt as to who is  
63 an employee within the meaning of this article, the board of trustees shall decide the question;

64 (12) "Employer error" means an omission, misrepresentation, or deliberate act in violation  
65 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations  
66 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State  
67 Regulations by the participating public employer that has resulted in an underpayment or  
68 overpayment of contributions required; ~~A deliberate act contrary to the provisions of this section~~  
69 ~~by a participating public employer does not constitute employer error~~

70 (13) "Final average salary" means either of the following: *Provided,* That salaries for  
71 determining benefits during any determination period may not exceed the maximum  
72 compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and  
73 Section 401 (a) (17) of the Internal Revenue Code: *Provided, however,* That the provisions of §5-  
74 10-22h of this code are not applicable to the amendments made to this subdivision during the  
75 2011 regular session of the Legislature;

76 (A) The average of the highest annual compensation received by a member, including a  
77 member of the Legislature who participates in the retirement system in the year 1971 or thereafter,  
78 during any period of three consecutive years of credited service contained within the member's

79 15 years of credited service immediately preceding the date his or her employment with a  
80 participating public employer last terminated: *Provided*, That for persons who were first hired on  
81 or after July 1, 2015, any period of five consecutive years of contributing service contained within  
82 the member's fifteen years of credited service immediately preceding the date his or her  
83 employment with a participating public employer last terminated; or

84 (B) If the member has less than five years of credited service, the average of the annual  
85 rate of compensation received by the member during his or her total years of credited service;  
86 and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision,  
87 of a member of the Legislature who participates in the retirement system as a member of the  
88 Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation  
89 (the total of all compensation paid under §4-2A-2, §4-2A-3, §4-2A-4, and §4-2A-5 of this code),  
90 in the year 1971, or in any year thereafter, plus any other compensation he or she receives in any  
91 year from any other participating public employer including the State of West Virginia, without any  
92 multiple in excess of one times his or her actual legislative compensation and other compensation,  
93 shall be used: *Provided*, That final average salary for any former member of the Legislature or for  
94 any member of the Legislature in the year 1971 who, in either event, was a member of the  
95 Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on  
96 November 30 in any one or more of those three years and who participated in the retirement  
97 system as a member of the Legislature in any one or more of those years means: (i) Either,  
98 notwithstanding the provisions of this subdivision preceding this proviso, \$1,500 multiplied by  
99 eight, plus the highest other compensation the former member or member received in any one of  
100 the three years from any other participating public employer including the State of West Virginia;  
101 or (ii) final average salary determined in accordance with paragraph (A) or (B) of this subdivision,  
102 whichever computation produces the higher final average salary, and in determining the annual  
103 compensation under subparagraph (ii) of this paragraph, the legislative compensation of the  
104 former member shall be computed on the basis of \$1,500 multiplied by eight, and the legislative

105 compensation of the member shall be computed on the basis set forth in the provisions of this  
106 subdivision immediately preceding this paragraph or on the basis of \$1,500 multiplied by eight,  
107 whichever computation as to the member produces the higher annual compensation;

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

110 (15) "Limited credited service" means service by employees of the West Virginia  
111 Educational Broadcasting Authority, in the employment of West Virginia University, during a  
112 period when the employee made contributions to another retirement system, as required by West  
113 Virginia University, and did not make contributions to the Public Employees Retirement System:  
114 *Provided*, That while limited credited service can be used for the formula set forth in §5-10-21(e)  
115 of this code, it may not be used to increase benefits calculated under §5-10-22 of this code;

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

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

124 (18) "Plan year" means the same as referenced in §5-10-42 of this code;

125 (19) "Political subdivision" means the State of West Virginia, a county, city or town in the  
126 state; a school corporation or corporate unit; any separate corporation or instrumentality  
127 established by one or more counties, cities or towns, as permitted by law; any corporation or  
128 instrumentality supported in most part by counties, cities or towns; and any public corporation  
129 charged by law with the performance of a governmental function and whose jurisdiction is  
130 coextensive with one or more counties, cities or towns: *Provided*, That any mental health agency

131 participating in the Public Employees Retirement System before July 1, 1997, is considered a  
132 political subdivision solely for the purpose of permitting those employees who are members of the  
133 Public Employees Retirement System to remain members and continue to participate in the  
134 retirement system at their option after July 1, 1997: *Provided, however,* That the Regional  
135 Community Policing Institute which participated in the Public Employees Retirement System  
136 before July 1, 2000, is considered a political subdivision solely for the purpose of permitting those  
137 employees who are members of the Public Employees Retirement System to remain members  
138 and continue to participate in the Public Employees Retirement System after July 1, 2000;

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

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

143 (22) "Required beginning date" means April 1 of the calendar year following the later of:  
144 (A) The calendar year in which the member attains age ~~seventy and one-half years of age~~ 70.5  
145 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in  
146 which a member ~~who has attained the age seventy and one-half years of age and who~~ ceases  
147 providing service covered under this retirement system to a participating employer;

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

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

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

154 (26) "Retroactive service" means: (1) Service between July 1, 1961, and the date an  
155 employer decides to become a participating member of the Public Employees Retirement System;

156 (2) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost



157 in accordance with 162 CSR 5.13; and (3) service of any member of a legislative body or  
158 employees of the State Legislature whose term of employment is otherwise classified as  
159 temporary for which the employee is eligible, but for which the employee did not elect to participate  
160 at that time;

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

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

**§5-10-27b. 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 code. This provision applies  
3 to plan years beginning after December 31, 1986. Notwithstanding anything in this code 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, including without limitation the minimum  
7 distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations  
8 thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term  
9 used in this article has the same meaning as when used in a comparable context in section  
10 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder  
11 unless a different meaning is clearly required by the context or definition in this article. The  
12 following provisions apply to payments of benefits required under this article:

13 (a) The payment of benefits under the retirement system to any member shall be  
14 distributed to him or her not later than the required beginning date, or be distributed to him or her  
15 commencing not later than the required beginning date, in accordance with regulations prescribed  
16 under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the  
17 lives of the member and his or her beneficiary or over a period not extending beyond the life  
18 expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this

19 section shall not be construed to grant a right to a form of benefit which is not otherwise available  
20 to a particular member under this retirement system: Provided, however, That if the member  
21 elects an annuity option which provides survivor benefits to a beneficiary who is not the member's  
22 spouse, and the annuity option elected would provide survivor payments that exceed the  
23 applicable percentage permitted by the MDIB regulations under Section 401(a)(9) of the Internal  
24 Revenue Code, the member's annuity election shall be changed to the highest survivor annuity  
25 option offered under this retirement system which satisfies the MDIB regulations. Benefit  
26 payments under this section shall not be delayed pending, or contingent upon, receipt of an  
27 application for retirement from the member.

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

32 (c) If a member dies before distribution to him or her has commenced, then his or her  
33 entire interest in the retirement system is to be distributed by December 31 of the calendar year  
34 containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of  
35 this section apply.

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

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

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

45 (A) December 31 of the calendar year in which the member would have attained age  
46 ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

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

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

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

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

64 (A) The later of: (i) December 31 of the calendar year immediately following the calendar  
65 year in which the member died; or (ii) December 31 of the calendar year in which the member  
66 would have attained age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born  
67 after June 30, 1949); or

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

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

1 (a) *General rule.* — Upon learning of any errors, the board shall correct errors in the

2 retirement system in a timely manner whether an individual, entity or board was at fault for the  
3 error with the intent of placing the affected individual, entity and retirement board in the position  
4 each would have been in had the error not occurred.

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

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

27 (d) *Overpayments to the retirement system by an employee.* — When mistaken or excess

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

41 (e) *Overpayments from the retirement system.* — If any error results in any member,  
42 retirant, beneficiary, entity or other individual receiving from the system more than he would have  
43 been entitled to receive had the error not occurred, the board, upon learning of the error, shall  
44 correct the error in a timely manner. If correction of the error occurs after annuity payments to a  
45 retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the  
46 benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person  
47 who received the overpayment from the retirement system shall repay the amount of any  
48 overpayment to the retirement system in any manner permitted by the board. If the member,  
49 retirant, beneficiary or other person who received the overpayment is deceased and an annuity  
50 or lump sum benefit is still payable, the amount of the remaining overpayment shall be offset  
51 against the benefit payment owed in a manner consistent with the board's error correction policy.  
52 Interest shall not accumulate on any corrective payment made to the retirement system pursuant  
53 to this subsection.

54           (f) *Underpayments from the retirement system.* — If any error results in any member,  
55   retirant, beneficiary, entity or other individual receiving from the retirement system less than he  
56   would have been entitled to receive had the error not occurred, the board, upon learning of the  
57   error, shall correct the error in a timely manner. If correction of the error occurs after annuity  
58   payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the  
59   payment of the benefit to the correct amount. In addition, the board shall pay the amount of such  
60   underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall  
61   not be paid on any corrective payment made by the retirement system pursuant to this subsection.

62           (g) *Eligibility errors.* — If the board finds that an individual, employer, or both individual  
63   and employer currently or formerly participating in the retirement system is not eligible to  
64   participate, the board shall notify the individual and his or her employer of the determination and  
65   terminate participation in the retirement system. Any erroneous payments to the retirement  
66   system shall be returned to the employer and individual in accordance with the methods described  
67   in subsections (c) and (d) of this section and any erroneous payments from the retirement system  
68   to such individual shall be returned to the retirement system in accordance with the methods  
69   described in subsection (e) of this section. Any erroneous service credited to the individual shall  
70   be removed. If the board determines that an individual or employer, or both, has not been  
71   participating in the retirement system, but was eligible to and required to be participating in the  
72   retirement system, the board shall as soon as practicable notify the individual and his or her  
73   employer of the determination and the individual and his or her employer shall prospectively  
74   commence participation in the retirement system as soon as practicable. Service credit for service  
75   prior to the date on which the individual prospectively commences participation in the retirement  
76   system shall be granted only if the board receives the required employer and employee  
77   contributions for such service, in accordance with subsection (b) of this section, including interest.

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.****§7-14D-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 are retired on or retire after July 1, 2018, shall have an accrued benefit of two  
6 and one-half percent of the member’s final average salary multiplied by the member’s years of  
7 credited service. A member’s accrued benefit may not exceed the limits of Section 415 of the  
8 Internal Revenue Code and is subject to the provisions of §7-14D-9a of this code.

9           (b) “Accumulated contributions” means the sum of all amounts deducted from the  
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 §7-14D-7 of this code or §5-10-29 of this code as a result of covered  
12 employment 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  
30 benefits. Annual compensation for determining benefits during any determination period may not  
31 exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-  
32 10D-7 of 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 early or 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) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity  
41 or other benefit payable by the plan.

42 (k) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-  
43 1 *et seq.* of this code.

44 (l) "County commission" has the meaning ascribed to it in §7-1-1 of this code.

45 (m) "Covered employment" means either: (1) Employment as a deputy sheriff and the  
46 active performance of the duties required of a deputy sheriff; (2) the period of time which active  
47 duties are not performed but disability benefits are received under §7-14D-14 or §7-14D-15 of  
48 this code; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or  
49 her employment as a deputy sheriff where the secondary employment requires the deputy sheriff  
50 to be a member of another retirement system which is administered by the Consolidated Public



51 Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the deputy sheriff  
52 contributes to the fund created in §7-14D-6 of this code the amount specified as the deputy  
53 sheriff's contribution in §7-14D-7 of this code.

54 (n) "Credited service" means the sum of a member's years of service, active military duty,  
55 disability service, unused annual leave service, and unused sick leave service.

56 (o) "Deputy sheriff" means an individual employed as a county law-enforcement deputy  
57 sheriff in this state and as defined by §7-14-2 of this code.

58 (p) "Dependent child" means either:

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

60 (A) A natural child of the member;

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

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

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

66 (2) Any unmarried child under age 23:

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

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

70 (C) Whose relationship with the member is described in subparagraph (A), (B), or (C),  
71 paragraph (1) of this subdivision.

72 (q) "Dependent parent" means the father or mother of the member who was claimed as a  
73 dependent by the member for federal income tax purposes at the time of the member's death.

74 (r) "Disability service" means service credit received by a member, expressed in whole  
75 years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both,  
76 during which time a member receives disability benefits under §7-14D-14 or §7-14D-15 of this

77 code.

78 (s) "Early retirement age" means age 40 or over and completion of 20 years of service.

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

85 (u) "Effective date" means July 1, 1998.

86 (v) "Final average salary" means the average of the highest annual compensation received  
87 for covered employment by the member during any five consecutive plan years within the  
88 member's last 10 years of service. If the member did not have annual compensation for the five  
89 full plan years preceding the member's attainment of normal retirement age and during that period  
90 the member received disability benefits under §7-14D-14 or §7-14D-15 of this code then "final  
91 average salary" means the average of the full monthly salary determined paid to the member  
92 during that period multiplied by 12.

93 (w) "Fund" means the West Virginia Deputy Sheriff Retirement Fund created pursuant to  
94 §7-14D-6 of this code.

95 (x) "Hour of service" means:

96 (1) Each hour for which a member is paid or entitled to payment for covered employment  
97 during which time active duties are performed. These hours shall be credited to the member for  
98 the plan year in which the duties are performed; and

99 (2) Each hour for which a member is paid or entitled to payment for covered employment  
100 during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity  
101 including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof  
102 and without regard to whether the employment relationship has terminated. Hours under this

103 paragraph shall be calculated and credited pursuant to West Virginia Division of Labor rules. A  
104 member will not be credited with any hours of service for any period of time he or she is receiving  
105 benefits under §7-14D-14 or §7-14D-15 of this code; and

106 (3) Each hour for which back pay is either awarded or agreed to be paid by the employing  
107 county commission, irrespective of mitigation of damages. The same hours of service shall not  
108 be credited both under this paragraph and paragraph (1) or (2) of this subdivision. Hours under  
109 this paragraph shall be credited to the member for the plan year or years to which the award or  
110 agreement pertains rather than the plan year in which the award, agreement, or payment is made.

111 (y) "Member" means a person first hired as a deputy sheriff after the effective date of this  
112 article, as defined in subdivision (u) of this section, or a deputy sheriff first hired prior to the  
113 effective date and who elects to become a member pursuant to §7-14D-5 or §7-14D-17 of this  
114 code. A member shall remain a member until the benefits to which he or she is entitled under  
115 this article are paid or forfeited or until cessation of membership pursuant to §7-14D-5 of this  
116 code.

117 (z) "Monthly salary" means the portion of a member's annual compensation which is paid  
118 to him or her per month.

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

125 (bb) "Normal retirement age" means the first to occur of the following: (1) Attainment of  
126 age 50 years and the completion of 20 or more years of service; (2) while still in covered  
127 employment, attainment of at least age 50 years, and when the sum of current age plus years of  
128 service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least

129 age 60 years, and completion of five years of service; or (4) attainment of age 62 years and  
130 completion of five or more years of service.

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

140 (dd) "Public Employees Retirement System" means the West Virginia Public Employees  
141 Retirement System created by §5-10-1 *et seq.* of this code.

142 (ee) "Plan" means the West Virginia Deputy Sheriff Death, Disability, and Retirement Plan  
143 established by this article.

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

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

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

153 (ii) "Required beginning date" means April 1 of the calendar year following the later of: (i)  
154 The calendar year in which the member attains age ~~70 and one-half~~ 70.5 (if born before July 1,

155 1949) or age 72 (if born after June 30, 1949); or (ii) the calendar year in which he or she retires or  
156 otherwise separates from covered employment.

