

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 450

By Senators Nelson and Hunt

[Introduced January 24, 2023; referred
to the Committee on Pensions; and then to the
Committee on Finance]

1 A BILL to amend and reenact §5-10-2 of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §7-14D-2, §7-14D-14, and §7-14D-15; to amend and reenact §8-22A-2; to
 3 amend and reenact §15-2A-2 and §15-2A-9; to amend and reenact §16-5V-2; to amend
 4 and reenact §18-7A-3 and §18-7A-25; and to amend and reenact §20-18-2, §20-18-21,
 5 and §20-18-22, all relating to disability retirement medical examinations of the West
 6 Virginia Public Employees Retirement System, the Deputy Sheriffs' Retirement System,
 7 the Municipal Police and Firefighters Retirement System, the State Police Retirement
 8 Fund, the Emergency Medical Services Retirement System, the Teachers Retirement
 9 System, and the Natural Resources Police Officers Retirement System.

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.

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

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

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

(3) "Actuarial equivalent" means a benefit of equal value computed upon the basis of a

mortality table and regular interest adopted by the board of trustees from time to time: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, actuarial equivalent shall be computed using the mortality tables and interest rates required to comply with those requirements;

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

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

(6) "Beneficiary" means any person which shall include an irrevocable special needs trust, as that term is defined in this section, for the benefit of one individual beneficiary and which trust terminates upon the death of such individual with no further annuity benefits being payable, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

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

(8) "Compensation" means the remuneration paid a member by a participating public employer for personal services rendered by the member to the participating public employer. In the event a member's remuneration is not all paid in money, his or her participating public employer shall fix the value of the portion of the remuneration which is not paid in money: *Provided*, That members hired in a position for the first time on or after July 1, 2014, who receive nonmonetary remuneration shall not have nonmonetary remuneration included in compensation for retirement purposes and nonmonetary remuneration may not be used in calculating a member's final average salary. Any lump sum or other payments paid to members that do not constitute regular salary or wage payments are not considered compensation for the purpose of withholding

contributions for the system or for the purpose of calculating a member's final average salary. These payments include, but are not limited to, attendance or performance bonuses, one-time flat fee or lump sum payments, payments paid as a result of excess budget, or employee recognition payments. The board shall have final power to decide whether the payments shall be considered compensation for purposes of this article;

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

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

(11) "Employee" means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, in whole or in part, by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia National Guard whose compensation, in whole or in part, is paid by the federal government: *Provided*, That an employee of the Legislature whose term of employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is employed during regular sessions or during the interim between regular sessions in seven or more consecutive calendar years, as certified by the clerk of the house in which the employee served, is an employee, any provision to the contrary in this article notwithstanding, and is entitled to credited service in accordance with provisions of §5-10-14 of this code: *Provided, however*, That members of the legislative body of any political subdivision and commissioners of the West Virginia Claims Commission are employees receiving one year of service credit for each

one-year term served and prorated service credit for any partial term served, anything contained in this article to the contrary notwithstanding: *Provided further*, That only a compensated board member of a participating public employer appointed to a board of a nonlegislative body for the first time on or after July 1, 2014, who normally is required to work 12 months per year and 1040 hours of service per year is an employee. In any case of doubt as to who is an employee within the meaning of this article, the board of trustees shall decide the question;

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

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

(A) The average of the highest annual compensation received by a member, including a member of the Legislature who participates in the retirement system in the year 1971 or thereafter, during any period of three consecutive years of credited service contained within the member's 15 years of credited service immediately preceding the date his or her employment with a participating public employer last terminated: *Provided*, That for persons who were first hired on or after July 1, 2015, any period of five consecutive years of contributing service contained within the member's 15 years of credited service immediately preceding the date his or her employment with a participating public employer last terminated; or

(B) If the member has less than five years of credited service, the average of the annual

rate of compensation received by the member during his or her total years of credited service; and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision, of a member of the Legislature who participates in the retirement system as a member of the Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation (the total of all compensation paid under §4-2A-2, §4-2A-3, §4-2A-4, and §4-2A-5 of this code), in the year 1971, or in any year thereafter, plus any other compensation he or she receives in any year from any other participating public employer including the State of West Virginia, without any multiple in excess of one times his or her actual legislative compensation and other compensation, shall be used: *Provided*, That final average salary for any former member of the Legislature or for any member of the Legislature in the year 1971 who, in either event, was a member of the Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on November 30 in any one or more of those three years and who participated in the retirement system as a member of the Legislature in any one or more of those years means: (i) Either, notwithstanding the provisions of this subdivision preceding this proviso, \$1,500 multiplied by eight, plus the highest other compensation the former member or member received in any one of the three years from any other participating public employer including the State of West Virginia; or (ii) final average salary determined in accordance with paragraph (A) or (B) of this subdivision, whichever computation produces the higher final average salary, and in determining the annual compensation under subparagraph (ii) of this paragraph, the legislative compensation of the former member shall be computed on the basis of \$1,500 multiplied by eight, and the legislative compensation of the member shall be computed on the basis set forth in the provisions of this subdivision immediately preceding this paragraph or on the basis of \$1,500 multiplied by eight, whichever computation as to the member produces the higher annual compensation;

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

(15) "Limited credited service" means service by employees of the West Virginia

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

(16) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

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

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

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

(19) (20) "Political subdivision" means the State of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any mental health agency participating in the Public Employees Retirement System before July 1, 1997, is considered a political subdivision solely for the purpose of permitting those employees who are members of the

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

~~(20)~~ (21) "Prior service" means service rendered prior to July 1, 1961, to the extent credited a member as provided in this article;

~~(24)~~ (22) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board of trustees adopts from time to time;

~~(22)~~ (23) "Required beginning date" means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which a member ceases providing service covered under this retirement system to a participating employer;

