

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

### **Senate Bill 712**

BY SENATOR OLIVERIO

[Introduced March 6, 2025; referred  
to the Committee on Pensions; and then to the  
Committee on Finance]



1 A BILL to amend and reenact §5-10-2, §5-10-19, §5-10-27b, §5-10-48, §5-10C-4, §5-10D-6a, §7-  
2 14D-2, §7-14D-9b, §7-14D-24a, §8-22A-2, §8-22A-11, §8-22A-34, §15-2-45, §15-2A-2,  
3 §15-2A-6b, §16-5V-2, §16-5V-13, §16-5V-35, §18-7A-3, §18-7A-13a, §18-7A-28b, §18-  
4 7B-2, §18-7B-12a, §20-18-2, §20-18-14, §20-18-30, §51-9-1a, §51-9-10, and §51-9-12b  
5 of the Code of West Virginia, 1931, as amended; and to amend the code by adding a new  
6 section, designated §15-2A-6e, relating to retirement provisions of the West Virginia Public  
7 Employees Retirement System, the Deputy Sheriffs' Retirement System, the Municipal  
8 Police and Firefighters Retirement System, the West Virginia State Police Death,  
9 Disability, and Retirement System, the State Police Retirement System, the Emergency  
10 Medical Services Retirement System, the Teachers Retirement System, the Teachers'  
11 Defined Contribution Retirement System, the Natural Resources Police Officers  
12 Retirement System, and the Judges' Retirement System; defining the terms "bona fide  
13 separation from service upon retirement", "participating public employer", and "retirant";  
14 amending the definition of "required beginning date" to be consistent with federal law;  
15 clarifying notification by employer of retirant who returns to work by a participating public  
16 employer; adding the Emergency Medical Services Retirement System to the pick-up  
17 provisions of members' contributions by participating public employers; amending retired  
18 public safety officers provision to pay for qualified health insurance premiums from eligible  
19 retirement plans; and providing technical clean-up of provisions.

*Be it enacted by the Legislature of West Virginia:*

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE  
GOVERNOR, SECRETARY OF STATE, AND ATTORNEY GENERAL;  
BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,  
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

## **ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

### **§5-10-2. Definitions.**

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

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

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

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

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

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

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

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

(8) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with the employer or any participating employer in the system for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with a participating public employer. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent full-time, permanent part-time, temporary full-time, temporary part-time, per diem or leased employee basis;

~~(8)~~(9) "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)~~(10) "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;

50           ~~(40)~~(11) "Credited service" means the sum of a member's prior service credit, military  
51 service credit, workers' compensation service credit, and contributing service credit standing to  
52 his or her credit as provided in this article;

53           ~~(44)~~(12) "Employee" means any person who serves regularly as an officer or employee,  
54 full-time, on a salary basis, whose tenure is not restricted as to temporary or provisional  
55 appointment, in the service of, and whose compensation is payable, in whole or in part, by any  
56 political subdivision, or an officer or employee whose compensation is calculated on a daily basis  
57 and paid monthly or on completion of assignment, including technicians and other personnel  
58 employed by the West Virginia National Guard whose compensation, in whole or in part, is paid  
59 by the federal government: *Provided*, That an employee of the Legislature whose term of  
60 employment is otherwise classified as temporary and who is employed to perform services  
61 required by the Legislature for its regular sessions or during the interim between regular sessions  
62 and who has been or is employed during regular sessions or during the interim between regular  
63 sessions in seven or more consecutive calendar years, as certified by the clerk of the house in  
64 which the employee served, is an employee, any provision to the contrary in this article  
65 notwithstanding, and is entitled to credited service in accordance with provisions of §5-10-14 of  
66 this code: *Provided, however*, That members of the legislative body of any political subdivision  
67 and commissioners of the West Virginia Claims Commission are employees receiving one year  
68 of service credit for each one-year term served and prorated service credit for any partial term  
69 served, anything contained in this article to the contrary notwithstanding: *Provided further*, That  
70 only a compensated board member of a participating public employer appointed to a board of a  
71 nonlegislative body for the first time on or after July 1, 2014, who normally is required to work 12  
72 months per year and 1,040 hours of service per year is an employee. In any case of doubt as to  
73 who is an employee within the meaning of this article, the board of trustees shall decide the  
74 question;