157 (jj) "Retire" or "retirement" means a member's withdrawal from the employ of a  
158 participating public employer and the commencement of an annuity by the plan.

159 (kk) "Retirement income payments" means the annual retirement income payments  
160 payable under the plan.

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

163 (mm) "Surviving spouse" means the person to whom the member was legally married at  
164 the time of the member's death and who survived the member.

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

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

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

180 (oo) "Year of service". — A member shall, except in his or her first and last years of covered

181 employment, be credited with year of service credit based upon the hours of service performed  
 182 as covered employment and credited to the member during the plan year based upon the following  
 183 schedule:

184	Hours of Service	Years of Service Credited
185	Less than 500	0
186	500 to 999	1/3
187	1,000 to 1,499	2/3
188	1,500 or more	1

189 During a member's first and last years of covered employment, the member shall be  
 190 credited with one-twelfth of a year of service for each month during the plan year in which the  
 191 member is credited with an hour of service. A member is not entitled to credit for years of service  
 192 for any time period during which he or she received disability payments under §7-14D-14 or §7-  
 193 14D-15 of this code. Except as specifically excluded, years of service include covered  
 194 employment prior to the effective date. Years of service which are credited to a member prior to  
 195 his or her receipt of accumulated contributions upon termination of employment pursuant to §7-  
 196 14D-13 or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the  
 197 member repays the accumulated contributions with interest pursuant to §7-14D-13 of this code  
 198 or had prior to the effective date made the repayment pursuant to §5-10-18 of this code.

**§7-14D-7a. 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, entity or board was at fault for the error with the  
 3 intent of placing the affected individual, entity and board in the position each would have been in  
 4 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 participating public employer remitting the required employer contribution

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

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

26 (d) Overpayments to the plan by an employee: When mistaken or excess employee  
27 contributions or overpayments have been made to the retirement system, the board shall have  
28 sole authority for determining the means of return, offset or credit to or for the benefit of the  
29 individual making the mistaken or excess employee contribution of the amounts, and may use  
30 any means authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal  
31 Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively,  
32 in its full and complete discretion, the board may require the participating public employer  
33 employing the individual to pay the individual the amounts as wages, with the board crediting the

34 participating public employer with a corresponding amount to offset against its future contributions  
35 to the plan. If the employer has no future liability for employer contributions to the plan, the board  
36 shall refund said amount directly to the employer: *Provided*, That the wages paid to the individual  
37 shall not be considered compensation for any purposes of this article. Earnings or interest shall  
38 not be returned, offset, or credited under any of the means used by the board for returning  
39 employee overpayments.

40 (e) Overpayments from the plan: If any error results in any member, retirant, beneficiary,  
41 entity or other individual receiving from the system more than he would have been entitled to  
42 receive had the error not occurred, the board, upon learning of the error, shall correct the error in  
43 a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary  
44 have commenced, the board shall prospectively adjust the payment of the benefit to the correct  
45 amount. In addition, the member, retirant, beneficiary, entity or other person who received the  
46 overpayment from the plan shall repay the amount of any overpayment to the plan in any manner  
47 permitted by the board. If the member, retirant, beneficiary or other person who received the  
48 overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the  
49 remaining overpayment shall be offset against the benefit payment owed in a manner consistent  
50 with the board's error correction policy. Interest shall not accumulate on any corrective payment  
51 made to the plan pursuant to this subsection.

52 (f) Underpayments from the plan: If any error results in any member, retirant, beneficiary,  
53 entity or other individual receiving from the plan less than he would have been entitled to receive  
54 had the error not occurred, the board, upon learning of the error, shall correct the error in a timely  
55 manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have  
56 commenced, the board shall prospectively adjust the payment of the benefit to the correct amount.  
57 In addition, the board shall pay the amount of such underpayment to the member, retirant,  
58 beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment  
59 made by the plan pursuant to this subsection.



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

**§7-14D-9b. 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, including without limitation the minimum  
7 distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations  
8 thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term  
9 used in this article has the same meaning as when used in a comparable context in section  
10 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder

11 unless a different meaning is clearly required by the context or definition in this article. The  
12 following provisions apply to payments of benefits required under this article:

13 (a) The payment of benefits under the plan to any member shall be distributed to him or  
14 her not later than the required beginning date, or be distributed to him or her commencing not  
15 later than the required beginning date, in accordance with regulations prescribed under section  
16 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the  
17 member and his or her beneficiary or over a period not extending beyond the life expectancy of  
18 the member and his or her beneficiary: *Provided*, That the requirements of this section shall not  
19 be construed to grant a right to a form of benefit which is not otherwise available to a particular  
20 member under this retirement system: *Provided, however, That if the member elects an annuity*  
21 *option which provides survivor benefits to a beneficiary who is not the member's spouse, and the*  
22 *annuity option elected would provide survivor payments that exceed the applicable percentage*  
23 *permitted by the MDIB regulations under section 401(a)(9) of the Internal Revenue Code, the*  
24 *member's annuity election shall be changed to the highest survivor annuity option offered under*  
25 *this plan which satisfies the MDIB regulations.* Benefit payments under this section shall not be  
26 delayed pending, or contingent upon, receipt of an application for retirement from the member.

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

31 (c) If a member dies before distribution to him or her has commenced, then his or her  
32 entire interest in the retirement system is to be distributed by December 31 of the calendar year  
33 containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of  
34 this section apply.

35 (d) If a member dies before distribution to him or her has commenced, and the member's  
36 interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary,

37 distributions are to be made over the life of that beneficiary or over a period certain not greater  
38 than the life expectancy of that beneficiary, commencing on or before the following:

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

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

44 (A) December 31 of the calendar year in which the member would have attained age  
45 ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

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

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

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

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

63 (A) The later of: (i) December 31 of the calendar year immediately following the calendar  
64 year in which the member died; or (ii) December 31 of the calendar year in which the member  
65 would have attained age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born  
66 after June 30, 1949); or

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

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

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

#### **§8-22A-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 six-tenths percent per year  
4 of the member's final average salary for the first 20 years of credited service. Additionally, two  
5 percent per year for 21 through 25 years and one percent per year for 26 through 30 years will be  
6 credited with a maximum benefit of 67 percent of a member's final average salary. A member's  
7 accrued benefit may not exceed the limits of section 415 of the Internal Revenue Code and is  
8 subject to the provisions of §8-22A-10 of this code.

9 (b) "Accumulated contributions" means the sum of all retirement contributions deducted  
10 from the compensation of a member, or paid on his or her behalf as a result of covered  
11 employment, together with regular interest on the deducted amounts.

12 (c) "Active military duty" means full-time duty in the active military service of the United  
13 States Army, Navy, Air Force, Coast Guard or Marine Corps. The term does not include regularly  
14 required training or other duty performed by a member of a reserve component or National Guard  
15 unless the member can substantiate that he or she was called into the full-time active military  
16 service of the United States and has received no compensation during the period of that duty from

17 any board or employer other than the armed forces.

18 (d) "Actuarial equivalent" means a benefit of equal value computed on the basis of the  
19 mortality table and interest rates as set and adopted by the board in accordance with the  
20 provisions of this article: *Provided*, That when used in the context of compliance with the federal  
21 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 (e) "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 on the nature or  
27 location of employment or services performed during the plan year plus amounts excluded under  
28 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  
32 of this code and section 401(a) (17) of the Internal Revenue Code.

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

34 (g) "Annuity starting date" means the first day of the month for which an annuity is payable  
35 after submission of a retirement application or the required beginning date, if earlier. For purposes  
36 of this subsection, if retirement income payments commence after the normal retirement age,  
37 "retirement" means the first day of the month following or coincident with the latter of the last day  
38 the member worked in covered employment or the member's normal retirement age and after  
39 completing proper written application for retirement on an application supplied by the board.

40 (h) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity  
41 or other benefit payable by the plan.

42 (i) "Board" means the Consolidated Public Retirement Board.

43 (j) "Covered employment" means either: (1) Employment as a full-time municipal police  
44 officer or firefighter and the active performance of the duties required of that employment; or (2)  
45 the period of time during which active duties are not performed but disability benefits are received  
46 under this article; or (3) concurrent employment by a municipal police officer or firefighter in a job  
47 or jobs in addition to his or her employment as a municipal police officer or firefighter in this plan  
48 where the secondary employment requires the police officer or firefighter to be a member of  
49 another retirement system which is administered by the Consolidated Public Retirement Board  
50 pursuant to this code: *Provided*, That the police officer or firefighter contributes to the fund created  
51 in this article the amount specified as the member's contribution in §8-22A-8 of this code.

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

54 (l) "Dependent child" means either: (1) An unmarried person under age 18 who is: (A) A  
55 natural child of the member; (B) a legally adopted child of the member; (C) a child who at the time  
56 of the member's death was living with the member while the member was an adopting parent  
57 during any period of probation; or (D) a stepchild of the member residing in the member's  
58 household at the time of the member's death; or (2) Any unmarried child under age 23: (A) Who  
59 is enrolled as a full-time student in an accredited college or university; (B) who was claimed as a  
60 dependent by the member for federal income tax purposes at the time of the member's death;  
61 and (C) whose relationship with the member is described in paragraph (A), (B) or (C), subdivision  
62 (1) of this subsection.

63 (m) "Dependent parent" means the father or mother of the member who was claimed as  
64 a dependent by the member for federal income tax purposes at the time of the member's death.

65 (n) "Disability service" means service credit received by a member, expressed in whole  
66 years, fractions thereof, or both, equal to one half of the whole years, fractions thereof, or both,  
67 during which time a member receives disability benefits under this article.

68 (o) "Effective date" means January 1, 2010.

69           (p) “Employer error” means an omission, misrepresentation or deliberate act in violation  
70 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations  
71 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State  
72 Regulations by the participating public employer that has resulted in an underpayment or  
73 overpayment of contributions required.

74           ~~(p)~~ (q) “Final average salary” means the average of the highest annual compensation  
75 received for covered employment by the member during any five consecutive plan years within  
76 the member’s last 10 years of service while employed, prior to any disability payment. If the  
77 member did not have annual compensation for the five full plan years preceding the member’s  
78 attainment of normal retirement age and during that period the member received disability benefits  
79 under this article, then “final average salary” means the average of the monthly compensation  
80 which the member was receiving in the plan year prior to the initial disability. “Final average salary”  
81 does not include any lump sum payment for unused, accrued leave of any kind or character.

82           ~~(q)~~ (r) “Full-time employment” means permanent employment of an employee by a  
83 participating municipality in a position which normally requires 12 months per year service and  
84 requires at least 1,040 hours per year service in that position.

85           ~~(r)~~ (s) “Fund” means the West Virginia Municipal Police Officers and Firefighters  
86 Retirement Fund created by this article.

87           ~~(s)~~ (t) “Hour of service” means: (1) Each hour for which a member is paid or entitled to  
88 payment for covered employment during which time active duties are performed. These hours  
89 shall be credited to the member for the plan year in which the duties are performed; and (2) each  
90 hour for which a member is paid or entitled to payment for covered employment during a plan  
91 year but where no duties are performed due to vacation, holiday, illness, incapacity including  
92 disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without  
93 regard to whether the employment relationship has terminated. Hours under this subdivision shall  
94 be calculated and credited pursuant to West Virginia Division of Labor rules. A member may not

95 be credited with any hours of service for any period of time he or she is receiving benefits under  
96 §8-22A-17 and §8-22A-18 of this code; and (3) each hour for which back pay is either awarded  
97 or agreed to be paid by the employing municipality, irrespective of mitigation of damages. The  
98 same hours of service may not be credited both under subdivision (1) or (2) of this subsection  
99 and under this subdivision. Hours under this paragraph shall be credited to the member for the  
100 plan year or years to which the award or agreement pertains, rather than the plan year in which  
101 the award, agreement or payment is made.

102 ~~(t)~~ (u) "Member" means, except as provided in §8-22A-32 and §8-22A-33 of this code, a  
103 person hired as a municipal police officer or municipal firefighter, as defined in this section, by a  
104 participating municipal employer on or after January 1, 2010. A member shall remain a member  
105 until the benefits to which he or she is entitled under this article are paid or forfeited.

106 ~~(u)~~ (v) "Monthly salary" means the W-2 reportable compensation received by a member  
107 during the month.

108 ~~(v)~~ (w) "Municipality" has the meaning ascribed to it in this code.

109 ~~(w)~~ (x)(1) "Municipal police officer" means an individual employed as a member of a paid  
110 police department by a West Virginia municipality or municipal subdivision which has established  
111 and maintains a municipal policemen's pension and relief fund, and who is not a member of, and  
112 not eligible for membership in, a municipal policemen's pension and relief fund as provided in §8-  
113 22-16 of this code: *Provided*, That municipal police officer also means an individual employed as  
114 a member of a paid police department by a West Virginia municipality or municipal subdivision  
115 which is authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid  
116 police department does not mean a department whose employees are paid nominal salaries or  
117 wages or are paid only for services actually rendered on an hourly basis.

118 (2) "Municipal firefighter" means an individual employed as a member of a paid fire  
119 department by a West Virginia municipality or municipal subdivision which has established and  
120 maintains a municipal firemen's pension and relief fund, and who is not a member of, and not



121 eligible for membership in, a municipal firemen's pension and relief fund as provided in §8-22-16  
122 of this code: *Provided*, That municipal firefighter also means an individual employed as a member  
123 of a paid fire department by a West Virginia municipality or municipal subdivision which is  
124 authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid fire  
125 department does not mean a department whose employees are paid nominal salaries or wages  
126 or are paid only for services actually rendered on an hourly basis.

127 ~~(x)~~ (y) "Municipal subdivision" means any separate corporation or instrumentality  
128 established by one or more municipalities, as permitted by law; and any public corporation  
129 charged by law with the performance of a governmental function and whose jurisdiction is  
130 coextensive with one or more municipalities.

131 ~~(y)~~ (z) "Normal form" means a monthly annuity which is one twelfth of the amount of the  
132 member's accrued benefit which is payable for the member's life. If the member dies before the  
133 sum of the payments he or she receives equals his or her accumulated contributions on the  
134 annuity starting date, the named beneficiary shall receive in one lump sum the difference between  
135 the accumulated contributions at the annuity starting date and the total of the retirement income  
136 payments made to the member.

137 ~~(z)~~ (aa) "Normal retirement age" means the first to occur of the following: (1) Attainment  
138 of age 50 years and the completion of 20 or more years of regular contributory service; (2) while  
139 still in covered employment, attainment of at least age 50 years and when the sum of current age  
140 plus regular contributory service equals or exceeds 70 years; (3) while still in covered  
141 employment, attainment of at least age 60 years and completion of 10 years of regular  
142 contributory service; or (4) attainment of age 62 years and completion of five or more years of  
143 regular contributory service.

144 ~~(aa)~~ (bb) "Plan" means the West Virginia Municipal Police Officers and Firefighters  
145 Retirement System established by this article.

146 ~~(bb)~~ (cc) "Plan year" means the 12-month period commencing on January 1 of any

147 designated year and ending the following December 31.

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

153 ~~(dd)~~ (ee) "Regular contributory service" means a member's credited service excluding  
154 active military duty, disability service and accrued annual and sick leave service.

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

157 ~~(ff)~~ (gg) "Required beginning date" means April 1 of the calendar year following the later  
158 of: (1) The calendar year in which the member attains age ~~70 and one-half~~ 70.5 (if born before  
159 July 1, 1949) or age 72 (if born after June 30, 1949); or (2) the calendar year in which he or she  
160 retires or otherwise separates from covered employment.