~~(23)~~ (24) "Retirant" means any member who commences an annuity payable by the retirement system;

~~(24)~~ (25) "Retirement" means a member's withdrawal from the employ of a participating public employer and the commencement of an annuity by the retirement system;

~~(25)~~ (26) "Retirement system" or "system" means the West Virginia Public Employees Retirement System created and established by this article;

~~(26)~~ (27) "Retroactive service" means: (1) Service between July 1, 1961, and the date an employer decides to become a participating member of the Public Employees Retirement System; (2) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost in accordance with 162 CSR 5.12; and (3) service of any member of a legislative body or employees of the State Legislature whose term of employment is otherwise classified as temporary for which the employee is eligible, but for which the employee did not elect to participate at that time;

~~(27)~~ (28) "Service" means personal service rendered to a participating public employer by an employee of a participating public employer;

~~(28)~~ (29) "Special needs trust" means a trust established pursuant to §44D-8B-13 of this code for an individual beneficiary with a disability and such special needs trust is or will become irrevocable by the time the retirant names the special needs trust as the beneficiary of retirant's annuity benefits in place of the individual beneficiary and terminates upon the death of the individual beneficiary with no further annuity benefits being payable; and

~~(29)~~ (30) "State" means the State of West Virginia.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14. 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 of

15 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 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
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 this
48 code; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or her
49 employment as a deputy sheriff where the secondary employment requires the deputy sheriff to be
50 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 of
80 relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the
81 relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by
82 the participating public employer that has resulted in an underpayment or overpayment of
83 contributions required.

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

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

92 (w) "Fund" means the West Virginia Deputy Sheriff Retirement Fund created pursuant to

93 §7-14D-6 of this code.

94 (x) "Hour of service" means:

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

98 (2) Each hour for which a member is paid or entitled to payment for covered employment
99 during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity
100 including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof and
101 without regard to whether the employment relationship has terminated. Hours under this
102 paragraph shall be calculated and credited pursuant to West Virginia Division of Labor rules. A
103 member will not be credited with any hours of service for any period of time he or she is receiving
104 benefits under §7-14D-14 or §7-14D-15 of this code; and

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

110 (y) "Medical examination" means an in-person or virtual examination of a member's
111 physical or mental health, or both, by a physician or physicians selected or approved by the board;
112 or, at the discretion of the board, a medical record review of the member's physical or mental
113 health, or both, by a physician selected or approved by the board.

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

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

121 ~~(aa)~~ (bb) "Normal form" means a monthly annuity which is one-twelfth of the amount of the
122 member's accrued benefit which is payable for the member's life. If the member dies before the
123 sum of the payments he or she receives equals his or her accumulated contributions on the
124 annuity starting date, the named beneficiary 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 ~~(bb)~~ "Normal retirement age" means the first to occur of the following: (1) Attainment of age
128 50 years and the completion of 20 or more years of service; (2) while still in covered employment,
129 attainment of at least age 50 years, and when the sum of current age plus years of service equals
130 or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years,
131 and completion of five years of service; or (4) attainment of age 62 years and completion of five or
132 more years of service.

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

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

144 ~~(ee)~~ (ff) "Plan" means the West Virginia Deputy Sheriff Death, Disability, and Retirement

145 Plan established by this article.

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

148 ~~(gg)~~ (hh) "Qualified public safety employee" means any employee of a participating state or
149 political subdivision who provides police protection, fire-fighting 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 ~~(hh)~~ (ii) "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 ~~(ii)~~ (jj) "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 70.5 (if born before July 1, 1949) or age 72
157 (if born after June 30, 1949); or (ii) the calendar year in which he or she retires or otherwise
158 separates from covered employment.

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

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

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

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

167 ~~(nn)~~ (oo) "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 expected
169 to result in death or that has lasted or can be expected to last for a continuous period of not less
170 than 12 months. For purposes of this subdivision:

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

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

182 ~~(ee)~~ (pp) "Year of service". — A member shall, except in his or her first and last years of
 183 covered employment, be credited with year of service credit based upon the hours of service
 184 performed as covered employment and credited to the member during the plan year based upon
 185 the following schedule:

186	Hours of Service	Years of Service Credited
187	Less than 500	0
188	500 to 999	1/3
189	1,000 to 1,499	2/3
190	1,500 or more	1

191 During a member's first and last years of covered employment, the member shall be
 192 credited with one-twelfth of a year of service for each month during the plan year in which the
 193 member is credited with an hour of service. A member is not entitled to credit for years of service
 194 for any time period during which he or she received disability payments under §7-14D-14 or §7-
 195 14D-15 of this code. Except as specifically excluded, years of service include covered
 196 employment prior to the effective date. Years of service which are credited to a member prior to his

197 or her receipt of accumulated contributions upon termination of employment pursuant to §7-14D-
198 13 or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the
199 member repays the accumulated contributions with interest pursuant to §7-14D-13 of this code or
200 had prior to the effective date made the repayment pursuant to §5-10-18 of this code.

§7-14D-14. Awards and benefits for disability – duty related.

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

2 (1) Has been or becomes either totally or partially disabled by injury, illness, or disease;

3 and

4 (2) The disability is a result of an occupational risk or hazard inherent in or peculiar to the
5 services required of members; or

6 (3) The disability was incurred while performing law-enforcement functions during either
7 scheduled work hours or at any other time; and

8 (4) In the opinion of the board based on a medical examination, the member is by reason of
9 the disability unable to perform adequately the duties required of a deputy sheriff, is entitled to
10 receive and shall be paid from the fund in monthly installments the compensation under either
11 subsection (b) or (c) of this section.