75           ~~(42)~~(13) "Employer error" means an omission, misrepresentation, or deliberate act in  
76 violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State  
77 Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia  
78 Code of State Regulations by the participating public employer that has resulted in an  
79 underpayment or overpayment of contributions required;

80           ~~(43)~~(14) "Final average salary" means either of the following: *Provided*, That salaries for  
81 determining benefits during any determination period may not exceed the maximum  
82 compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and  
83 Section 401 (a) (17) of the Internal Revenue Code: *Provided, however*, That the provisions of §5-  
84 10-22h of this code are not applicable to the amendments made to this subdivision during the  
85 2011 regular session of the Legislature:

86           (A) The average of the highest annual compensation received by a member, including a  
87 member of the Legislature who participates in the retirement system in the year 1971 or thereafter,  
88 during any period of three consecutive years of credited service contained within the member's  
89 15 years of credited service immediately preceding the date his or her employment with a  
90 participating public employer last terminated: *Provided*, That for persons who were first hired on  
91 or after July 1, 2015, any period of five consecutive years of contributing service contained within  
92 the member's 15 years of credited service immediately preceding the date his or her employment  
93 with a participating public employer last terminated; or

94           (B) If the member has less than five years of credited service, the average of the annual  
95 rate of compensation received by the member during his or her total years of credited service;  
96 and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision,  
97 of a member of the Legislature who participates in the retirement system as a member of the  
98 Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation  
99 (the total of all compensation paid under §4-2A-2, §4-2A-3, §4-2A-4, and §4-2A-5 of this code),  
100 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)~~(15) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, codified at Title 26 of the United States Code;

~~(45)~~(16) "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)~~(17) "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)~~(18) "Member" means any person who has accumulated contributions standing to his or her credit in the members' deposit fund;

~~(18)~~(19) "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;

~~(19)~~(20) "Plan year" means the same as referenced in §5-10-42 of this code;

~~(20)~~(21) "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;

~~(24)~~(22) "Prior service" means service rendered prior to July 1, 1961, to the extent credited a member as provided in this article;

~~(22)~~(23) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board of trustees adopts from time to time;

~~(23)~~(24) "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~~

(A) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(B) The calendar year in which he or she retires or otherwise separates from covered employment.

(C) The applicable age is:

(i) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(ii) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(iii) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of § 401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time;

~~(24)~~(25) "Retirant" means any member who commences an annuity payable by the retirement system;

~~(25)~~(26) "Retirement" means a member's withdrawal from the employ of a participating public employer and the commencement of an annuity by the retirement system;

~~(26)~~(27) "Retirement system" or "system" means the West Virginia Public Employees Retirement System created and established by this article;

~~(27)~~(28) "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;

~~(28)~~(29) "Service" means personal service rendered to a participating public employer by an employee of a participating public employer;

~~(29)~~(30) "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

~~(30)~~(31) "State" means the State of West Virginia.

**§5-10-19. Employers to file information as to employees' service and reemployment of retirants.**

(a) Each participating public employer shall file with the board of trustees, in such form as the board shall from time to time prescribe, a detailed statement of all service rendered to participating public employers by each of its employees and by any retirant who retired under section twenty-two-c of this article and who is working for the employer on a contract basis, as defined in section twenty-two-c of this article, and such other information as the board shall require in the operation of the retirement system; Provided, That for any retirants becoming reemployed by a participating public employer pursuant to the provisions of §5-10-48 of this code, the

retirement board may also require of retirants and participating public employers such reports, forms and verifications as it deems necessary to ensure that a bona fide separation from service upon retirement has occurred.