161 ~~(gg)~~ (hh) "Retirement income payments" means the monthly retirement income payments  
162 payable.

163 ~~(hh)~~ (ii) "Spouse" means the person to whom the member is legally married on the annuity  
164 starting date.

165 ~~(ii)~~ (jj) "Surviving spouse" means the person to whom the member was legally married at  
166 the time of the member's death and who survived the member.

167 ~~(jj)~~ (kk) "Totally disabled" means a member's inability to engage in substantial gainful  
168 activity by reason of any medically determined physical or mental impairment that can be  
169 expected to result in death or that has lasted or can be expected to last for a continuous period  
170 of not less than 12 months. For purposes of this subsection: (1) A member is totally disabled only  
171 if his or her physical or mental impairment or impairments is so severe that he or she is not only  
172 unable to perform his or her previous work as a police officer or firefighter but also cannot,

173 considering his or her age, education and work experience, engage in any other kind of substantial  
 174 gainful employment which exists in the state regardless of whether: (A) The work exists in the  
 175 immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member  
 176 would be hired if he or she applied for work. For purposes of this article, substantial gainful  
 177 employment is the same definition as used by the United States Social Security Administration;  
 178 and (2) "Physical or mental impairment" is an impairment that results from an anatomical,  
 179 physiological or psychological abnormality that is demonstrated by medically accepted clinical  
 180 and laboratory diagnostic techniques. The board may require submission of a member's annual  
 181 tax return for purposes of monitoring the earnings limitation.

182 ~~(kk)~~ (ll) "Vested" means eligible for retirement income payments after completion of five or  
 183 more years of regular contributory service.

184 ~~(ll)~~ (mm) "Year of service" means a member shall, except in his or her first and last years  
 185 of covered employment, be credited with years of service credit based on the hours of service  
 186 performed as covered employment and credited to the member during the plan year based on  
 187 the following schedule:

188 Hours of Service	Year of Service Credited
189 Less than 500	0
190 500 to 999	1/3
191 1,000 to 1,499	2/3
192 1,500 or more	1

193 During a member's first and last years of covered employment, the member shall be  
 194 credited with one twelfth of a year of service for each month during the plan year in which the  
 195 member is credited with an hour of service for which contributions were received by the fund. A  
 196 member is not entitled to credit for years of service for any time period during which he or she  
 197 received disability payments under §8-22A-17 and §8-22A-18 of this code.

**§8-22A-8a. Correction of errors; underpayments; overpayments.**

1           (a) *General rule.* — Upon learning of errors, the board shall correct errors in the plan in a  
2 timely manner whether the individual, entity or board was at fault for the error with the intent of  
3 placing the affected individual, entity, and retirement 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 employer 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 shall be the responsibility of the employer. The employer may  
12 remit total payment and the employee reimburse the employer through payroll deduction over a  
13 period equivalent to the time period during which the employer error occurred. If the correction of  
14 an error involving an underpayment to the plan will result in the plan correcting an erroneous  
15 underpayment from the plan, the correction of the underpayment from the plan shall be made  
16 only after the board receives full payment of all required employee and employer contributions or  
17 underpayments, including interest.

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

26           (d) *Overpayments to the plan by an employee.* — When mistaken or excess employee

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

39 (e) *Overpayments from the plan.* — If any error results in any member, retirant, beneficiary,  
40 entity or other individual receiving from the plan more than he would have been entitled to receive  
41 had the error not occurred the board, ~~after~~ upon learning of the error shall correct the error in a  
42 timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary  
43 have commenced, the board shall prospectively adjust the payment of the benefit to the correct  
44 amount. In addition, the member, retirant, beneficiary, entity or other person who received the  
45 overpayment from the plan shall repay the amount of any overpayment to the retirement system  
46 in any manner permitted by the board. If the member, retirant, beneficiary, or other person who  
47 received the overpayment is deceased and an annuity or lump sum benefit is still payable, the  
48 amount of the remaining overpayment shall be offset against the benefit payment owed in a  
49 manner consistent with the board's error correction policy. Interest shall not accumulate on any  
50 corrective payment made to the plan pursuant to this subsection.

51 (f) *Underpayments from the plan.* — If any error results in any member, retirant,  
52 beneficiary, entity or other individual receiving from the plan less than he would have been entitled

53 to receive had the error not occurred, the board, upon learning of the error, shall correct the error  
54 in a timely manner. If correction of the error occurs after annuity payments to a retirant or  
55 beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to  
56 the correct amount. In addition, the board shall pay the amount of such underpayment to the  
57 member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any  
58 corrective payment made by the retirement system pursuant to this subsection.

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

**§8-22A-11. 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, including without limitation the minimum  
7 distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations  
8 thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term  
9 used in this article has the same meaning as when used in a comparable context in section  
10 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder  
11 unless a different meaning is clearly required by the context or definition in this article. The  
12 following provisions apply to payments of benefits required under this article:

13 (a) The payment of benefits under the plan to any member shall be distributed to him or  
14 her not later than the required beginning date, or be distributed to him or her commencing not  
15 later than the required beginning date, in accordance with regulations prescribed under section  
16 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the  
17 member and his or her beneficiary or over a period not extending beyond the life expectancy of  
18 the member and his or her beneficiary: *Provided*, That the requirements of this section shall not  
19 be construed to grant a right to a form of benefit which is not otherwise available to a particular  
20 member under this retirement system: Provided, however, That if the member elects an annuity  
21 option which provides survivor benefits to a beneficiary who is not the member's spouse, and the  
22 annuity option elected would provide survivor payments that exceed the applicable percentage  
23 permitted by the MDIB regulations under section 401(a)(9) of the Internal Revenue Code, the  
24 member's annuity election shall be changed to the highest survivor annuity option offered under  
25 this plan which satisfies the MDIB regulations. Benefit payments under this section shall not be  
26 delayed pending, or contingent on, receipt of an application for retirement from the member.

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

31 (c) If a member dies before distribution to him or her has commenced, then his or her  
32 entire interest in the plan is to be distributed by December 31 of the calendar year containing the  
33 fifth anniversary of the member's death, unless the provisions of subsection (d) of this section  
34 apply.

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

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

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

44 (A) December 31 of the calendar year in which the member would have attained age  
45 ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

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

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



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

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

63 (A) The later of: (i) December 31 of the calendar year immediately following the calendar  
64 year in which the member died; or (ii) December 31 of the calendar year in which the member  
65 would have attained age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born  
66 after June 30, 1949); or

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

## CHAPTER 15. PUBLIC SAFETY.

### ARTICLE 2. WEST VIRGINIA STATE POLICE.

#### §15-2-25b. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:

2 (a) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value  
3 computed upon the basis of the mortality table and interest rates as set and adopted by the  
4 retirement board in accordance with the provisions of this article: *Provided*, That when used in  
5 the context of compliance with the federal maximum benefit requirements of section 415 of the  
6 Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and  
7 interest rates required to comply with those requirements.

8 (b) "Agency" means the West Virginia State Police.

9 (c) "Beneficiary" means a surviving spouse or other surviving beneficiary who is entitled  
10 to, or will be entitled to, an annuity or other benefit payable by the fund.

11 (d) "Board" means the West Virginia Consolidated Public Retirement Board created

12 pursuant to §5-10D-1 *et seq.* of this code.

13 (e) "Dependent child" means any unmarried child or children born to or adopted by a  
14 member of the fund who is:

15 (1) Under the age of 18;

16 (2) After reaching 18 years of age, continues as a full-time student in an accredited high  
17 school, college, university, business or trade school, until the child or children reaches the age of  
18 20 years; or

19 (3) Is financially dependent on the member by virtue of a permanent mental or physical  
20 disability upon evidence satisfactory to the board.

21 (f) "Dependent parent" means the member's parent or stepparent claimed as a dependent  
22 by the member for federal income tax purposes at the time of the member's death.

23 (g) "Employee" means any person regularly employed in the service of the agency as a  
24 law-enforcement officer before March 12, 1994, and who is eligible to participate in the fund.

25 (h) "Employer error" means an omission, misrepresentation or deliberate act in violation  
26 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations  
27 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State  
28 Regulations by the participating public employer that has resulted in an underpayment or  
29 overpayment of contributions required.

30 (i) "Fund", "plan" or "system" means the West Virginia State Police Death, Disability and  
31 Retirement Fund.

32 (†) (j) "Law-enforcement officer" means an individual employed or otherwise engaged in  
33 either a public or private position which involves the rendition of services relating to enforcement  
34 of federal, state or local laws for the protection of public or private safety, including, but not limited  
35 to, positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any  
36 other law-enforcement position which requires certification, but excluding positions held by  
37 elected sheriffs or appointed chiefs of police whose duties are determined by the board to be

38 purely administrative in nature.

39 ~~(j)~~ (k) "Member" means any person who has contributions standing to his or her credit in  
40 the fund and who has not yet entered into retirement status.

41 ~~(k)~~ (l) "Partially disabled" means an employee's inability, on a probable permanent basis,  
42 to perform the essential duties of a law-enforcement officer by reason of any medically  
43 determinable physical or mental impairment which has lasted or can be expected to last for a  
44 continuous period of not less than 12 months, but which impairment does not preclude the  
45 employee from engaging in other types of nonlaw-enforcement employment.

46 ~~(l)~~ (m) "Physical or mental impairment" means an impairment that results from an  
47 anatomical, physiological or psychological abnormality that is demonstrated by medically  
48 accepted clinical and laboratory diagnostic techniques.

49 ~~(m)~~ (n) "Plan year" means the 12-month period commencing on July 1 of any designated  
50 year and ending the following June 30.

51 ~~(n)~~ (o) "Qualified public safety employee" means any employee of a participating state or  
52 political subdivision who provides police protection, fire-fighting services or emergency medical  
53 services for any area within the jurisdiction of the state or political subdivision, or such other  
54 meaning given to the term by section 72(t)(10)(B) of the Internal Revenue Code or by Treasury  
55 Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

56 ~~(o)~~ (p) "Retirant" or "retiree" means any former member who is receiving an annuity  
57 payable by the fund.

58 ~~(p)~~ (q) "Surviving spouse" means the person to whom the member was legally married at  
59 the time of the member's death and who survived the member.

60 ~~(q)~~ (r) "Totally disabled" means an employee's probable permanent inability to engage in  
61 substantial gainful activity by reason of any medically determined physical or mental impairment  
62 that can be expected to result in death or that has lasted or can be expected to last for a  
63 continuous period of not less than 12 months. For purposes of this subsection, an employee is

64 totally disabled only if his or her physical or mental impairments are so severe that he or she is  
65 not only unable to perform his or her previous work as an employee of the agency but also cannot,  
66 considering his or her age, education and work experience, engage in any other kind of substantial  
67 gainful employment which exists in the state regardless of whether: (1) The work exists in the  
68 immediate area in which the employee lives; (2) a specific job vacancy exists; or (3) the employee  
69 would be hired if he or she applied for work.

**§15-2-45. 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 code. This section applies  
3 to plan years beginning after December 31, 1986. Notwithstanding anything in the retirement  
4 system to the contrary, the payment of benefits under this article shall be determined and made  
5 in accordance with section 401(a)(9) of the Internal Revenue Code and the federal regulations  
6 promulgated thereunder as applicable to governmental plans, including without limitation the  
7 minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the  
8 regulations thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the  
9 regulations. Any term used in this article has the same meaning as when used in a comparable  
10 context in section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated  
11 thereunder unless a different meaning is clearly required by the context or definition in this article.  
12 The following provisions apply to payments of benefits required under this article:

13           (a) The payment of benefits under the fund to any member shall be distributed to him or  
14 her not later than the required beginning date, or be distributed to him or her commencing not  
15 later than the required beginning date, in accordance with regulations prescribed under section  
16 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the  
17 member and his or her beneficiary, or over a period not extending beyond the life expectancy of  
18 the member and his or her beneficiary: *Provided*, That the requirements of this section may not  
19 be construed to grant a right to a form of benefit which is not otherwise available to a particular

20 member under this retirement system. For purposes of this section, the term “required beginning  
21 date” means April 1 of the calendar year following the later of: (i) The calendar year in which the  
22 member attains age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after  
23 June 30, 1949); or (ii) the calendar year in which the member retires or otherwise ceases providing  
24 covered service under this fund. Benefit payments under this section shall not be delayed  
25 pending, or contingent upon, receipt of an application for retirement from the member.

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

30 (c) If a member dies before distribution to him or her has commenced, then his or her  
31 entire interest in the fund is to be distributed by December 31 of the calendar year containing the  
32 fifth anniversary of the member’s death, unless the provisions of subsection (d) of this section  
33 apply.

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

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

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

43 (A) December 31 of the calendar year in which the member would have attained age  
44 ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

45 (B) December 31 of the calendar year immediately following the calendar year in which

46 the member died.

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

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

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

62 (A) The later of: (i) December 31 of the calendar year immediately following the calendar  
63 year in which the member died; or (ii) December 31 of the calendar year in which the member  
64 would have attained age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born  
65 after June 30, 1949); or

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

**§15-2-54. Correction of errors; underpayments; overpayments.**

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

5           (b) *Underpayments to the system.* — Any error resulting in an underpayment to the system  
6 may be corrected by the member or retirant remitting the required employee contribution or  
7 underpayment and the employer 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 employer. The employer may remit  
12 total payment and the employee reimburse the employer 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 system will result in the system correcting an erroneous  
15 underpayment from the system, the correction of the underpayment from the system shall be  
16 made only after the board receives full payment of all required employee and employer  
17 contributions or underpayments, including interest.

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

26           (d) *Overpayments to the system by an employee.* — When mistaken or excess employee  
27 contributions or overpayments have been made to the system, the board shall have sole authority  
28 for determining the means of return, offset or credit to or for the benefit of the individual making  
29 the mistaken or excess employee contribution of the amounts, and may use any means  
30 authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue

31 Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full  
32 and complete discretion, the board may require the employer employing the individual to pay the  
33 individual the amounts as wages, with the board crediting the employer with a corresponding  
34 amount to offset against its future contributions to the plan. If the employer has no future liability  
35 for employer contributions to the system, the board shall refund said amount directly to the  
36 employer: *Provided*, That the wages paid to the individual shall not be considered compensation  
37 for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under  
38 any of the means used by the board for returning employee overpayments.

39 (e) *Overpayments from the system.* — If any error results in any member, retirant,  
40 beneficiary, entity or other individual receiving from the system more than he would have been  
41 entitled to receive had the error not occurred the board, upon learning of the error, shall correct  
42 the error in a timely manner. If correction of the error occurs after annuity payments to a retirant  
43 or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit  
44 to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who  
45 received the overpayment from the system shall repay the amount of any overpayment to the  
46 system in any manner permitted by the board. If the member, retirant, beneficiary or other person  
47 who received the overpayment is deceased and an annuity or lump sum benefit is still payable,  
48 the amount of the remaining overpayment shall be offset against the benefit payment owed in a  
49 manner consistent with the board's error correction policy. Interest shall not accumulate on any  
50 corrective payment made to the system pursuant to this subsection.

51 (f) *Underpayments from the system.* — If any error results in any member, retirant,  
52 beneficiary, entity or other individual receiving from the retirement system less than he would  
53 have been entitled to receive had the error not occurred, the board, upon learning of the error,  
54 shall correct the error in a timely manner. If correction of the error occurs after annuity payments  
55 to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of  
56 the benefit to the correct amount. In addition, the board shall pay the amount of such



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

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

## **ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.**

### **§15-2A-2. Definitions.**

1 As used in this article, unless the context clearly requires a different meaning:

2 (1) “Accumulated contributions” means the sum of all amounts deducted from base salary,  
3 together with four percent interest compounded annually.