12 (b) If the member is totally disabled, the member shall receive 90 percent of his or her
13 average full monthly compensation for the 12-month contributory period preceding the member's
14 disability award, or the shorter period if the member has not worked 12 months. Any member
15 retired under this subsection, or under §7-14D-17 of this code, on or before July 1, 2020, shall
16 have his or her monthly benefit payment increased by \$400.

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

20 (d) If the member remains partially disabled until attaining 60 years of age, the member
21 shall then receive the retirement benefit provided in §7-14D-11 and §7-14D-12 of this code.

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

§7-14D-15. Same – Due to other causes.

1 (a) Any member who after the effective date of this article and during covered employment:
 2 (1) Has been or becomes totally or partially disabled from any cause other than those set forth in
 3 section fourteen of this article and not due to vicious habits, intemperance or willful misconduct on
 4 his or her part; and (2) in the opinion of the board based on a medical examination, he or she is by
 5 reason of the disability unable to perform adequately the duties required of a deputy sheriff, is
 6 entitled to receive and shall be paid from the fund in monthly installments the compensation set
 7 forth in either subsection (b) or (c) of this section.

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

11 (c) If the member is partially disabled, he or she shall receive thirty-three and one-third
 12 percent of his or her average full monthly compensation for the twelve-month contributory period
 13 preceding the disability award, or the shorter period, if the member has not worked twelve months.

14 (d) If the member remains disabled until attaining sixty years of age, then the member shall
 15 receive the retirement benefit provided in sections eleven and twelve of this article.

16 (e) The board shall propose legislative rules for promulgation in accordance with the
 17 provisions of article three, chapter twenty-nine-a of this code concerning member disability
 18 payments so as to ensure that the payments do not exceed one hundred percent of the average
 19 current salary in any given county for the position last held by the member.

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

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 2.75 percent per year of the
4 member's final average salary for the first 20 years of credited service. Additionally, 2 percent per
5 year for 21 through 25 years and 1.5 percent per year for each year over 25 years will be credited
6 with a maximum benefit of 90 percent of a member's final average salary. A member's accrued
7 benefit may not exceed the limits of section 415 of the Internal Revenue Code and is subject to the
8 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 of
32 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 is
59 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; and
61 (C) whose relationship with the member is described in paragraph (A), (B) or (C), subdivision (1) of
62 this subsection.

63 (m) "Dependent parent" means the father or mother of the member who was claimed as a
64 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 of
70 relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or
71 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 (q) "Final average salary" means the average of the highest annual compensation received
75 for covered employment by the member during any five consecutive plan years within the
76 member's last 10 years of service while employed, prior to any disability payment. If the member
77 did not have annual compensation for the five full plan years preceding the member's attainment
78 of normal retirement age and during that period the member received disability benefits under this
79 article, then "final average salary" means the average of the monthly compensation which the
80 member was receiving in the plan year prior to the initial disability. "Final average salary" does not
81 include any lump sum payment for unused, accrued leave of any kind or character.

82 (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 (s) "Fund" means the West Virginia Municipal Police Officers and Firefighters Retirement
86 Fund created by this article.

87 (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 year
91 but where no duties are performed due to vacation, holiday, illness, incapacity including disability,
92 layoff, jury duty, military duty, leave of absence or any combination thereof and without regard to
93 whether the employment relationship has terminated. Hours under this subdivision shall be
94 calculated and credited pursuant to West Virginia Division of Labor rules. A member may not be
95 credited with any hours of service for any period of time he or she is receiving benefits under §8-
96 22A-17 and §8-22A-18 of this code; and (3) each hour for which back pay is either awarded or
97 agreed to be paid by the employing municipality, irrespective of mitigation of damages. The same
98 hours of service may not be credited both under subdivision (1) or (2) of this subsection and under
99 this subdivision. Hours under this paragraph shall be credited to the member for the plan year or

100 years to which the award or agreement pertains, rather than the plan year in which the award,
101 agreement or payment is made.

102 (u) "Medical examination" means an in-person or virtual examination of a member's
103 physical or mental health, or both, by a physician or physicians selected or approved by the board;
104 or, at the discretion of the board, a medical record review of the member's physical or mental
105 health, or both, by a physician selected or approved by the board.

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

110 (~~v~~) (w) "Monthly salary" means the W-2 reportable compensation received by a member
111 during the month.

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

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

122 (2) "Municipal firefighter" means an individual employed as a member of a paid fire
123 department by a West Virginia municipality or municipal subdivision which has established and
124 maintains a municipal firemen's pension and relief fund, and who is not a member of, and not
125 eligible for membership in, a municipal firemen's pension and relief fund as provided in §8-22-16 of

126 this code: *Provided*, That municipal firefighter also means an individual employed as a member of
127 a paid fire department by a West Virginia municipality or municipal subdivision which is authorized
128 to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid fire department does not
129 mean a department whose employees are paid nominal salaries or wages or are paid only for
130 services actually rendered on an hourly basis.

131 ~~(y)~~ (z) "Municipal subdivision" means any separate corporation or instrumentality
132 established by one or more municipalities, as permitted by law; and any public corporation
133 charged by law with the performance of a governmental function and whose jurisdiction is
134 coextensive with one or more municipalities.

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

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

147 ~~(bb)~~ (cc) "Plan" means the West Virginia Municipal Police Officers and Firefighters
148 Retirement System established by this article.

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

151 ~~(dd)~~ (ee) "Qualified public safety employee" means any employee of a participating state or

152 political subdivision who provides police protection, firefighting services or emergency medical
153 services for any area within the jurisdiction of the state or political subdivision, or such other
154 meaning given to the term by section 72(t) (10) (B) of the Internal Revenue Code or by Treasury
155 Regulation §1.401(a)-1(b) (2) (v) as they may be amended from time to time.