(b) Prior to any retirant subsequently becoming employed on a permanent full-time, permanent part-time, per diem, leased employee, temporary full-time or temporary part-time basis by a participating public employer, the employer shall notify the board and the retirant, in writing, if and when ~~the retirant's potential temporary~~ any such potential employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of ~~either temporary full-time or temporary part-time~~ such employment, the employer shall notify the board, in writing, of the retirant's subsequent employment.

**§5-10-27b. Federal law minimum required distributions.**

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

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed

under §401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section shall not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under § 401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this retirement system which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

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

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

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

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

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

(A) December 31 of the calendar year in which the member would have attained ~~age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949)~~ the applicable age as set forth in the definition of required beginning date; or

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

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

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

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

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member

would have attained age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949);  
or

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

**§5-10-48. Reemployment after retirement; options for holder of elected public office.**

(a) The Legislature finds that a compelling state interest exists in maintaining an actuarially sound retirement system and that this interest necessitates that certain limitations be placed upon an individual's ability to retire from the system and to then later return to state employment as an employee with a participating public employer while contemporaneously drawing an annuity from the system. The Legislature hereby further finds and declares that the interests of the public are served when persons having retired from public employment are permitted, within certain limitations, to render post-retirement employment in positions of public service, either in elected or appointed capacities. The Legislature further finds and declares that it has the need for qualified employees and that in many cases an employee of the Legislature will retire and be available to return to work for the Legislature as a per diem employee. The Legislature further finds and declares that in many instances these employees have particularly valuable expertise which the Legislature cannot find elsewhere. The Legislature further finds and declares that reemploying these persons on a limited per diem basis after they have retired is not only in the best interests of this state but has no adverse effect whatsoever upon the actuarial soundness of this particular retirement system.

(b) For the purposes of this section: (1) "Regularly employed on a full-time basis" means employment of an individual by a participating public employer, in a position other than as an elected or appointed public official, which normally requires 12 months per year service and at least 1,040 hours of service per year in that position; (2) "temporary full-time employment" or "temporary part-time employment" means employment of an individual on a temporary or provisional basis by a participating public employer, other than as an elected or appointed public official, in a position which does not otherwise render the individual as regularly employed; (3)

"former employee of the Legislature" means any person who has retired from employment with the Legislature and who has at least 10 years' contributing service with the Legislature; and (4) "reemployed by the Legislature" means a former employee of the Legislature who has been reemployed on a per diem basis not to exceed 175 days per calendar year.

(c) Subject to the provisions of subsection (i) of this section, if a retirant becomes regularly employed on a full-time basis by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system. If his or her reemployment is for a period of one year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased annuity due to the additional employment, the annuity to be computed according to §5-10-22 of this code. If his or her reemployment is for a period less than one year, he or she may request in writing that the employee and employer retirement contributions submitted during reemployment be credited to the participating public employer pursuant to §5-10-44 of this code, and his or her previous annuity shall be reinstated effective the first day of the month following termination of reemployment and the board's receipt of written notice thereof. Subject to the provisions of subsection (i) of this section, a retirant may accept legislative per diem, temporary full-time, or temporary part-time employment from a participating employer without suspending his or her retirement annuity so long as he or she does not receive annual compensation in excess of \$25,000.

(d) *Senior judges, justices, and magistrates.* —

(1) Notwithstanding the provisions of subsection (c) of this section, a retired intermediate court judge, circuit court judge, or family court judge, or justice who is recalled and assigned to temporary service as a senior judge or justice by the West Virginia Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of §51-9-10 of this code while continuing to receive his or her annuity, subject to the provisions of subsection (i) of this section.