4 (2) “Active military duty” means full-time active duty with the armed forces of the United  
5 States, namely, the United States Air Force, Army, Coast Guard, Marines or Navy; and service  
6 with the National Guard or reserve military forces of any of the armed forces when the employee  
7 has been called to active full-time duty. (3) “Actuarially equivalent” or “of equal actuarial value”

8 means a benefit of equal value computed upon the basis of the mortality table and interest rates  
9 as set and adopted by the retirement board in accordance with the provisions of this article:  
10 *Provided*, That when used in the context of compliance with the federal maximum benefit  
11 requirements of section 415 of the Internal Revenue Code, “actuarially equivalent” shall be  
12 computed using the mortality tables and interest rates required to comply with those requirements.

13 (4) “Agency” means the West Virginia State Police.

14 (5) “Base salary” means compensation paid to an employee without regard to any  
15 overtime pay.

16 (6) “Beneficiary” means a surviving spouse or other surviving beneficiary who is entitled  
17 to, or will be entitled to, an annuity or other benefit payable by the fund.

18 (7) “Board” means the Consolidated Public Retirement Board created pursuant to §5-10D-  
19 1 *et seq.* of this code.

20 (8) “Dependent child” means any unmarried child or children born to or adopted by a  
21 member or retirant of the fund who:

22 (A) Is under the age of 18;

23 (B) After reaching 18 years of age, continues as a full-time student in an accredited high  
24 school, college, university or business or trade school until the child or children reaches the age  
25 of 23 years; or

26 (C) Is financially dependent on the member or retirant by virtue of a permanent mental or  
27 physical disability upon evidence satisfactory to the board.

28 (9) “Dependent parent” means the member's or retirant's parent or stepparent claimed as  
29 a dependent by the member or retirant for federal income tax purposes at the time of the  
30 member's or retirant's death.

31 (10) “Employee” means any person regularly employed in the service of the agency as a  
32 law-enforcement officer after March 12, 1994, and who is eligible to participate in the fund.

33 (11) “Employer error” means an omission, misrepresentation or deliberate act in violation

34 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations  
35 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State  
36 Regulations by the participating public employer that has resulted in an underpayment or  
37 overpayment of contributions required.

38 (12) “Final average salary” means the average of the highest annual compensation  
39 received for employment with the agency, including compensation paid for overtime service,  
40 received by the employee during any five calendar years within the employee's last 10 years of  
41 service: *Provided*, That annual compensation for determining benefits during any determination  
42 period may not exceed the maximum compensation allowed as adjusted for cost of living in  
43 accordance with §5-10D-7 of this code and section 401(a)(17) of the Internal Revenue Code.

44 ~~(12)~~ (13) “Fund”, “plan”, “system” or “retirement system” means the West Virginia State  
45 Police Retirement Fund created and established by this article.

46 ~~(13)~~ (14) “Internal Revenue Code” means the Internal Revenue Code of 1986, as  
47 amended.

48 ~~(14)~~ (15) “Law-enforcement officer” means an individual employed or otherwise engaged  
49 in either a public or private position which involves the rendition of services relating to enforcement  
50 of federal, state or local laws for the protection of public or private safety, including, but not limited  
51 to, positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any  
52 other law-enforcement position which requires certification, but excluding positions held by  
53 elected sheriffs or appointed chiefs of police whose duties are purely administrative in nature.

54 ~~(15)~~ (16) “Member” means any person who has contributions standing to his or her credit  
55 in the fund and who has not yet entered into retirement status.

56 ~~(16)~~ (17) “Month of service” means each month for which an employee is paid or entitled  
57 to payment for at least one hour of service for which contributions were remitted to the fund. These  
58 months shall be credited to the member for the calendar year in which the duties are performed.

59 ~~(17)~~ (18) “Partially disabled” means an employee’s inability, on a probable permanent

60 basis, to perform the essential duties of a law-enforcement officer by reason of any medically  
61 determinable physical or mental impairment which has lasted or can be expected to last for a  
62 continuous period of not less than 12 months, but which impairment does not preclude the  
63 employee from engaging in other types of nonlaw-enforcement employment.

64 ~~(18)~~ (19) "Physical or mental impairment" means an impairment that results from an  
65 anatomical, physiological or psychological abnormality that is demonstrated by medically  
66 accepted clinical and laboratory diagnostic techniques.

67 ~~(19)~~ (20) "Plan year" means the 12-month period commencing on July 1 of any designated  
68 year and ending the following June 30.

69 ~~(20)~~ (21) "Qualified public safety employee" means any employee of a participating state  
70 or political subdivision who provides police protection, fire fighting services or emergency medical  
71 services for any area within the jurisdiction of the state or political subdivision, or such other  
72 meaning given to the term by section 72(t)(10)(B) of the Internal Revenue Code or by Treasury  
73 Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

74 ~~(24)~~ (22) "Required beginning date" means April 1 of the calendar year following the later  
75 of: (A) The calendar year in which the member attains age ~~seventy and one-half years~~ 70.5 (if  
76 born before July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which  
77 he or she retires or otherwise separates from service with the agency. ~~after having attained the~~  
78 ~~age of 70.5 years.~~

79 ~~(22)~~ (23) "Retirant" or "retiree" means any member who commences an annuity payable  
80 by the retirement system.

81 ~~(23)~~ (24) "Salary" means the compensation of an employee, excluding any overtime  
82 payments.

83 ~~(24)~~ (25) "Surviving spouse" means the person to whom the member or retirant was legally  
84 married at the time of the member's or retirant's death and who survived the member or retirant.

85 ~~(25)~~ (26) "Totally disabled" means an employee's probable permanent inability to engage

86 in substantial gainful activity by reason of any medically determined physical or mental impairment  
87 that can be expected to result in death or that has lasted or can be expected to last for a  
88 continuous period of not less than 12 months. For purposes of this subdivision, an employee is  
89 totally disabled only if his or her physical or mental impairments are so severe that he or she is  
90 not only unable to perform his or her previous work as an employee of the agency, but also cannot,  
91 considering his or her age, education and work experience, engage in any other kind of substantial  
92 gainful employment which exists in the state regardless of whether: (A) The work exists in the  
93 immediate area in which the employee lives; (B) a specific job vacancy exists; or (C) the employee  
94 would be hired if he or she applied for work.

95 ~~(26)~~ (27) "Years of service" means the months of service acquired by a member while in  
96 active employment with the agency divided by 12. Years of service shall be calculated in years  
97 and fraction of a year from the date of active employment of the member with the agency through  
98 the date of termination of employment or retirement from the agency. If a member returns to active  
99 employment with the agency following a previous termination of employment with the agency and  
100 the member has not received a refund of contributions plus interest for the previous employment  
101 under section eight of this article, service shall be calculated separately for each period of  
102 continuous employment and years of service shall be the total service for all periods of  
103 employment. Years of service shall exclude any periods of employment with the agency for which  
104 a refund of contributions plus interest has been paid to the member unless the employee repays  
105 the previous withdrawal, as provided in section eight of this article, to reinstate the years of  
106 service.

**§15-2A-6b. Federal law minimum required distributions.**

1 The requirements of this section apply to any distribution of a member's interest and take  
2 precedence over any inconsistent provisions of this retirement system. This section applies to  
3 plan years beginning after December 31, 1986. Notwithstanding anything in the retirement system  
4 to the contrary, the payment of benefits under this article shall be determined and made in

5 accordance with section 401(a)(9) of the Internal Revenue Code and the federal regulations  
6 promulgated thereunder as applicable to governmental plans, including without limitation the  
7 minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the  
8 regulations thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the  
9 regulations. Any term used in this article has the same meaning as when used in a comparable  
10 context in section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated  
11 thereunder unless a different meaning is clearly required by the context or definition in this article.  
12 The following provisions apply to payments of benefits required under this article:

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

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

27 (c) If a member dies before distribution to him or her has commenced, then his or her  
28 entire interest in the retirement system is to be distributed by December 31 of the calendar year  
29 containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of  
30 this section apply.

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

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

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

40 (A) December 31 of the calendar year in which the member would have attained age  
41 ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

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

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

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

55 (2) If the member's sole designated beneficiary is either the surviving spouse or a former  
56 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100

57 percent of the survivor benefit, election of life expectancy treatment must be made on or before  
58 the earlier of (A) or (B) below:

59 (A) The later of: (i) December 31 of the calendar year immediately following the calendar  
60 year in which the member died; or (ii) December 31 of the calendar year in which the member  
61 would have attained age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born  
62 after June 30, 1949); or

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

**§15-2A-23. Correction of errors; underpayments; overpayments.**

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

5 (b) *Underpayments to the system.* — Any error resulting in an underpayment to the  
6 system, may be corrected by the member or retirant remitting the required employee contribution  
7 or underpayment and the employer 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 shall be the responsibility of the employer. The employer may  
12 remit total payment and the employee reimburse the employer through payroll deduction over a  
13 period equivalent to the time period during which the employer error occurred. If the correction of  
14 an error involving an underpayment to the system will result in the system correcting an erroneous  
15 underpayment from the system, the correction of the underpayment from the system shall be  
16 made only after the board receives full payment of all required employee and employer  
17 contributions or underpayments, including interest.

18 (c) *Overpayments to the system by an employer.* — When mistaken or excess employer



19 contributions or other overpayments have been made to the system by an employer, the board  
20 shall credit the employer with an amount equal to the overpayment, to be offset against the  
21 employer's future liability for employer contributions to the system. If the employer has no future  
22 liability for employer contributions to the retirement system, the board shall refund the erroneous  
23 contributions directly to the employer. Earnings or interest shall not be returned, offset or credited  
24 to the employer under any of the means used by the board for returning employer overpayments  
25 to the retirement system.

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

39 (e) *Overpayments from the system.* — If any error results in any member, retirant,  
40 beneficiary, entity or other individual receiving from the system more than he would have been  
41 entitled to receive had the error not occurred the board, upon learning of the error, shall correct  
42 the error in a timely manner. If correction of the error occurs after annuity payments to a retirant  
43 or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit  
44 to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who

45 received the overpayment from the system shall repay the amount of any overpayment to the  
46 system in any manner permitted by the board. If the member, retirant, beneficiary or other person  
47 who received the overpayment is deceased and an annuity or lump sum benefit is still payable,  
48 the amount of the remaining overpayment shall be offset against the benefit payment owed in a  
49 manner consistent with the board's error correction policy. Interest shall not accumulate on any  
50 corrective payment made to the system pursuant to this subsection.

51 (f) *Underpayments from the system.* — If any error results in any member, retirant,  
52 beneficiary, entity or other individual receiving from the system less than he would have been  
53 entitled to receive had the error not occurred, the board, upon learning of the error, shall correct  
54 the error in a timely manner. If correction of the error occurs after annuity payments to a retirant  
55 or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit  
56 to the correct amount. In addition, the board shall pay the amount of such underpayment to the  
57 member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any  
58 corrective payment made by the system pursuant to this subsection.

59 (g) *Eligibility errors.* — If the board finds that an individual, employer, or both individual  
60 and employer currently or formerly participating in the system is not eligible to participate, the  
61 board shall notify the individual and his or her employer of the determination and terminate  
62 participation in the system. Any erroneous payments to the system shall be returned to the  
63 employer and individual in accordance with the methods described in subsections (c) and (d) of  
64 this section and any erroneous payments from the system to such individual shall be returned to  
65 the system in accordance with the methods described in subsection (e) of this section. Any  
66 erroneous service credited to the individual shall be removed. If the board determines that an  
67 individual or employer, or both, has not been participating in the system, but was eligible to and  
68 required to be participating in the system, the board shall as soon as practicable notify the  
69 individual and his or her employer of the determination, and the individual and his or her employer  
70 shall prospectively commence participation in the system as soon as practicable. Service credit

71 for service prior to the date on which the individual prospectively commences participation in the  
72 system shall be granted only if the board receives the required employer and employee  
73 contributions for such service, in accordance with subsection (b) in this section, including interest.

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.**

#### **§16-5V-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 six 10ths percent per year  
4 of the member's final average salary for the first 20 years of credited service. Additionally, two  
5 percent per year for 21 through 25 years and one and one-half percent per year for each year  
6 over 25 years will be credited with a maximum benefit of 67 percent. A member's accrued benefit  
7 may not exceed the limits of section 415 of the Internal Revenue Code and is subject to the  
8 provisions of section 12 of this article.

9 (1) The board may, upon the recommendation of the board's actuary, increase the  
10 employees' contribution rate to 10 and five-tenths percent should the funding of the plan not reach  
11 70 percent funded by July 1, 2012. The board shall decrease the contribution rate to eight and  
12 one-half percent once the plan funding reaches the 70 percent support objective as of any later  
13 actuarial valuation date.

14 (2) Upon reaching the 75 percent actuarial funded level, as of an actuarial valuation date,  
15 the board shall increase the two and six-tenths percent to two and three-quarter percent for the  
16 first 20 years of credited service. The maximum benefit will also be increased from 67 percent to  
17 90 percent.

18 (b) "Accumulated contributions" means the sum of all retirement contributions deducted  
19 from the compensation of a member, or paid on his or her behalf as a result of covered

20 employment, together with regular interest on the deducted amounts.

21 (c) "Active military duty" means full-time active duty with any branch of the armed forces  
22 of the United States, including service with the National Guard or reserve military forces when the  
23 member has been called to active full-time duty and has received no compensation during the  
24 period of that duty from any board or employer other than the armed forces.

25 (d) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the  
26 mortality table and interest rates as set and adopted by the board in accordance with the  
27 provisions of this article.

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

37 (f) "Annual leave service" means accrued annual leave.

38 (g) "Annuity starting date" means the first day of the month for which an annuity is payable  
39 after submission of a retirement application. For purposes of this subsection, if retirement income  
40 payments commence after the normal retirement age, "retirement" means the first day of the  
41 month following or coincident with the latter of the last day the member worked in covered  
42 employment or the member's normal retirement age and after completing proper written  
43 application for retirement on an application supplied by the board.

44 (h) "Board" means the Consolidated Public Retirement Board.

45 (i) "Contributing service" or "contributory service" means service rendered by a member

46 while employed by a participating public employer for which the member made contributions to  
47 the plan.

48 (j) "County commission or political subdivision" has the meaning ascribed to it in this code.

49 (k) "Covered employment" means either: (1) Employment as a full-time emergency  
50 medical technician, emergency medical technician/paramedic or emergency medical  
51 services/registered nurse and the active performance of the duties required of emergency medical  
52 services officers; or (2) the period of time during which active duties are not performed but  
53 disability benefits are received under this article; or (3) concurrent employment by an emergency  
54 medical services officer in a job or jobs in addition to his or her employment as an emergency  
55 medical services officer where the secondary employment requires the emergency medical  
56 services officer to be a member of another retirement system which is administered by the  
57 Consolidated Public Retirement Board pursuant to this code: *Provided*, That the emergency  
58 medical services officer contributes to the fund created in this article the amount specified as the  
59 member's contribution in §16-5V-8 of this code.

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

62 (m) "Dependent child" means either:

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

64 (A) A natural child of the member;

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

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

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

70 (2) Any unmarried child under age 23:

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

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

74 (C) Whose relationship with the member is described in paragraph (A), (B) or (C),  
75 subdivision (1) of this subsection.

76 (n) "Dependent parent" means the father or mother of the member who was claimed as a  
77 dependent by the member for federal income tax purposes at the time of the member's death.