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

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

160 ~~(gg)~~ (hh) "Required beginning date" means April 1 of the calendar year following the later
161 of: (1) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age
162 72 (if born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise
163 separates from covered employment.

164 ~~(hh)~~ (ii) "Retirement income payments" means the monthly retirement income payments
165 payable.

166 ~~(ii)~~ (jj) "Spouse" means the person to whom the member is legally married on the annuity
167 starting date.

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

170 ~~(kk)~~ (ll) "Totally disabled" means a member's inability to engage in substantial gainful
171 activity by reason of any medically determined physical or mental impairment that can be expected
172 to result in death or that has lasted or can be expected to last for a continuous period of not less
173 than 12 months. For purposes of this subsection: (1) A member is totally disabled only if his or her
174 physical or mental impairment or impairments are so severe that he or she is not only unable to
175 perform his or her previous work as a police officer or firefighter but also cannot, considering his or
176 her age, education and work experience, engage in any other kind of substantial gainful
177 employment which exists in the state regardless of whether: (A) The work exists in the immediate

178 area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be
 179 hired if he or she applied for work. For purposes of this article, substantial gainful employment is
 180 the same definition as used by the United States Social Security Administration; and (2) "Physical
 181 or mental impairment" is an impairment that results from an anatomical, physiological or
 182 psychological abnormality that is demonstrated by medically accepted clinical and laboratory
 183 diagnostic techniques. The board may require submission of a member's annual tax return for
 184 purposes of monitoring the earnings limitation.

185 ~~(H)~~ (mm) "Vested" means eligible for retirement income payments after completion of five
 186 or more years of regular contributory service.

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

191 Hours of Service	Year of Service Credited
192 Less than 500	0
193 500 to 999	1/3
194 1,000 to 1,499	2/3
195 1,500 or more	1

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

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2A. WEST VIRGINIA STATE POLICE 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.

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

14 (4) "Agency" means the West Virginia State Police.

15 (5) "Base salary" means compensation paid to an employee without regard to any overtime
16 pay.

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

19 (7) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-
20 1 *et seq.* of this code.

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

23 (A) Is under the age of 18;

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

26 23 years; or

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

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

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

34 (11) "Employer error" means an omission, misrepresentation or deliberate act in violation
35 of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations
36 or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
37 Regulations by the participating public employer that has resulted in an underpayment or
38 overpayment of contributions required.

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

45 (13) "Fund", "plan", "system" or "retirement system" means the West Virginia State Police
46 Retirement Fund created and established by this article.

47 (14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

48 (15) "Law-enforcement officer" means an individual employed or otherwise engaged in
49 either a public or private position which involves the rendition of services relating to enforcement of
50 federal, state or local laws for the protection of public or private safety, including, but not limited to,
51 positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any other

52 law-enforcement position which requires certification, but excluding positions held by elected
53 sheriffs or appointed chiefs of police whose duties are purely administrative in nature.

54 (16) "Medical examination" means an in-person or virtual examination of a member's
55 physical or mental health, or both, by a physician or physicians selected or approved by the board;
56 or, at the discretion of the board, a medical record review of the member's physical or mental
57 health, or both, by a physician selected or approved by the board.

58 (17) "Member" means any person who has contributions standing to his or her credit in the
59 fund and who has not yet entered into retirement status.

60 (17) (18) "Month of service" means each month for which an employee is paid or entitled to
61 payment for at least one hour of service for which contributions were remitted to the fund. These
62 months shall be credited to the member for the calendar year in which the duties are performed.

63 (18) (19) "Partially disabled" means an employee's inability, on a probable permanent
64 basis, to perform the essential duties of a law-enforcement officer by reason of any medically
65 determinable physical or mental impairment which has lasted or can be expected to last for a
66 continuous period of not less than 12 months, but which impairment does not preclude the
67 employee from engaging in other types of nonlaw-enforcement employment.

68 (19) (20) "Physical or mental impairment" means an impairment that results from an
69 anatomical, physiological or psychological abnormality that is demonstrated by medically
70 accepted clinical and laboratory diagnostic techniques.

71 (20) (21) "Plan year" means the 12-month period commencing on July 1 of any designated
72 year and ending the following June 30.

73 (21) (22) "Qualified public safety employee" means any employee of a participating state or
74 political subdivision who provides police protection, fire fighting services or emergency medical
75 services for any area within the jurisdiction of the state or political subdivision, or such other
76 meaning given to the term by section 72(t)(10)(B) of the Internal Revenue Code or by Treasury
77 Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

78 ~~(22)~~ (23) "Required beginning date" means April 1 of the calendar year following the later
79 of: (A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age
80 72 (if born after June 30, 1949); or (B) the calendar year in which he or she retires or otherwise
81 separates from service with the agency.

82 ~~(23)~~ (24) "Retirant" or "retiree" means any member who commences an annuity payable by
83 the retirement system.

84 ~~(24)~~ (25) "Salary" means the compensation of an employee, excluding any overtime
85 payments.

86 ~~(25)~~ (26) "Surviving spouse" means the person to whom the member or retirant was legally
87 married at the time of the member's or retirant's death and who survived the member or retirant.

88 ~~(26)~~ (27) "Totally disabled" means an employee's probable permanent inability to engage
89 in substantial gainful activity by reason of any medically determined physical or mental impairment
90 that can be expected to result in death or that has lasted or can be expected to last for a
91 continuous period of not less than 12 months. For purposes of this subdivision, an employee is
92 totally disabled only if his or her physical or mental impairments are so severe that he or she is not
93 only unable to perform his or her previous work as an employee of the agency, but also cannot,
94 considering his or her age, education and work experience, engage in any other kind of substantial
95 gainful employment which exists in the state regardless of whether: (A) The work exists in the
96 immediate area in which the employee lives; (B) a specific job vacancy exists; or (C) the employee
97 would be hired if he or she applied for work.

98 ~~(27)~~ (28) "Years of service" means the months of service acquired by a member while in
99 active employment with the agency divided by 12. Years of service shall be calculated in years and
100 fraction of a year from the date of active employment of the member with the agency through the
101 date of termination of employment or retirement from the agency. If a member returns to active
102 employment with the agency following a previous termination of employment with the agency and
103 the member has not received a refund of contributions plus interest for the previous employment

104 under §15-2A-8 of this code, service shall be calculated separately for each period of continuous
105 employment and years of service shall be the total service for all periods of employment. Years of
106 service shall exclude any periods of employment with the agency for which a refund of
107 contributions plus interest has been paid to the member unless the employee repays the previous
108 withdrawal, as provided in §15-2A-8 of this code, to reinstate the years of service.

§15-2A-9. Awards and benefits for disability – Incurred in performance of duty.

1 (a) Any employee of the agency who has not yet entered retirement status on the basis of
2 age and service and who becomes partially disabled by injury, illness or disease resulting from any
3 occupational risk or hazard inherent in or peculiar to the services required of employees of the
4 agency or incurred pursuant to or while the employee was engaged in the performance of his or
5 her duties as an employee of the agency shall, if, in the opinion of the board based on a medical
6 examination, he or she is, by reason of that cause, unable to perform adequately the duties
7 required of him or her as an employee of the agency, but is able to engage in other gainful
8 employment in a field other than law enforcement, be retired from active service by the board. The
9 retirant thereafter is entitled to receive annually from the fund in equal monthly installments during
10 his or her lifetime, or until the retirant attains the age of fifty-five or until the disability eligibility
11 sooner terminates, one or the other of two amounts, whichever is greater:

12 (1) An amount equal to six tenths of the base salary received in the preceding twelve-
13 month employment period: Provided, That if the member had not been employed with the agency
14 for twelve months prior to the disability, the amount of monthly salary shall be annualized for the
15 purpose of determining the benefit; or

16 (2) The sum of \$6,000. The first day of the month following the date in which the retirant
17 attains age fifty-five, the retirant shall receive the benefit provided in section six of this article as it
18 would apply to his or her final average salary based on earnings from the agency through the day
19 immediately preceding his or her disability. The recalculation of benefit upon a retirant attaining
20 age fifty-five shall be considered to be a retirement under the provisions of section six of this article

21 for purposes of determining the amount of annual annuity adjustment and for all other purposes of
22 this article: Provided, That a retirant who is partially disabled under this article may not, while in
23 receipt of benefits for partial disability, be employed as a law-enforcement officer: Provided,
24 however, That a retirant on a partial disability under this article may serve as an elected sheriff or
25 appointed chief of police in the state without a loss of disability retirement benefits as long as the
26 elected or appointed position is shown, to the satisfaction of the board, to require the performance
27 of administrative duties and functions only, as opposed to the full range of duties of a law-
28 enforcement officer.

29 (b) If in the opinion of the board based on a medical examination any member who has not
30 yet entered retirement status on the basis of age and service and who becomes physically or
31 mentally disabled by injury, illness or disease on a probable permanent basis resulting from any
32 occupational risk or hazard inherent in or peculiar to the services required of employees of the
33 agency or incurred pursuant to or while the employee was or is engaged in the performance of his
34 or her duties as an employee of the agency to the extent that the employee is incapacitated ever to
35 engage in any gainful employment, the employee is entitled to receive annually, and there shall be
36 paid from the fund in equal monthly installments during his or her lifetime or until the disability
37 sooner terminates, an amount equal to the base salary received by the employee in the preceding
38 full twelve-month employment period. Until a member has worked twelve months, the amount of
39 monthly base salary shall be annualized for the purpose of determining the benefit.

40 (c) Disability benefit payments made pursuant to subsection (a) or (b) of this section will
41 begin the first day of the month following board approval and termination of employment or as
42 ordered by a court of competent jurisdiction.

43 (d) The superintendent of the agency may expend moneys from funds appropriated for the
44 agency in payment of medical, surgical, laboratory, x-ray, hospital, ambulance and dental
45 expenses and fees and reasonable costs and expenses incurred in the purchase of artificial limbs
46 and other approved appliances which may be reasonably necessary for any retirant who is

47 temporarily, permanently or totally disabled by injury, illness or disease resulting from any
 48 occupational risk or hazard inherent in or peculiar to the service required of employees of the
 49 agency or incurred pursuant to or while the employee was or shall be engaged in the performance
 50 of duties as an employee of the agency. Whenever the superintendent determines that any
 51 disabled retirant is ineligible to receive any of the benefits in this section at public expense, the
 52 superintendent shall, at the request of the disabled retirant, refer the matter to the board for
 53 hearing and final decision. In no case will the compensation rendered to health care providers for
 54 medical and hospital services exceed the then current rate schedule approved by the West
 55 Virginia Insurance Commission. Upon termination of employment and receipt of properly executed
 56 forms from the agency and the member, the board shall process the member's disability retirement
 57 benefit and commence annuity payments as soon as administratively feasible.

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 over
 6 25 years will be credited with a maximum benefit of 67 percent. A member's accrued benefit may
 7 not exceed the limits of section 415 of the Internal Revenue Code and is subject to the provisions
 8 of §16-5V-12 of this code.

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 one-

12 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 of
22 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 or
31 location of employment or services performed during the plan year plus amounts excluded under
32 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 the
47 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, as
87 defined by the West Virginia Office of Emergency Medical Services. This definition is construed to
88 include employed ambulance providers and other services such as law enforcement, rescue or
89 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 of
95 relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the
96 relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by
97 the participating public employer that has resulted in an underpayment or overpayment of
98 contributions required.