78 (o) "Disability service" means service received by a member, expressed in whole years,  
79 fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during  
80 which time a member receives disability benefits under this article.

81 (p) "Early retirement age" means age 45 or over and completion of 20 years of contributory  
82 service.

83 (q) "Effective date" means January 1, 2008.

84 (r) "Emergency medical services officer" means an individual employed by the state,  
85 county or other political subdivision as a medical professional who is qualified to respond to  
86 medical emergencies, aids the sick and injured and arranges or transports to medical facilities,  
87 as defined by the West Virginia Office of Emergency Medical Services. This definition is construed  
88 to include employed ambulance providers and other services such as law enforcement, rescue  
89 or fire department personnel who primarily perform these functions and are not provided any other  
90 credited service benefits or retirement plans. These persons may hold the rank of emergency  
91 medical technician/basic, emergency medical technician/paramedic, emergency medical  
92 services/registered nurse, or others as defined by the West Virginia Office of Emergency Medical  
93 Services and the Consolidated Public Retirement Board.

94 (s) "Employer error" means an omission, misrepresentation or deliberate act in violation  
95 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or  
96 the relevant provisions of both the West Virginia Code and of the West Virginia Code of State  
97 Rules by the participating public employer that has resulted in an underpayment or overpayment

98 of contributions required. ~~A deliberate act contrary to the provisions of this article by a participating~~  
99 ~~public employer does not constitute employer error.~~

100 (t) "Final average salary" means the average of the highest annual compensation received  
101 for covered employment by the member during any five consecutive plan years within the  
102 member's last 10 years of service while employed, prior to any disability payment. If the member  
103 did not have annual compensation for the five full plan years preceding the member's attainment  
104 of normal retirement age and during that period the member received disability benefits under this  
105 article, then "final average salary" means the average of the monthly salary determined paid to  
106 the member during that period as determined under §16-5V-19 of this code multiplied by 12. Final  
107 average salary does not include any lump sum payment for unused, accrued leave of any kind or  
108 character.

109 (u) "Full-time employment" means permanent employment of an employee by a  
110 participating public employer in a position which normally requires 12 months per year service  
111 and requires at least 1040 hours per year service in that position.

112 (v) "Fund" means the West Virginia Emergency Medical Services Retirement Fund created  
113 by this article.

114 (w) "Hour of service" means:

115 (1) Each hour for which a member is paid or entitled to payment for covered employment  
116 during which time active duties are performed. These hours shall be credited to the member for  
117 the plan year in which the duties are performed; and

118 (2) Each hour for which a member is paid or entitled to payment for covered employment  
119 during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity  
120 including disability, layoff, jury duty, military duty, leave of absence or any combination thereof  
121 and without regard to whether the employment relationship has terminated. Hours under this  
122 subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A  
123 member will not be credited with any hours of service for any period of time he or she is receiving

124 benefits under §16-5V-19 or §16-5V-20 of this code; and

125 (3) Each hour for which back pay is either awarded or agreed to be paid by the employing  
126 county commission or political subdivision, irrespective of mitigation of damages. The same hours  
127 of service shall not be credited both under subdivision (1) or (2) of this subsection and under this  
128 subdivision. Hours under this paragraph shall be credited to the member for the plan year or years  
129 to which the award or agreement pertains, rather than the plan year in which the award,  
130 agreement or payment is made.

131 (x) "Member" means a person first hired as an emergency medical services officer by an  
132 employer which is a participating public employer of the Public Employees Retirement System or  
133 the Emergency Medical Services Retirement System after the effective date of this article, as  
134 defined in subsection (q) of this section, or an emergency medical services officer of an employer  
135 which is a participating public employer of the Public Employees Retirement System first hired  
136 prior to the effective date and who elects to become a member pursuant to this article. A member  
137 shall remain a member until the benefits to which he or she is entitled under this article are paid  
138 or forfeited.

139 (y) "Monthly salary" means the W-2 reportable compensation received by a member  
140 during the month.

141 (z) "Normal form" means a monthly annuity which is one twelfth of the amount of the  
142 member's accrued benefit which is payable for the member's life. If the member dies before the  
143 sum of the payments he or she receives equals his or her accumulated contributions on the  
144 annuity starting date, the named beneficiary shall receive in one lump sum the difference between  
145 the accumulated contributions at the annuity starting date and the total of the retirement income  
146 payments made to the member.

147 (aa) "Normal retirement age" means the first to occur of the following:

148 (1) Attainment of age 50 years and the completion of 20 or more years of regular  
149 contributory service, excluding active military duty, disability service and accrued annual and sick



150 leave service;

151 (2) While still in covered employment, attainment of at least age 50 years and when the  
152 sum of current age plus regular contributory years of service equals or exceeds 70 years;

153 (3) While still in covered employment, attainment of at least age 60 years and completion  
154 of 10 years of regular contributory service; or

155 (4) Attainment of age 62 years and completion of five or more years of regular contributory  
156 service.

157 (bb) "Participating public employer" means any county commission or political subdivision  
158 in the state which has elected to cover its emergency medical services officers, as defined in this  
159 article, under the West Virginia Emergency Medical Services Retirement System.

160 ~~(cc) "Political subdivision" means a county, city or town in the state; any separate~~  
161 ~~corporation or instrumentality established by one or more counties, cities or towns, as permitted~~  
162 ~~by law; any corporation or instrumentality supported in most part by counties, cities or towns; and~~  
163 ~~any public corporation charged by law with the performance of a governmental function and~~  
164 ~~whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any~~  
165 ~~public corporation established under section four, article fifteen, chapter seven of this code is~~  
166 ~~considered a political subdivision solely for the purposes of this article~~

167 ~~(dd)~~ "Plan" means the West Virginia Emergency Medical Services Retirement System  
168 established by this article.

169 ~~(ee)~~ (dd) "Plan year" means the 12-month period commencing on January 1 of any  
170 designated year and ending the following December 31.

171 (ee) "Political subdivision" means a county, city or town in the state; any separate  
172 corporation or instrumentality established by one or more counties, cities or towns, as permitted  
173 by law; any corporation or instrumentality supported in most part by counties, cities or towns; and  
174 any public corporation charged by law with the performance of a governmental function and  
175 whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any

176 public corporation established under §7-15-4 of this code is considered a political subdivision  
177 solely for the purposes of this article.

178 (ff) "Public Employees Retirement System" means the West Virginia Public Employee's  
179 Retirement System created by West Virginia Code.

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

182 (hh) "Required beginning date" means April 1 of the calendar year following the later of:  
183 (1) The calendar year in which the member attains age ~~seventy and one-half~~ 70.5 (if born before  
184 July 1, 1949) or age 72 (if born after June 30, 1949); or (2) the calendar year in which he or she  
185 retires or otherwise separates from covered employment.

186 (ii) "Retirant" means any member who commences an annuity payable by the plan.

187 (jj) "Retire" or "retirement" means a member's withdrawal from the employ of a participating  
188 public employer and the commencement of an annuity by the plan.

189 (kk) "Retirement income payments" means the monthly retirement income payments  
190 payable under the plan.

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

193 (mm) "Surviving spouse" means the person to whom the member was legally married at  
194 the time of the member's death and who survived the member.

195 (nn) "Totally disabled" means a member's inability to engage in substantial gainful activity  
196 by reason of any medically determined physical or mental impairment that can be expected to  
197 result in death or that has lasted or can be expected to last for a continuous period of not less  
198 than 12 months.

199 For purposes of this subsection:

200 (1) A member is totally disabled only if his or her physical or mental impairment or  
201 impairments is so severe that he or she is not only unable to perform his or her previous work as

202 an emergency medical services officer but also cannot, considering his or her age, education and  
 203 work experience, engage in any other kind of substantial gainful employment which exists in the  
 204 state regardless of whether: (A) The work exists in the immediate area in which the member lives;  
 205 (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.  
 206 For purposes of this article, substantial gainful employment is the same definition as used by the  
 207 United States Social Security Administration.

208 (2) "Physical or mental impairment" is an impairment that results from an anatomical,  
 209 physiological or psychological abnormality that is demonstrated by medically accepted clinical  
 210 and laboratory diagnostic techniques. The board may require submission of a member's annual  
 211 tax return for purposes of monitoring the earnings limitation.

212 (oo) "Year of service" means a member shall, except in his or her first and last years of  
 213 covered employment, be credited with years of service credit based upon the hours of service  
 214 performed as covered employment and credited to the member during the plan year based upon  
 215 the following schedule:

216 Hours of Service	Year of Service Credited.
217 Less than 500 .....	0
218 500 to 999 . . . . .	1/3
219 1,000 to 1,499 .....	2/3
220 1,500 or more .....	1

221 During a member's first and last years of covered employment, the member shall be  
 222 credited with one twelfth of a year of service for each month during the plan year in which the  
 223 member is credited with an hour of service for which contributions were received by the fund. A  
 224 member is not entitled to credit for years of service for any time period during which he or she  
 225 received disability payments under §16-5V-19 or §16-5V-20 of this code. Except as specifically  
 226 excluded, years of service include covered employment prior to the effective date.

227 Years of service which are credited to a member prior to his or her receipt of accumulated

228 contributions upon termination of employment pursuant to §16-5V-18 of this code or §5-10-30 of  
229 this code, shall be disregarded for all purposes under this plan unless the member repays the  
230 accumulated contributions with interest pursuant to section §16-5V-18 of this code or has prior to  
231 the effective date made the repayment pursuant to §5-10-18 of this code.

**§16-5V-8a. Correction of errors; underpayments; overpayments.**

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

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

19 (c) Overpayments to the plan by an employer: When mistaken or excess employer  
20 contributions or other employer overpayments have been made to the plan, the board shall credit  
21 the employer with an amount equal to the overpayment, to be offset against the employer's future

22 liability for employer contributions to the plan. If the employer has no future liability for employer  
23 contributions to the plan, the board shall refund the erroneous contributions directly to the  
24 employer. Earnings or interest shall not be returned, offset or credited to the employer under any  
25 of the means used by the board for returning employer overpayments to the retirement system.

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

40 (e) Overpayments from the plan: If any error results in any member, retirant, beneficiary,  
41 entity or other individual receiving from the system more than he would have been entitled to  
42 receive had the error not occurred the board upon learning of the error shall correct the error in a  
43 timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary  
44 have commenced, the board shall prospectively adjust the payment of the benefit to the correct  
45 amount. In addition, the member, retirant, beneficiary, entity or other person who received the  
46 overpayment from the plan shall repay the amount of any overpayment to the plan in any manner  
47 permitted by the board. If the member, retirant, beneficiary or other person who received the

48 overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the  
49 remaining overpayment shall be offset against the benefit payment owed in a manner consistent  
50 with the board's error correction policy. Interest shall not accumulate on any corrective payment  
51 made to the plan pursuant to this subsection.

52 (f) Underpayments from the retirement system: If any error results in any member, retirant,  
53 beneficiary, entity or other individual receiving from the plan less than he would have been entitled  
54 to receive had the error not occurred, the board, upon learning of the error, shall correct the error  
55 in a timely manner. If correction of the error occurs after annuity payments to a retirant or  
56 beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to  
57 the correct amount. In addition, the board shall pay the amount of such underpayment to the  
58 member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any  
59 corrective payment made by the plan pursuant to this subsection.

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

74 (b) of this section, including interest.

**§16-5V-13. 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 federal regulations promulgated  
6 thereunder as applicable to governmental plans, including without limitation the minimum  
7 distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations  
8 thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term  
9 used in this article has the same meaning as when used in a comparable context in section  
10 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder  
11 unless a different meaning is clearly required by the context or definition in this article. The  
12 following provisions apply to payments of benefits required under this article:

13           (a) The payment of benefits under the plan to any member shall be distributed to him or  
14 her not later than the required beginning date, or be distributed to him or her commencing not  
15 later than the required beginning date, in accordance with regulations prescribed under section  
16 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the  
17 member and his or her beneficiary or over a period not extending beyond the life expectancy of  
18 the member and his or her beneficiary: *Provided*, That the requirements of this section may not  
19 be construed to grant a right to a form of benefit which is not otherwise available to a particular  
20 member under this retirement system: *Provided, however*, That if the member elects an annuity  
21 option which provides survivor benefits to a beneficiary who is not the member's spouse, and the  
22 annuity option elected would provide survivor payments that exceed the applicable percentage  
23 permitted by the MDIB regulations under section 401(a)(9) of the Internal Revenue Code, the  
24 member's annuity election shall be changed to the highest survivor annuity option offered under

25 this plan which satisfies the MDIB regulations. Benefit payments under this section shall not be  
26 delayed pending, or contingent upon, receipt of an application for retirement from the member.

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

31 (c) If a member dies before distribution to him or her has commenced, then his or her  
32 entire interest in the plan is to be distributed by December 31 of the calendar year containing the  
33 fifth anniversary of the member's death, unless the provisions of subsection (d) of this section  
34 apply.

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

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

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

44 (A) December 31 of the calendar year in which the member would have attained age  
45 ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

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

48 (e) If a member dies before distribution to him or her has commenced and the survivor  
49 annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary  
50 who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section



51 may elect to have life expectancy treatment apply to the distribution for purposes of determining  
 52 whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such  
 53 election shall not delay the required distribution of the deceased member's entire interest in the  
 54 retirement system beyond December 31 of the calendar year containing the fifth anniversary of  
 55 the member's death as required by subsection (c) of this section: *Provided, however*, That the  
 56 election is timely made in a form acceptable to the board on or before the following:

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

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

63 (A) The later of: (i) December 31 of the calendar year immediately following the calendar  
 64 year in which the member died; or (ii) December 31 of the calendar year in which the member  
 65 would have attained age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born  
 66 after June 30, 1949); or

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

## CHAPTER 18. EDUCATION.

### ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

#### §18-7A-3. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:

2 "Accumulated contributions" means all deposits and all deductions from the gross salary  
 3 of a contributor plus regular interest.

4 "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf  
 5 of a retired member.

6           “Actuarially equivalent” or “of equal actuarial value” means a benefit of equal value  
7 computed upon the basis of the mortality table and interest rates as set and adopted by the  
8 retirement board in accordance with the provisions of this article: *Provided*, That when used in  
9 the context of compliance with the federal maximum benefit requirements of section 415 of the  
10 Internal Revenue Code, “actuarially equivalent” shall be computed using the mortality tables and  
11 interest rates required to comply with those requirements.

12           “Annuities” means the annual retirement payments for life granted beneficiaries in  
13 accordance with this article.

14           “Average final salary” means the average of the five highest fiscal year salaries earned as  
15 a member within the last 15 fiscal years of total service credit, including military service as  
16 provided in this article, or if total service is less than 15 years, the average annual salary for the  
17 period on which contributions were made: *Provided*, That salaries for determining benefits during  
18 any determination period may not exceed the maximum compensation allowed as adjusted for  
19 cost of living in accordance with §5-10D-7 of this code and section 401(a)(17) of the Internal  
20 Revenue Code.

21           “Beneficiary” means the recipient of annuity payments made under the retirement system.

22           “Contributor” means a member of the retirement system who has an account in the  
23 Teachers Accumulation Fund.

24           “Deposit” means a voluntary payment to his or her account by a member.

25           “Employer” means the agency of and within the state which has employed or employs a  
26 member.