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

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

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

113 (w) "Hour of service" means:

114 (1) Each hour for which a member is paid or entitled to payment for covered employment
115 during which time active duties are performed. These hours shall be credited to the member for the

116 plan year in which the duties are performed; and

117 (2) Each hour for which a member is paid or entitled to payment for covered employment
118 during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity
119 including disability, layoff, jury duty, military duty, leave of absence or any combination thereof and
120 without regard to whether the employment relationship has terminated. Hours under this
121 subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A
122 member will not be credited with any hours of service for any period of time he or she is receiving
123 benefits under §16-5V-19 or §16-5V-20 of this code; and

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

130 (x) "Medical examination" means an in-person or virtual examination of a member's
131 physical or mental health, or both, by a physician or physicians selected or approved by the board;
132 or, at the discretion of the board, a medical record review of the member's physical or mental
133 health, or both, by a physician selected or approved by the board.

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

142 ~~(y)~~ (z) "Monthly salary" means the W-2 reportable compensation received by a member
143 during the month.

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

150 ~~(aa)~~ (bb) "Normal retirement age" means the first to occur of the following:

151 (1) Attainment of age 50 years and the completion of 20 or more years of regular
152 contributory service, excluding active military duty, disability service and accrued annual and sick
153 leave service;

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

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

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

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

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

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

167 ~~(ee)~~ (ff) "Political subdivision" means a county, city or town in the state; any separate

168 corporation or instrumentality established by one or more counties, cities or towns, as permitted by
169 law; any corporation or instrumentality supported in most part by counties, cities or towns; and any
170 public corporation charged by law with the performance of a governmental function and whose
171 jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any public
172 corporation established under §7-15-4 of this code is considered a political subdivision solely for
173 the purposes of this article.

174 ~~(ff)~~ (gg) "Public Employees Retirement System" means the West Virginia Public
175 Employee's Retirement System created by West Virginia Code.

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

178 ~~(hh)~~ (ii) "Required beginning date" means April 1 of the calendar year following the later of:
179 (1) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72
180 (if born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise
181 separates from covered employment.

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

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

185 ~~(kk)~~ (ll) "Retirement income payments" means the monthly retirement income payments
186 payable under the plan.

187 ~~(ll)~~ (mm) "Spouse" means the person to whom the member is legally married on the
188 annuity starting date.

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

191 ~~(nn)~~ (oo) "Totally disabled" means a member's inability to engage in substantial gainful
192 activity by reason of any medically determined physical or mental impairment that can be expected
193 to result in death or that has lasted or can be expected to last for a continuous period of not less

194 than 12 months.

195 For purposes of this subsection:

196 (1) A member is totally disabled only if his or her physical or mental impairment or
 197 impairments is so severe that he or she is not only unable to perform his or her previous work as an
 198 emergency medical services officer but also cannot, considering his or her age, education and
 199 work experience, engage in any other kind of substantial gainful employment which exists in the
 200 state regardless of whether: (A) The work exists in the immediate area in which the member lives;
 201 (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

202 For purposes of this article, substantial gainful employment is the same definition as used by the
 203 United States Social Security Administration.

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

208 ~~(pp)~~ (pp) "Year of service" means a member shall, except in his or her first and last years of
 209 covered employment, be credited with years of service credit based upon the hours of service
 210 performed as covered employment and credited to the member during the plan year based upon
 211 the following schedule:

Hours of Service	Years of Service Credited
Less than 500	0
500 to 999	1/3
1000 to 1499	2/3

1500 or more	1
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212 During a member's first and last years of covered employment, the member shall be
 213 credited with one twelfth of a year of service for each month during the plan year in which the
 214 member is credited with an hour of service for which contributions were received by the fund. A
 215 member is not entitled to credit for years of service for any time period during which he or she
 216 received disability payments under §16-5V-19 or §16-5V-20 of this code. Except as specifically
 217 excluded, years of service include covered employment prior to the effective date.

218 Years of service which are credited to a member prior to his or her receipt of accumulated
 219 contributions upon termination of employment pursuant to §16-5V-18 of this code or §5-10-30 of
 220 this code, shall be disregarded for all purposes under this plan unless the member repays the
 221 accumulated contributions with interest pursuant to section §16-5V-18 of this code or has prior to
 222 the effective date made the repayment pursuant to §5-10-18 of this code.

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 of
 3 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 the
 9 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, or
29 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.

32 "Employment term" means employment for at least 10 months, a month being defined as
33 20 employment days.

34 "Gross salary" means the fixed annual or periodic cash wages paid by a participating
35 public employer to a member for performing duties for the participating public employer for which
36 the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the

37 work was done. Gross salary also includes retroactive payments made to a member to correct a
38 clerical error, or made pursuant to a court order or final order of an administrative agency charged
39 with enforcing federal or state law pertaining to the member's rights to employment or wages, with
40 all retroactive salary payments to be allocated to and considered paid in the periods in which the
41 work was or would have been done. Gross salary does not include lump sum payments for
42 bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind
43 including, but not limited to, transportation allowances, automobiles or automobile allowances, or
44 lump sum payments for unused, accrued leave of any type or character.

45 "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been
46 amended.

47 "Medical examination" means an in-person or virtual examination of a member's physical
48 or mental health, or both, by a physician or physicians selected or approved by the board; or, at the
49 discretion of the board, a medical record review of the member's physical or mental health, or
50 both, by a physician selected or approved by the board.

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

55 "Members of the administrative staff of the public schools" means deans of instruction,
56 deans of men, deans of women, and financial and administrative secretaries.

57 "Members of the extension staff of the public schools" means every agricultural agent,
58 boys and girls club agent, and every member of the agricultural extension staff whose work is not
59 primarily stenographic, clerical, or secretarial.

60 "New entrant" means a teacher who is not a present teacher.

61 "Nonteaching member" means any person, except a teacher member, who is regularly
62 employed for full-time service by: (A) Any county board of education or educational services

63 cooperative; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D)
64 the West Virginia Council for Community and Technical College Education; (E) a governing board,
65 as defined in §18B-1-2 of this code; or (F) a public charter school established pursuant to §18-5G-
66 1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to
67 §18-5G-7 of this code a determination to participate in the retirement systems under this article
68 and §18-7B-1 *et seq.* of this code, subject to §18-7B-7a: *Provided*, That any person whose
69 employment with the Higher Education Policy Commission, the West Virginia Council for
70 Community and Technical College Education, or a governing board commences on or after July 1,
71 1991, is not considered a nonteaching member.

72 "Plan year" means the 12-month period commencing on July 1 and ending the following
73 June 30 of any designated year.

74 "Present member" means a present teacher or nonteacher who is a member of the
75 retirement system.

76 "Present teacher" means any person who was a teacher within the 35 years beginning July
77 1, 1934, and whose membership in the retirement system is currently active.

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

81 "Public schools" means all publicly supported schools, including colleges and universities
82 in this state.

83 "Refund beneficiary" means the estate of a deceased contributor or a person he or she has
84 nominated as beneficiary of his or her contributions by written designation duly executed and filed
85 with the retirement board.

86 "Regular interest" means interest at four percent compounded annually, or a higher
87 earnable rate if set forth in the formula established in legislative rules, series seven of the
88 Consolidated Public Retirement Board, 162 CSR 7.

89 "Regularly employed for full-time service" means employment in a regular position or job
90 throughout the employment term regardless of the number of hours worked or the method of pay.

91 "Required beginning date" means April 1 of the calendar year following the later of: (A) The
92 calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born
93 after June 30, 1949); or (B) the calendar year in which the member retires or ceases covered
94 employment under the retirement system.

95 "Retirant" means any member who commences an annuity payable by the retirement
96 system.

97 "Retirement board" means the Consolidated Public Retirement Board created pursuant to
98 §5-10D-1 *et seq.* of this code.

99 "Retirement system" means the State Teachers Retirement System established by this
100 article.

101 "Teacher member" means the following persons, if regularly employed for full-time service:

102 (A) Any person employed for instructional service in the public schools of West Virginia; (B)
103 principals; (C) public school librarians; (D) superintendents of schools and assistant county
104 superintendents of schools; (E) any county school attendance director holding a West Virginia
105 teacher's certificate; (F) members of the research, extension, administrative, or library staffs of the
106 public schools; (G) the State Superintendent of Schools, heads and assistant heads of the
107 divisions under his or her supervision, or any other employee under the state superintendent
108 performing services of an educational nature; (H) employees of the State Board of Education who
109 are performing services of an educational nature; (I) any person employed in a nonteaching
110 capacity by the State Board of Education, any county board of education, the State Department of
111 Education, or the State Teachers Retirement Board, if that person was formerly employed as a
112 teacher in the public schools; (J) all classroom teachers, principals, and educational
113 administrators in schools under the supervision of the Division of Corrections and Rehabilitation,
114 the Division of Health, or the Division of Human Services; (K) an employee of the State Board of

115 School Finance, if that person was formerly employed as a teacher in the public schools; (L)
 116 employees of an educational services cooperative who are performing services of an educational
 117 nature; (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this
 118 code who elects to remain a member of the State Teachers Retirement System provided in this
 119 article; and (N) any person employed by a public charter school established pursuant to §18-5G-
 120 1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to
 121 §18-5G-7 of this code a determination to participate in the retirement systems under this article
 122 and §18-7B-1 *et seq.* of this code.

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

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

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

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

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

12 (c) Except for a person who first becomes a member of the retirement system on or after
 13 July 1, 2015, any member who has served at least thirty but less than thirty-five years as a teacher

14 or nonteaching member in West Virginia and is less than fifty-five years of age is eligible for an
15 annuity, but the annuity shall be the reduced actuarial equivalent of the annuity the member would
16 have received if the member were age fifty-five at the time the annuity was applied for.

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

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

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

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

32 (3) ~~A~~ A medical examination by a physician or physicians selected by the retirement
33 board must show that the member is at the time mentally or physically incapacitated for service as
34 a teacher or nonteaching member, that for that service the disability is total and likely to be
35 permanent and that he or she should be retired in consequence of the disability.

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

40 provisions of §18-17A-28: Provided, That any option selected under the provisions of §18-17A-28
 41 shall be in all respects the actuarial equivalent of the straight life annuity benefit the disability
 42 retirant receives or would receive if the options under said section were not available and that no
 43 beneficiary or beneficiaries of the disability retirant may receive a greater benefit, nor receive any
 44 benefit for a greater length of time, than the beneficiary or beneficiaries would have received had
 45 the disability retirant not made any election of the options available under said section. In
 46 determining the actuarial equivalence, the retirement board shall take into account the life
 47 expectancies of the member and the beneficiary: Provided, however, That the life expectancies
 48 may at the discretion of the retirement board be established by an underwriting medical director of
 49 a competent insurance company offering annuities. Payment of the disability annuity provided in
 50 this article shall cease immediately if the retirement board finds that the disability of the retirant no
 51 longer exists, or if the retirant refuses to submit to medical examination as required by this section.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 18. WEST VIRGINIA DIVISION OF NATURAL RESOURCES POLICE OFFICER RETIREMENT STYSTEM.