27           “Employer error” means an omission, misrepresentation, or deliberate act in violation of  
28 relevant provisions of the West Virginia Code, or of the West Virginia Code of State Regulations,  
29 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State  
30 Regulations by the participating public employer that has resulted in an underpayment or  
31 overpayment of contributions required. ~~A deliberate act contrary to the provisions of this section~~

32 ~~by a participating public employer does not constitute employer error~~

33           “Employment term” means employment for at least 10 months, a month being defined as  
34 20 employment days.

35           “Gross salary” means the fixed annual or periodic cash wages paid by a participating  
36 public employer to a member for performing duties for the participating public employer for which  
37 the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the  
38 work was done. Gross salary also includes retroactive payments made to a member to correct a  
39 clerical error, or made pursuant to a court order or final order of an administrative agency charged  
40 with enforcing federal or state law pertaining to the member’s rights to employment or wages, with  
41 all retroactive salary payments to be allocated to and considered paid in the periods in which the  
42 work was or would have been done. Gross salary does not include lump sum payments for  
43 bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind  
44 including, but not limited to, transportation allowances, automobiles or automobile allowances, or  
45 lump sum payments for unused, accrued leave of any type or character.

46           “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been  
47 amended.

48           “Member” means any person who has accumulated contributions standing to his or her  
49 credit in the State Teachers Retirement System. A member shall remain a member until the  
50 benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of  
51 membership pursuant to §18-7A-13 of this code.

52           “Members of the administrative staff of the public schools” means deans of instruction,  
53 deans of men, deans of women, and financial and administrative secretaries.

54           “Members of the extension staff of the public schools” means every agricultural agent,  
55 boys and girls club agent, and every member of the agricultural extension staff whose work is not  
56 primarily stenographic, clerical, or secretarial.

57           “New entrant” means a teacher who is not a present teacher.

58           “Nonteaching member” means any person, except a teacher member, who is regularly  
59 employed for full-time service by: (A) Any county board of education or educational services  
60 cooperative; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D)  
61 the West Virginia Council for Community and Technical College Education; (E) a governing board,  
62 as defined in §18B-1-2 of this code; or (F) a public charter school established pursuant to §18-  
63 5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant  
64 to §18-5G-7 of this code a determination to participate in the retirement systems under this article  
65 and §18-7B-1 *et seq.* of this code, subject to §18-7B-7a: *Provided*, That any person whose  
66 employment with the Higher Education Policy Commission, the West Virginia Council for  
67 Community and Technical College Education, or a governing board commences on or after July  
68 1, 1991, is not considered a nonteaching member.

69           “Plan year” means the 12-month period commencing on July 1 and ending the following  
70 June 30 of any designated year.

71           “Present member” means a present teacher or nonteacher who is a member of the  
72 retirement system.

73           “Present teacher” means any person who was a teacher within the 35 years beginning  
74 July 1, 1934, and whose membership in the retirement system is currently active.

75           “Prior service” means all service as a teacher completed prior to July 1, 1941, and all  
76 service of a present member who was employed as a teacher and did not contribute to a  
77 retirement account because he or she was legally ineligible for membership during the service.

78           “Public schools” means all publicly supported schools, including colleges and universities  
79 in this state.

80           “Refund beneficiary” means the estate of a deceased contributor or a person he or she  
81 has nominated as beneficiary of his or her contributions by written designation duly executed and  
82 filed with the retirement board.

83           “Regular interest” means interest at four percent compounded annually, or a higher

84 earnable rate if set forth in the formula established in legislative rules, series seven of the  
85 Consolidated Public Retirement Board, 162 CSR 7.

86 “Regularly employed for full-time service” means employment in a regular position or job  
87 throughout the employment term regardless of the number of hours worked or the method of pay.

88 “Required beginning date” means April 1 of the calendar year following the later of: (A)  
89 The calendar year in which the member attains age ~~70 and one-half years~~ 70.5 (if born before  
90 July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which the member  
91 retires or ceases covered employment under the retirement system. ~~after having attained the age~~  
92 ~~of 70 and one-half years~~

93 “Retirant” means any member who commences an annuity payable by the retirement  
94 system.

95 “Retirement board” means the Consolidated Public Retirement Board created pursuant to  
96 §5-10D-1 *et seq.* of this code.

97 “Retirement system” means the State Teachers Retirement System established by this  
98 article.

99 “Teacher member” means the following persons, if regularly employed for full-time service:  
100 (A) Any person employed for instructional service in the public schools of West Virginia; (B)  
101 principals; (C) public school librarians; (D) superintendents of schools and assistant county  
102 superintendents of schools; (E) any county school attendance director holding a West Virginia  
103 teacher’s certificate; (F) members of the research, extension, administrative, or library staffs of  
104 the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the  
105 divisions under his or her supervision, or any other employee under the state superintendent  
106 performing services of an educational nature; (H) employees of the State Board of Education who  
107 are performing services of an educational nature; (I) any person employed in a nonteaching  
108 capacity by the State Board of Education, any county board of education, the State Department  
109 of Education, or the State Teachers Retirement Board, if that person was formerly employed as

110 a teacher in the public schools; (J) all classroom teachers, principals, and educational  
111 administrators in schools under the supervision of the Division of Corrections and Rehabilitation,  
112 the Division of Health, or the Division of Human Services; (K) an employee of the State Board of  
113 School Finance, if that person was formerly employed as a teacher in the public schools; (L)  
114 employees of an educational services cooperative who are performing services of an educational  
115 nature; (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of  
116 this code who elects to remain a member of the State Teachers Retirement System provided in  
117 this article; and (N) any person employed by a public charter school established pursuant to §18-  
118 5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant  
119 to §18-5G-7 of this code a determination to participate in the retirement systems under this article  
120 and §18-7B-1 *et seq.* of this code.

121 “Total service” means all service as a teacher or nonteacher while a member of the  
122 retirement system since last becoming a member and, in addition thereto, credit for prior service,  
123 if any.

124 Age in excess of 70 years shall be considered to be 70 years.

**§18-7A-14c. Correction of errors; underpayments; overpayments.**

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

5 (b) *Underpayments to the retirement system.* — Any error resulting in an underpayment  
6 to the retirement system, may be corrected by the member or retirant remitting the required  
7 employee contribution or underpayment and the participating public employer remitting the  
8 required employer contribution or underpayment. Interest shall accumulate in accordance with  
9 the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive  
10 service, loan and correction of error interest factors and any accumulating interest owed on the

11 employee and employer contributions or underpayments resulting from an employer error shall  
12 be the responsibility of the participating public employer. The participating public employer may  
13 remit total payment and the employee reimburse the participating public employer through payroll  
14 deduction over a period equivalent to the time period during which the employer error occurred.  
15 If the correction of an error involving an underpayment to the retirement system will result in the  
16 plan paying the retirant an additional amount, this additional payment shall be made only after the  
17 board receives full payment of all required employee and employer contributions or  
18 underpayments, including interest.

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

27 (d) *Overpayments to the retirement system by an employee.* — When mistaken or excess  
28 employee contributions or overpayments, have been made to the retirement system, the board  
29 shall have sole authority for determining the means of return, offset or credit to or for the benefit  
30 of the individual making the mistaken or excess employee contribution of the amounts and may  
31 use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the  
32 Internal Revenue Code and guidance issued thereunder applicable to governmental plans.  
33 Alternatively, in its full and complete discretion, the board may require the employer employing  
34 the individual to pay the individual the amounts as wages, with the retirement board crediting the  
35 participating public employer with a corresponding amount to offset against its future contributions  
36 to the plan. If the employer has no future liability for employer contributions to the retirement

37 system, the retirement board shall refund said amount directly to the employer: *Provided*, That  
38 the wages paid to the individual shall not be considered compensation for any purposes of this  
39 article. Earnings or interest shall not be returned, offset, or credited under any of the means used  
40 by the retirement board for returning member overpayments.

41 (e) *Overpayments from the retirement system.* — If any error results in any member,  
42 retirant, beneficiary, entity or other individual receiving from the system more than he would have  
43 been entitled to receive had the error not occurred the board, upon learning of the error, shall  
44 correct the error in a timely manner. If correction of the error occurs after annuity payments to a  
45 retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the  
46 benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person  
47 who received the overpayment from the retirement system shall repay the amount of any  
48 overpayment to the retirement system in any manner permitted by the board. If the member,  
49 retirant, beneficiary or other person who received the overpayment is deceased and an annuity  
50 or lump sum benefit is still payable, the amount of the remaining overpayment shall be offset  
51 against the benefit payment owed in a manner consistent with the retirement board's error  
52 correction policy. Interest shall not accumulate on any corrective payment made to the retirement  
53 system pursuant to this subsection.

54 (f) *Underpayments from the retirement system.* — If any error results in any member,  
55 retirant, beneficiary, entity or other individual receiving from the retirement system less than he  
56 would have been entitled to receive had the error not occurred, the board, upon learning of the  
57 error, shall correct the error in a timely manner. If correction of the error occurs after annuity  
58 payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the  
59 payment of the benefit to the correct amount. In addition, the board shall pay the amount of such  
60 underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall  
61 not be paid on any corrective payment made by the retirement system pursuant to this subsection.

62 (g) *Eligibility errors.* — If the board finds that an individual, employer, or both individual



63 and employer currently or formerly participating in the retirement system is not eligible to  
64 participate, the board shall notify the individual and his or her employer of the determination, and  
65 terminate participation in the retirement system. Any erroneous payments to the retirement  
66 system shall be returned to the employer and individual in accordance with the methods described  
67 in subsections (c) and (d) of this section and any erroneous payments from the retirement system  
68 to such individual shall be returned to the retirement system in accordance with the methods  
69 described in subsection (e) of this section. Any erroneous service credited to the individual shall  
70 be removed. If the board determines that an individual or employer, or both, has not been  
71 participating in the retirement system, but was eligible to and required to be participating in the  
72 retirement system, the board shall as soon as practicable notify the individual and his or her  
73 employer of the determination, and the individual and his or her employer shall prospectively  
74 commence participation in the retirement system as soon as practicable. Service credit for service  
75 prior to the date on which the individual prospectively commences participation in the retirement  
76 system shall be granted only if the board receives the required employer and employee  
77 contributions for such service, in accordance with subsection (b) of this section, including interest.

**§18-7A-28b. 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 retirement system. This  
3 section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the  
4 retirement system to the contrary, the payment of benefits under this article shall be determined  
5 and made in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations  
6 promulgated thereunder as applicable to governmental plans, including without limitation the  
7 minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the  
8 regulations thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the  
9 regulations. Any term used in this article has the same meaning as when used in a comparable  
10 context in section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated

11 thereunder unless a different meaning is clearly required by the context or definition in this article.

12 The following provisions apply to payments of benefits required under this article:

13 (a) The payment of benefits under the retirement system to any member shall be  
14 distributed to him or her not later than the required beginning date, or be distributed to him or her  
15 commencing not later than the required beginning date, in accordance with regulations prescribed  
16 under section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the  
17 lives of the member and his or her beneficiary or over a period not extending beyond the life  
18 expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this  
19 section may not be construed to grant a right to a form of benefit which is not otherwise available  
20 to a particular member under this retirement system: *Provided, however, That if the member*  
21 *elects an annuity option which provides survivor benefits to a beneficiary who is not the member's*  
22 *spouse, and the annuity option elected would provide survivor payments that exceed the*  
23 *applicable percentage permitted by the MDIB regulations under section 401(a)(9) of the Internal*  
24 *Revenue Code, the member's annuity election shall be changed to the highest survivor annuity*  
25 *option offered under this retirement system which satisfies the MDIB regulations.* Benefit  
26 payments under this section shall not be delayed pending, or contingent upon, receipt of an  
27 application for retirement from the member.

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

32 (c) If a member dies before distribution to him or her has commenced, then his or her  
33 entire interest in the retirement system is to be distributed by December 31 of the calendar year  
34 containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of  
35 this section apply.

36 (d) If a member dies before distribution to him or her has commenced, and the member's

37 interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary,  
38 distributions are to be made over the life of that beneficiary or over a period certain not greater  
39 than the life expectancy of that beneficiary, commencing on or before the following:

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

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

45 (A) December 31 of the calendar year in which the member would have attained age  
46 ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

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

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

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

60 (2) If the member's sole designated beneficiary is either the surviving spouse or a former  
61 spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100  
62 percent of the survivor benefit, election of life expectancy treatment must be made on or before

63 the earlier of (A) or (B) below:

64 (A) The later of: (i) December 31 of the calendar year immediately following the calendar  
65 year in which the member died; or (ii) December 31 of the calendar year in which the member  
66 would have attained age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born  
67 after June 30, 1949); or

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

## **ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.**

### **§18-7B-2. Definitions.**

1 As used in this article, unless the context clearly requires a different meaning:

2 "Annual addition" means, for purposes of the limitations under section 415(c) of the  
3 Internal Revenue Code, the sum credited to a member's account for any limitation year of: (A)  
4 Employer contributions; (B) employee contributions; and (C) forfeitures. Repayment of cash-outs  
5 or contributions as described in section 415(k)(3) of the Internal Revenue Code, rollover  
6 contributions and picked-up employee contributions to a defined benefit plan may not be treated  
7 as annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-1.

8 "Annuity account" or "annuity" means an account established for each member to record  
9 the deposit of member contributions and employer contributions and interest, dividends, or other  
10 accumulations credited on behalf of the member.

11 "Compensation" means the full compensation actually received by members for service  
12 whether or not a part of the compensation is received from other funds, federal or otherwise, than  
13 those provided by the state or its subdivisions: *Provided*, That annual compensation for  
14 determining contributions during any determination period may not exceed the maximum  
15 compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and  
16 section 401(a)(17) of the Internal Revenue Code: *Provided, however*, That solely for purposes of  
17 applying the limitations of section 415 of the Internal Revenue Code to any annual addition,  
18 "compensation" has the meaning given it in §18-7B-13(d) of this code.

19 “Consolidated board” or “board” means the Consolidated Public Retirement Board created  
20 and established pursuant to §5-10D-1 *et seq.* of this code.

21 “Defined contribution system” or “system” means the Teachers’ Defined Contribution  
22 Retirement System created and established by this article.

23 “Employer” means the agency of and within the State of West Virginia which has employed  
24 or employs a member.

25 “Employer contribution” means an amount deposited into the member’s individual annuity  
26 account on a periodic basis coinciding with the employee’s regular pay period by an employer  
27 from its own funds.

28 “Employer error” means an omission, misrepresentation or deliberate act in violation of  
29 relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations  
30 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State  
31 Regulations by the participating public employer that has resulted in an underpayment or  
32 overpayment of contributions required.

33 “Employment term” means employment for at least 10 months in any plan year with a  
34 month being defined as 20 employment days.

35 “Existing employer” means any employer who employed or employs a member of the  
36 system.

37 “Existing retirement system” means the State Teachers Retirement System established in  
38 §18-7A-1 *et seq.* of this code.

39 “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been  
40 amended.

41 “Member” or “employee” means the following persons, if regularly employed for full-time  
42 service: (A) Any person employed for instructional service in the public schools of West Virginia;  
43 (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county  
44 superintendents of schools; (E) any county school attendance director holding a West Virginia

45 teacher's certificate; (F) members of the research, extension, administrative, or library staffs of  
46 the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the  
47 divisions under his or her supervision, or any other employee under the state superintendent  
48 performing services of an educational nature; (H) employees of the State Board of Education who  
49 are performing services of an educational nature; (I) any person employed in a nonteaching  
50 capacity by the State Board of Education, any county board of education, or the State Department  
51 of Education, if that person was formerly employed as a teacher in the public schools; (J) all  
52 classroom teachers, principals, and educational administrators in schools under the supervision  
53 of the Division of Corrections and the Department of Health and Human Resources; (K) any  
54 person who is regularly employed for full-time service by any county board of education,  
55 educational services cooperative, or the State Board of Education; (L) the administrative staff of  
56 the public schools including deans of instruction, deans of men and deans of women, and financial  
57 and administrative secretaries; (M) any person designated as a 21st Century Learner Fellow  
58 pursuant to §18A-3-11 of this code who elects to remain a member of the Teachers' Defined  
59 Contribution Retirement System established by this article; and (N) any person employed by a  
60 public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school  
61 includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to  
62 participate in the retirement systems under this article, subject to §18-7B-7a, and §18-7A-1 *et*  
63 *seq.* of this code.