§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 together
12 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 of
15 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 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 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; (2)
43 the period of time which active duties are not performed but disability benefits are received under
44 §20-18-21 or §20-18-22 of this code; or (3) concurrent employment by a Natural Resources Police
45 Officer in a job or jobs in addition to his or her employment as a Natural Resources Police Officer
46 where the secondary employment requires the Natural Resources Police Officer to be a member
47 of another retirement system which is administered by the Consolidated Public Retirement Board
48 pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the Natural Resources Police Officer
49 contributes to the fund created in §20-18-7 of this code the amount specified as the Natural
50 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 of
78 relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the
79 relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by
80 the participating public employer that has resulted in an underpayment or overpayment of
81 contributions required.

82 (t) "Final average salary" means the average of the highest annual compensation received
83 for covered employment by the member during any five consecutive plan years within the
84 member's last 10 years of service. If the member did not have annual compensation for the five full
85 plan years preceding the member's attainment of normal retirement age and during that period the
86 member received disability benefits under §20-18-21 or §20-18-22 of this code then "final average
87 salary" means the average of the monthly salary determined paid to the member during that period

88 determined as if the disability first commenced after the effective date of this article with monthly
89 compensation equal to that average monthly compensation which the member was receiving in
90 the plan year prior to the initial disability multiplied by 12.

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

93 (v) "Hour of service" means:

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

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

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

106 (w) "Medical examination" means an in-person or virtual examination of a member's
107 physical or mental health, or both, by a physician or physicians selected or approved by the board;
108 or, at the discretion of the board, a medical record review of the member's physical or mental
109 health, or both, by a physician selected or approved by the board.

110 (x) "Member" means a person first hired (x) as a Natural Resources Police Officer, as defined
111 in subsection (y) (z) of this section, on or after January 2, 2021, or a Natural Resources Police
112 Officer first hired prior to the effective date and who elects to become a member pursuant to §20-
113 18-6 of this code. A member shall remain a member until the benefits to which he or she is entitled

114 under this article are paid or forfeited or until cessation of membership pursuant to §20-18-6 of this
115 code.

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

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

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

130 ~~(aa)~~ (bb) "Normal retirement age" means the first to occur of the following: (1) Attainment of
131 age 55 years and the completion of 15 or more years of service; (2) while still in covered
132 employment, attainment of at least age 55 years, and when the sum of current age plus years of
133 service equals or exceeds 70 years; or (3) attainment of at least age 62 years, and completion of
134 10 years of service: *Provided*, That any member shall in qualifying for retirement pursuant to this
135 article have 10 or more years of service, all of which years shall be actual, contributory ones.

136 ~~(bb)~~ (cc) "Partially disabled" means a member's inability to engage in the duties of a
137 Natural Resources Police Officer by reason of any medically determinable physical or mental
138 impairment that can be expected to result in death or that has lasted or can be expected to last for
139 a continuous period of not less than 12 months. A member may be determined partially disabled

140 for the purposes of this article and maintain the ability to engage in other gainful employment
141 which exists within the state but which ability would not enable him or her to earn an amount at
142 least equal to two thirds of the average annual compensation earned by all active members of this
143 plan during the plan year ending as of the most recent June 30, as of which plan data has been
144 assembled and used for the actuarial valuation of the plan.

145 ~~(ee)~~ (dd) "Plan" means the West Virginia Natural Resources Police Officers Retirement
146 System established by this article.

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

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

151 ~~(ff)~~ (gg) "Qualified public safety employee" means any employee of the division who
152 provides police protection, fire-fighting services, or emergency medical services for any area
153 within the jurisdiction of the state or political subdivision, or such other meaning given to the term
154 by section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-
155 1(b)(2)(v) as they may be amended from time to time.

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

158 ~~(hh)~~ (ii) "Required beginning date" means April 1 of the calendar year following the later of:
159 (i) The calendar year in which the member attains age 72; or (ii) the calendar year in which the
160 member retires or otherwise separates from covered employment.

161 ~~(ii)~~ (ij) "Retirant" means any member who commences an annuity payable by the
162 retirement system.

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

165 ~~(kk)~~ (ll) "Retirement income payments" means the annual retirement income payments

166 payable under the plan.

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

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

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

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

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

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

191 Hours of Service Years of Service Credited

192 Less than 500 0

193 500 to 999 1/3

194 1,000 to 1,499 2/3

195 1,500 or more 1

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

§20-18-21. Award and benefits for disability – Duty related.

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

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

10 (b) If the member is totally disabled, the member shall receive 90 percent of his or her

11 average full monthly compensation for the 12-month contributory period preceding the member's
12 disability award, or the shorter period if the member has not worked 12 months.

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

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

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

§20-18-22. Award and benefits for disability – Due to other causes.

1 (a) Any member with ten or more years of contributing service and who after the effective
2 date of this article and during covered employment: (1) Has been or becomes totally or partially
3 disabled from any cause other than those set forth in §20-18-21 of this code and not due to vicious
4 habits, intemperance, or willful misconduct on his or her part; and (2) in the opinion of two
5 physicians based on a medical examination, one of whom shall be named by the board and one by
6 the member, he or she is by reason of the disability unable to perform adequately the duties
7 required of a Natural Resources Police Officer, is entitled to receive and shall be paid from the fund
8 in monthly installments the compensation set forth in either subsection (b) or (c) of this section.

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

12 (c) If the member is partially disabled, he or she shall receive 33 and one-third percent of
13 his or her average full monthly compensation for the 12-month contributory period preceding the

14 disability award, or the shorter period, if the member has not worked 12 months.

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

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

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

NOTE: The purpose of this bill is to define "medical examination" for disability retirement purposes in retirement plans administered by the Consolidated Public Retirement Board (PERS, DSRS, MPFRS, State Police Plan B, EMSRS, TRS, and NRPORS).

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