64 "Member contribution" means an amount reduced from the employee's regular pay  
65 periods, and deposited into the member's individual annuity account within the Teachers' Defined  
66 Contribution Retirement System.

67 "Permanent, total disability" means a mental or physical incapacity requiring absence from  
68 employment service for at least six months: *Provided*, That the incapacity is shown by an  
69 examination by a physician or physicians selected by the board: *Provided, however*, That for  
70 employees hired on or after July 1, 2005, "permanent, total disability" means an inability to engage

71 in substantial gainful activity by reason of any medically determinable physical or mental  
72 impairment that can be expected to result in death, or has lasted or can be expected to last for a  
73 continuous period of not less than 12 months and the incapacity is so severe that the member is  
74 likely to be permanently unable to perform the duties of the position the member occupied  
75 immediately prior to his or her disabling injury or illness.

76 “Plan year” means the 12-month period commencing on July 1 of any designated year  
77 and ending on the following June 30.

78 “Public schools” means all publicly supported schools, including normal schools, colleges,  
79 and universities in this state.

80 “Regularly employed for full-time service” means employment in a regular position or job  
81 throughout the employment term regardless of the number of hours worked or the method of pay.

82 “Required beginning date” means April 1 of the calendar year following the later of: (A)  
83 The calendar year in which the member attains age ~~70 and one-half years~~ 70.5 (if born before  
84 July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which the member  
85 retires or otherwise ceases employment with a participating employer. ~~after having attained the~~  
86 ~~age of 70 and one-half years.~~

87 “Retirement” means a member’s withdrawal from the active employment of a participating  
88 employer and completion of all conditions precedent to retirement.

89 “Year of employment service” means employment for at least 10 months, with a month  
90 being defined as 20 employment days: *Provided*, That no more than one year of service may be  
91 accumulated in any 12-month period.

**§18-7B-12a. Federal 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 defined contribution system.  
3 This section applies to plan years beginning after December 31, 1986. Notwithstanding anything  
4 in this system to the contrary, the payment of benefits under this article shall be determined and

5 made in accordance with section 401(a)(9) of the Internal Revenue Code and the federal  
6 regulations promulgated thereunder as applicable to governmental plans, including without  
7 limitation the ~~incidental death benefit provisions of section 401(a)(9)(G) of the Internal Revenue~~  
8 ~~Code and the regulations thereunder~~ minimum distribution incidental benefit (MDIB) requirement  
9 of section 401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of section  
10 1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when  
11 used in a comparable context in section 401(a)(9) of the Internal Revenue Code and the federal  
12 regulations promulgated thereunder unless a different meaning is clearly required by the context  
13 or definition in this article. The following provisions apply to payments of benefits required under  
14 this article:

15 (a) The payment of benefits under the defined contribution system to any member shall  
16 be distributed to him or her not later than the required beginning date, or be distributed to him or  
17 her commencing not later than the required beginning date, in accordance with regulations  
18 prescribed under section 401(a)(9) of the Internal Revenue Code, over the life of the member or  
19 over the lives of the member and his or her beneficiary or over a period not extending beyond the  
20 life expectancy of the member and his or her beneficiary (subject to the provisions of subsection  
21 (g) of this section: *Provided*, That the requirements of this section may not be construed to grant  
22 a right to a form of benefit which are is not otherwise available to a particular member under this  
23 retirement system: *Provided*, however, That if the member elects an annuity option which provides  
24 survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected  
25 would provide survivor payments that exceed the applicable percentage permitted by the MDIB  
26 regulations under section 401(a)(9) of the Internal Revenue Code, the member's annuity election  
27 shall be changed to the highest survivor annuity option offered under this retirement system which  
28 satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending,  
29 or contingent upon, receipt of an application for retirement from the member.



30 (b) If a member dies after distribution to him or her has commenced pursuant to this  
31 section but before his or her entire interest in the system has been distributed, then the remaining  
32 portion of that interest shall be distributed at least as rapidly as under the method of distribution  
33 being used at the date of his or her death (subject to the provisions of subsection (g) of this  
34 section).

35 (c) If a member dies before distribution to him or her has commenced, then his or her  
36 entire interest in the retirement system is to be distributed by December 31 of the calendar year  
37 containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of  
38 this section apply.

39 (d) If a member dies before distribution to him or her has commenced, and the member's  
40 interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary,  
41 distributions are to be made over the life of that beneficiary or over a period certain not greater  
42 than the life expectancy of that beneficiary (subject to the provisions of subsection (g) of this  
43 section), commencing on or before the following:

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

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

49 (A) December 31 of the calendar year in which the member would have attained age  
50 ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

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

53 (e) If a member dies before distribution to him or her has commenced and the survivor  
54 annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary  
55 who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section

56 may elect to have life expectancy treatment apply to the distribution for purposes of determining  
57 whether any portion of the distribution is an eligible rollover distribution (subject to the provisions  
58 of subsection (g) of this section, if applicable): *Provided*, That any such election shall not delay  
59 the required distribution of the deceased member's entire interest in the retirement system beyond  
60 December 31 of the calendar year containing the fifth anniversary of the member's death as  
61 required by subsection (c) of this section: *Provided, however*, That the election is timely made in  
62 a form acceptable to the board on or before the following:

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

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

69 (A) The later of: (i) December 31 of the calendar year immediately following the calendar  
70 year in which the member died; or (ii) December 31 of the calendar year in which the member  
71 would have attained age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born  
72 after June 30, 1949); or

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

74 (f) For purposes of this section, any amount paid to a child of a member will be treated as  
75 if it had been paid to the surviving spouse of the member if the remaining amount becomes  
76 payable to the surviving spouse when the child reaches the age of majority.

77 (g) The provisions of this subsection (g) will apply to distributions with respect to members  
78 who die on or after January 1, 2022, and to the designated beneficiaries of members who die  
79 prior to January 1, 2022, as described in subsection (g)(2) herein. This subsection (g) will not  
80 apply to qualified annuities described in SECURE Act section 401(b)(4)(B)[P.L. 116-94, Div. O].

81 (1) 10-Year Rule. — If the distributee of a deceased member’s account is a designated  
82 beneficiary who is not an “Eligible Designated Beneficiary,” then the system will distribute the  
83 member’s vested account in full no later than December 31 of the 10<sup>th</sup> year following the year of  
84 the member’s death.

85 (2) Beneficiary Death. — If an Eligible Designated Beneficiary dies before receiving  
86 distribution of the beneficiary’s entire interest in the member’s account, the system will distribute  
87 the remaining interest in full no later than December 31 of the 10<sup>th</sup> year following the year of the  
88 Eligible Designated Beneficiary’s death. Similarly, if a member died before January 1, 2022, the  
89 limitations of this subsection (g) shall apply to distributions to the beneficiary of the member’s  
90 designated beneficiary.

91 (3) Eligible Designated Beneficiary. — An individual is an “Eligible Designated Beneficiary”  
92 of a member if the individual qualifies as a designated beneficiary under section 401(a)(9)(E) of  
93 the Internal Revenue Code and is (1) the member’s spouse, (2) the member’s child who has not  
94 reached the age of majority (as defined for purposes of section 401(a)(9)(F) of the Internal  
95 Revenue Code, (3) an individual not more than 10 years younger than the member, (4) a disabled  
96 individual, as defined in section 72(m)(7) of the Internal Revenue Code, or (5) an individual who  
97 has been certified to be chronically ill, as defined in section 7702B(c)(2) of the Internal Revenue  
98 Code, for a reasonably lengthy period, or indefinitely. Certain trusts may be treated as Eligible  
99 Designated Beneficiaries pursuant to sections 401(a)(9)(H)(iv) and (v) of the Internal Revenue  
100 Code. When a child of the member reaches the age of majority, the system will distribute the  
101 child’s account in full no later than 10 years after that date.

**§18-7B-21. Correction of errors; underpayments; overpayments.**

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

5           (b) *Underpayments to the system.* — Any error resulting in an underpayment to the  
6 system, may be corrected by the member or retirant remitting the required employee contribution  
7 or underpayment and the existing employer remitting the required employer contribution or  
8 underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7  
9 concerning retirement board Refund, Reinstatement, Retroactive Service, Loan and Correction  
10 of Error Interest Factors and any accumulating interest owed on the employee and employer  
11 contributions or underpayments resulting from an employer error shall be the responsibility of the  
12 participating public employer. The participating public employer may remit total payment and the  
13 employee reimburse the participating public employer through payroll deduction over a period  
14 equivalent to the time period during which the employer error occurred. If the correction of an  
15 error involving an underpayment to the system will result in the system paying the retirant an  
16 additional amount, this additional payment shall be made only after the board receives full  
17 payment of all required employee and employer contributions or underpayments, including  
18 interest.

19           (c) *Overpayments to the system by an employer.* — When mistaken or excess employer  
20 contributions or other employer overpayments have been made to the system, the board shall  
21 credit the employer with an amount computed by the board, to be offset against the employer's  
22 future liability for employer contributions to the system. If the employer has no future liability for  
23 employer contributions to the retirement system, the board shall refund the erroneous  
24 contributions directly to the employer.

25           (d) *Overpayments to the retirement system by an employee.* — When mistaken or excess  
26 employee contributions or overpayments, have been made to the retirement system, the board  
27 shall have sole authority for determining the means of return, offset or credit to or for the benefit  
28 of the individual making the mistaken or excess employee contribution of the amounts, and may  
29 use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the  
30 Internal Revenue Code and guidance issued thereunder applicable to governmental plans.

31 Alternatively, in its full and complete discretion, the board may require the existing employer  
32 employing the individual to pay the individual the amounts as wages, with the board crediting the  
33 participating public employer with a corresponding amount to offset against its future contributions  
34 to the plan. If the employer has no future liability for employer contributions to the retirement  
35 system, the board shall refund said amount directly to the employer: *Provided*, That the wages  
36 paid to the individual are not considered compensation for any purposes of this article.

37 (e) *Overpayments from the retirement system.* — If any error results in any member,  
38 retirant beneficiary, entity or other individual receiving from the system more than he would have  
39 been entitled to receive had the error not occurred the board upon learning of the error shall  
40 correct the error in a timely manner. If correction of the error occurs after annuity payments to a  
41 retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the  
42 benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person  
43 who received the overpayment from the retirement system shall repay the amount of any  
44 overpayment to the retirement system in any manner permitted by the board. If the member,  
45 retirant, beneficiary or other person who received the overpayment is deceased and an annuity  
46 or lump sum benefit is still payable, the amount of the overpayment shall be offset against the  
47 benefit payment owed in a manner consistent with the board's error correction policy. Interest  
48 shall not accumulate on any corrective payment made to the retirement system pursuant to this  
49 subsection.

50 (f) *Underpayments from the retirement system.* — If any error results in any member,  
51 retirant, beneficiary, entity or other individual receiving from the retirement system less than he  
52 would have been entitled to receive had the error not occurred, the board, upon learning of the  
53 error, shall correct the error in a timely manner. If correction of the error occurs after annuity  
54 payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the  
55 payment of the benefit to the correct amount. In addition, the board shall pay the amount of such  
56 underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall

57 not be paid on any corrective payment made by the retirement system pursuant to this subsection.

58 (g) *Eligibility errors.* — If the board finds that an individual, employer, or both individual  
 59 and employer currently or formerly participating in the retirement system is not eligible to  
 60 participate, the board shall notify the individual and his or her employer of the determination, and  
 61 terminate participation in the retirement system. Any erroneous payments to the retirement  
 62 system shall be returned to the employer and individual in accordance with the methods described  
 63 in subsections (c) and (d) of this section and any erroneous payments from the retirement system  
 64 to such individual shall be returned to the retirement system in accordance with the methods  
 65 described in subsection (e) of this section. Any erroneous service credited to the individual shall  
 66 be removed. Service credit for service prior to the date on which the individual prospectively  
 67 commences participation in the retirement system shall be granted only if the board receives the  
 68 required employer and employee contributions for such service, in accordance with subsection  
 69 (b) of this section, including interest.

## **CHAPTER 20. NATURAL RESOURCES.**

### **ARTICLE 18. WEST VIRGINIA DIVISION OF NATURAL RESOURCES POLICE OFFICER RETIREMENT SYSTEM.**

#### **§20-18-2. 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 §20-18-13 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 §20-18-8(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) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity  
38 or other benefit payable by the plan.

39 (j) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-  
40 1 *et seq.* of this code.

41 (k) "Covered employment" means either: (1) Employment as a Natural Resources Police  
42 Officer and the active performance of the duties required of a Natural Resources Police Officer;  
43 (2) the period of time which active duties are not performed but disability benefits are received  
44 under §20-18-21 or §20-18-22 of this code; or (3) concurrent employment by a Natural Resources  
45 Police Officer in a job or jobs in addition to his or her employment as a Natural Resources Police  
46 Officer where the secondary employment requires the Natural Resources Police Officer to be a  
47 member of another retirement system which is administered by the Consolidated Public  
48 Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the Natural  
49 Resources Police Officer contributes to the fund created in §20-18-7 of this code the amount  
50 specified as the Natural Resource Police Officer's contribution in §20-18-8 of this code.

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

53 (m) "Dependent child" means either:

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

55 (A) A natural child of the member;

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

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

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



61 (2) Any unmarried child under age 23:

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

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

65 (C) Whose relationship with the member is described in subparagraph (A), (B), or (C),  
66 paragraph (1) of this subdivision.

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

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

70 (p) "Disability service" means service credit received by a member, expressed in whole  
71 years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both,  
72 during which time a member receives disability benefits under §20-18-21 or §20-18-22 of this  
73 code.

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

76 (r) "Effective date" means January 2, 2021.

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

83 (t) "Final average salary" means the average of the highest annual compensation received  
84 for covered employment by the member during any five consecutive plan years within the  
85 member's last 10 years of service. If the member did not have annual compensation for the five  
86 full plan years preceding the member's attainment of normal retirement age and during that period

87 the member received disability benefits under §20-18-21 or §20-18-22 of this code then “final  
88 average salary” means the average of the monthly salary determined paid to the member during  
89 that period determined as if the disability first commenced after the effective date of this article  
90 with monthly compensation equal to that average monthly compensation which the member was  
91 receiving in the plan year prior to the initial disability multiplied by 12.

92 (u) “Fund” means the West Virginia Natural Resources Police Officer Retirement Fund  
93 created pursuant to §20-18-7 of this code.

94 (v) “Hour of service” means:

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

96 (2) Each hour for which a member is paid but where no duties are performed due to  
97 vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of  
98 absence, or any combination thereof, and without regard to whether the employment relationship  
99 has terminated. Hours under this paragraph shall be calculated and credited pursuant to West  
100 Virginia Division of Labor rules. A member will not be credited with any hours of service for any  
101 period of time he or she is receiving benefits under §20-18-21 or §20-18-22 of this code; and

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

107 (w) “Member” means a person first hired as a Natural Resources Police Officer, as defined  
108 in subsection (y) of this section, on or after January 2, 2021, or a Natural Resources Police Officer  
109 first hired prior to the effective date and who elects to become a member pursuant to §20-18-6 of  
110 this code. A member shall remain a member until the benefits to which he or she is entitled under  
111 this article are paid or forfeited or until cessation of membership pursuant to §20-18-6 of this code.

112 (x) “Monthly salary” means the portion of a member’s gross annual compensation which

113 is paid to him or her per month.

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

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

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

133 (bb) "Partially disabled" means a member's inability to engage in the duties of a Natural  
134 Resources Police Officer by reason of any medically determinable physical or mental impairment  
135 that can be expected to result in death or that has lasted or can be expected to last for a  
136 continuous period of not less than 12 months. A member may be determined partially disabled  
137 for the purposes of this article and maintain the ability to engage in other gainful employment  
138 which exists within the state but which ability would not enable him or her to earn an amount at

139 least equal to two thirds of the average annual compensation earned by all active members of  
140 this plan during the plan year ending as of the most recent June 30, as of which plan data has  
141 been assembled and used for the actuarial valuation of the plan.

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

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

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

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

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

155 (hh) "Required beginning date" means April 1 of the calendar year following the later of:

156 (i) The calendar year in which the member attains age 72; or (ii) the calendar year in which ~~he or~~  
157 ~~she~~ the member retires or otherwise separates from covered employment.

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

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

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

164 (ll) "Spouse" means the person to whom the member is legally married on the annuity

165 starting date.

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

169 (nn) "Surviving spouse" means the person to whom the member was legally married at  
 170 the time of the member's death and who survived the member.

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

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

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

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

190 Hours of Service		Years of Service Credited
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191	Less than 500	0
192	500 to 999	1/3
193	1,000 to 1,499	2/3
194	1,500 or more	1

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

**§20-18-9. 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, upon learning of the error, shall correct  
40 the error in a timely manner. If correction of the error occurs after annuity payments to a retiree  
41 or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit  
42 to the correct amount. In addition, the member, retiree, beneficiary, the division or other person  
43 who received the overpayment from the plan shall repay the amount of any overpayment to the  
44 plan in any manner permitted by the board. If the member, retiree, beneficiary or other person  
45 who received the overpayment is deceased and an annuity or lump sum benefit is still payable,  
46 the amount of the overpayment shall be offset against the benefit payment owed in a manner  
47 consistent with the board’s error correction policy. Interest shall not accumulate on any corrective  
48 payment made to the plan pursuant to this subsection.

49           (f) *Underpayments from the plan.* — If any error results in any member, retiree,  
50 beneficiary, the division or other individual receiving from the plan less than he or she would have  
51 been entitled to receive had the error not occurred, the board, upon learning of the error, shall  
52 correct the error in a timely manner. If correction of the error occurs after annuity payments to a  
53 retiree or beneficiary have commenced, the board shall prospectively adjust the payment of the  
54 benefit to the correct amount. In addition, the board shall pay the amount of such underpayment  
55 to the member, retiree, beneficiary or other individual in a lump sum. Interest shall not be paid on  
56 any corrective payment made by the plan pursuant to this subsection.

57           (g) *Eligibility errors.* — If the board finds that an individual is not eligible to participate, the  
58 board shall notify the individual and the division of the determination and terminate his or her  
59 participation in the plan. Any erroneous payments to the retirement system shall be returned to  
60 the division and individual in accordance with the methods described in subsections (c) and (d)  
61 of this section and any erroneous payments from the plan to such individual shall be returned to  
62 the plan in accordance with the methods described in subsection (e) of this section. Any erroneous



63 service credited to the individual shall be removed. If the board determines that an individual has  
64 not been participating in the plan, but was eligible to and required to be participating in the plan,  
65 the board shall as soon as practicable notify the individual and the division of the determination,  
66 and the individual shall prospectively commence participation in the plan as soon as practicable.  
67 Service credit for service prior to the date on which the individual prospectively commences  
68 participation in the plan shall be granted only if the board receives the required employer and  
69 employee contributions for such service, in accordance with subsection (b) of this section,  
70 including interest.

71 *(h) Correction of errors occurring prior to transfer from Public Employee Retirement*  
72 *System.* — If any errors requiring correction occurred prior to establishment of the plan created  
73 pursuant to this article or prior to the transfer of funds from the Public Employee Retirement  
74 System, into the plan, or both, the employer and member contributions, if any, required to be  
75 calculated in order to effect correction shall be based on the rates in effect for the retirement  
76 system under which such employer or member contributions would have been made had the error  
77 not occurred. For purposes of this subsection, “retirement system” means either the Public  
78 Employees Retirement System or the plan. The board shall have full discretion when applying  
79 this subsection (h), consistent with the general principles of subsection (a) of this section. The  
80 intent of any correction is to place the affected individual, division and board in the position in  
81 which each would have been had the error not occurred.

**§20-18-14. 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, including without limitation the minimum

7 distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the regulations  
8 thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the regulations. Any term  
9 used in this article has the same meaning as when used in a comparable context in section  
10 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder  
11 unless a different meaning is clearly required by the context or definition in this article. The  
12 following provisions apply to payments of benefits required under this article:

13 (a) The payment of benefits under the plan to any member shall be distributed to him or  
14 her not later than the required beginning date, or be distributed to him or her commencing not  
15 later than the required beginning date, in accordance with regulations prescribed under section  
16 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the  
17 member and his or her beneficiary or over a period not extending beyond the life expectancy of  
18 the member and his or her beneficiary: *Provided*, That the requirements of this section may not  
19 be construed to grant a right to a form of benefit which is not otherwise available to a particular  
20 member under this retirement system: *Provided, however, That if the member elects an annuity*  
21 *option which provides survivor benefits to a beneficiary who is not the member's spouse, and the*  
22 *annuity option elected would provide survivor payments that exceed the applicable percentage*  
23 *permitted by the MDIB regulations under section 401(a)(9) of the Internal Revenue Code, the*  
24 *member's annuity election shall be changed to the highest survivor annuity option offered under*  
25 *this retirement plan which satisfies the MDIB regulations.* Benefit payments under this section  
26 may not be delayed pending, or contingent upon, receipt of an application for retirement from the  
27 member.

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

32 (c) If a member dies before distribution to him or her has commenced, then his or her  
33 entire interest in the retirement system is to be distributed by December 31 of the calendar year  
34 containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of  
35 this section apply.

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

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

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

45 (A) December 31 of the calendar year in which the member would have attained age 72;  
46 or

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

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

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

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

64 (A) The later of: (i) December 31 of the calendar year immediately following the calendar  
65 year in which the member died; or (ii) December 31 of the calendar year in which the member  
66 would have attained age 72; or

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

## **CHAPTER 51. COURTS AND THEIR OFFICERS.**

### **ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.**

#### **§51-9-1a. Definitions.**

1 (a) As used in this article, the term "judge", "judge of any court of record", or "judge of any  
2 court of record of this state" means, refers to, and includes judges of the several circuit courts,  
3 judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals. For  
4 purposes of this article, the terms do not mean, refer to, or include family court judges.

5 (b) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value  
6 computed upon the basis of the mortality table and interest rates as set and adopted by the  
7 retirement board in accordance with the provisions of this article: *Provided*, That when used in  
8 the context of compliance with the federal maximum benefit requirements of section 415 of the  
9 Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and  
10 interest rates required to comply with those requirements.

11 (c) "Beneficiary" means any person, except a member, who is entitled to an annuity or  
12 other benefit payable by the retirement system.

13 (d) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-  
14 1 *et seq.* of this code.

15 (e) "Employer error" means an omission, misrepresentation or deliberate act in violation  
16 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations  
17 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State  
18 Regulations by the participating public employer that has resulted in an underpayment or  
19 overpayment of contributions required.

20 (f) "Final average salary" means the average of the highest 36 consecutive months'  
21 compensation received by the member as a judge of any court of record of this state.

22 (f) (g) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been  
23 amended.

24 (g) (h) "Member" means a judge participating in this system.

25 (h) (i) "Plan year" means the 12-month period commencing on July 1 of any designated  
26 year and ending the following June 30.

27 (i) (j) "Required beginning date" means April 1 of the calendar year following the later of:  
28 (1) The calendar year in which the member attains age ~~70 and one-half~~ 70.5 (if born before July  
29 1, 1949) or age 72 (if born after June 30, 1949); or (2) the calendar year in which the member  
30 retires or otherwise separates from covered employment under this retirement system.

31 (j) (k) "Retirement system" or "system" means the Judges' Retirement System created and  
32 established by this article. Notwithstanding any other provision of law to the contrary, the  
33 provisions of this article are applicable only to circuit judges, judges of the Intermediate Court of  
34 Appeals, and justices of the Supreme Court of Appeals in the manner specified in this article. No  
35 service as a family court judge may be construed to qualify a person to participate in the Judges'  
36 Retirement System or used in any manner as credit toward eligibility for retirement benefits under  
37 the Judges' Retirement System.

**§51-9-12b. Federal minimum required distributions.**

1           The requirements of this section apply to any distribution of a member's or beneficiaries'  
2 interest and take precedence over any inconsistent provisions of this retirement system. This  
3 section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the  
4 retirement system to the contrary, the payment of benefits under this article shall be determined  
5 and made in accordance with section 401(a)(9) of the Internal Revenue Code and the federal  
6 regulations promulgated thereunder as applicable to governmental plans, including without  
7 limitation the minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G)  
8 and the regulations thereunder, and the incidental benefit rule of section 1.401-1(b)(1)(i) of the  
9 regulations. Any term used in this article has the same meaning as when used in a comparable  
10 context in section 401(a)(9) of the Internal Revenue Code and the federal regulations promulgated  
11 thereunder unless a different meaning is clearly required by the context or definition in this article.  
12 The following provisions apply to payments of benefits required under this article:

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

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

27 (c) If a member dies before distribution to him or her has commenced, then his or her  
28 entire interest in the retirement system is to be distributed by December 31 of the calendar year  
29 containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of  
30 this section apply.

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

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

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

40 (A) December 31 of the calendar year in which the member would have attained age  
41 ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or

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

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

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

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

59 (A) The later of: (i) December 31 of the calendar year immediately following the calendar  
60 year in which the member died; or (ii) December 31 of the calendar year in which the member  
61 would have attained age ~~seventy and one-half~~ 70.5 (if born before July 1, 1949) or age 72 (if born  
62 after June 30, 1949); or

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

**§51-9-18. Correction of errors; underpayments; overpayments.**

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

5 (b) *Underpayments to the system.* — Any error resulting in an underpayment to the  
6 system, may be corrected by the member or retirant remitting the required employee contribution  
7 or underpayment and the participating public employer remitting the required employer  
8 contribution or underpayment. Interest shall accumulate in accordance with the legislative rule  
9 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and  
10 correction of error interest factors and any accumulating interest owed on the employee and  
11 employer contributions or underpayments resulting from an employer error shall be the  
12 responsibility of the participating public employer. The participating public employer may remit  
13 total payment and the employee reimburse the participating public employer through payroll  
14 deduction over a period equivalent to the time period during which the employer error occurred.



15 If the correction of an error involving an underpayment to the system will result in the system  
16 correcting an erroneous underpayment from the system, the correction of the underpayment from  
17 the system shall be made only after the board receives full payment of all required employee and  
18 employer contributions or underpayments, including interest.

19 (c) *Overpayments to the retirement system by an employer.* — When mistaken or excess  
20 employer contributions, including any overpayments have been made to the retirement system  
21 by a participating public employer, the board, upon learning of the error, shall credit the  
22 participating public employer with an amount equal to the overpayment, to be offset against the  
23 employer's future liability for employer contributions to the system. If the employer has no future  
24 liability for employer contributions to the retirement system, the board shall refund the erroneous  
25 contributions directly to the employer. Earnings or interest shall not be returned, offset or credited  
26 to the employer under any of the means used by the board for returning employer overpayments  
27 to the retirement system.

28 (d) *Overpayments to the retirement system by an employee.* — When mistaken or excess  
29 employee contributions or overpayments have been made to the retirement system, the board,  
30 upon learning of the error, shall have sole authority for determining the means of return, offset or  
31 credit to or for the benefit of the individual making the mistaken or excess employee contribution  
32 of the amounts, and may use any means authorized or permitted under the provisions of section  
33 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to  
34 governmental plans. Alternatively, in its full and complete discretion, the board may require the  
35 participating public employer employing the individual to pay the individual the amounts as wages,  
36 with the board crediting the participating public employer with a corresponding amount to offset  
37 against its future contributions to the plan. If the employer has no future liability for employer  
38 contributions to the retirement system, the board shall refund said amount directly to the  
39 employer: *Provided*, That the wages paid to the individual shall not be considered compensation  
40 for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under

41 any of the means used by the board for returning employee overpayments.

42 (e) *Overpayments from the retirement system.* — If any error results in any member,  
43 retirant, beneficiary, entity or other individual receiving from the system more than he would have  
44 been entitled to receive had the error not occurred the board, upon learning of the error, shall  
45 correct the error in a timely manner. If correction of the error occurs after annuity payments to a  
46 retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the  
47 benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person  
48 who received the overpayment from the retirement system shall repay the amount of any  
49 overpayment to the retirement system in any manner permitted by the board. If the member,  
50 retirant, beneficiary or other person who received the overpayment is deceased and an annuity  
51 or lump sum benefit is still payable, the amount of the overpayment shall be offset against the  
52 benefit payment owed in a manner consistent with the board's error correction policy. Interest  
53 shall not accumulate on any corrective payment made to the retirement system pursuant to this  
54 subsection.

55 (f) *Underpayments from the retirement system.* — If any error results in any member,  
56 retirant, beneficiary, entity or other individual receiving from the retirement system less than he  
57 would have been entitled to receive had the error not occurred, the board, upon learning of the  
58 error, shall correct the error in a timely manner. If correction of the error occurs after annuity  
59 payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the  
60 payment of the benefit to the correct amount. In addition, the board shall pay the amount of such  
61 underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall  
62 not be paid on any corrective payment made by the retirement system pursuant to this subsection.

63 (g) *Eligibility errors.* — If the board finds that an individual, employer, or both individual  
64 and employer, participating in the system is not eligible to participate, the board shall notify the  
65 individual and his or her employer of the determination, and terminate participation in the system.  
66 Any erroneous payments to the system shall be returned to the employer and individual in

67 accordance with the methods described in subsections (c) and (d) of this section and any  
68 erroneous payments from the system to such individual shall be returned to the system in  
69 accordance with the methods described in subsection (e) of this section. Any erroneous service  
70 credited to the individual shall be removed. If the board determines that an individual or employer,  
71 or both, has not been participating in the system, but was eligible to and required to be  
72 participating in the system, the board shall as soon as practicable notify the individual and his or  
73 her employer of the determination, and the individual and his or her employer shall prospectively  
74 commence participation in the retirement system as soon as practicable. Service credit for service  
75 prior to the date on which the individual prospectively commences participation in the system shall  
76 be granted only if the board receives the required employer and employee contributions for such  
77 service, in accordance with subsection (b) of this section, including interest.

NOTE: The purpose of this bill is to update all retirement plans administered by the Consolidated Public Retirement Board (PERS, DSRS, MPFRS, State Police Plans A and B, EMSRS, TRS, TDC, NRPORS and JRS) with federal requirements in accordance with the SECURE Act; clarify the correction of error provisions; and amend definitions accordingly.

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