(2) Notwithstanding the provisions of subsection (c) of this section, a retired magistrate who is recalled and assigned to temporary service as a senior magistrate by the West Virginia Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of §50-1-6a of this code while continuing to receive his or her annuity, subject to the provisions of subsection (i) of this section.

(e) Subject to the provisions of subsection (i) of this section, if a member retires and is then subsequently elected to a public office, or is subsequently appointed to hold an elected public office, or is a former employee of the Legislature who has been reemployed by the Legislature, he or she has the option, notwithstanding subsection (c) of this section, to either:

(1) Continue to receive payment of his or her annuity while holding public office, or during any reemployment of a former employee of the Legislature on a per diem basis, in addition to the salary he or she may be entitled to as an office holder, or as a per diem reemployed former employee of the Legislature; or

(2) Suspend the payment of his or her annuity and become a contributing member of the retirement system as provided in subsection (c) of this section. Notwithstanding the provisions of this subsection, a member who is participating in the system as an elected public official may not retire from his or her elected position and commence to receive an annuity from the system and then be elected or reappointed to the same position unless and until a continuous 12-month period has passed since his or her retirement from the position: *Provided*, That a former employee of the Legislature may not be reemployed by the Legislature on a per diem basis until at least 60 days after the employee has retired: *Provided, however*, That the limitation on compensation provided by subsection (c) of this section does not apply to the reemployed former employee: *Provided further*, That in no event may reemployment by the Legislature of a per diem employee exceed 175 days per calendar year.

(f) Subject to the provisions of subsection (i) of this section, a member who is participating in the system simultaneously as both a regular, full-time employee of a participating public

74 employer, and as an elected or appointed member of the legislative body of the state or any  
75 political subdivision, may, upon meeting the age and service requirements of this article, elect to  
76 retire from his or her regular full-time state employment and may commence to receive an annuity  
77 from the system without terminating his or her position as a member of the legislative body of the  
78 state or political subdivision: *Provided*, That the retired member shall not, during the term of his  
79 or her retirement and continued service as a member of the legislative body of a political  
80 subdivision, be eligible to continue his or her participation as a contributing member of the system  
81 and shall not continue to accrue any additional service credit or benefits in the system related to  
82 the continued service.

83 (g) Notwithstanding the provisions of §5-10-27b of this code, any publicly elected member  
84 of the legislative body of any political subdivision or of the State Legislature, the Clerk of the  
85 House of Delegates, and the Clerk of the Senate may elect to commence receiving in-service  
86 retirement distributions from this system upon attaining the age of 70 and one-half  
87 years: *Provided*, That the member is eligible to retire under the provisions of §5-10-20 or §5-10-  
88 21 of this code: *Provided, however*, That the member elects to stop actively contributing to the  
89 system while receiving the in-service distributions.

90 (h) The Legislature hereby finds and declares that a severe shortage of child protective  
91 services workers and adult protective services workers exists throughout the state, and therefore,  
92 a compelling state interest exists in expanding the use of retired employees to serve this critical  
93 need. Notwithstanding any provision of subsection (c) of this section to the contrary, a person  
94 receiving retirement benefits or who is eligible to receive retirement benefits pursuant to the  
95 provisions of this chapter, may accept employment as a child protective services worker or an  
96 adult protective services worker on a full-time or part-time basis without having payment of his or  
97 her retirement annuity suspended and without reentering the retirement system as a contributing  
98 member. This subsection is only applicable if the retired employee meets the minimum  
99 qualifications of the position, has been retired for at least 60 days, and is hired to fill an existing

child protective services or adult protective services vacancy. The retired employee may continue to work under this subsection only as long as that position remains vacant. The vacant position shall be posted until it is filled by a regularly employed person meeting the minimum qualifications to serve as a child protective service worker or an adult protective service worker. The provisions of this subsection shall expire July 1, 2025.

(i) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by a participating public employer after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the retirement system. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or his or her participating public employer fails to comply with §5-10-19 in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement. The board may take any actions necessary or appropriate in accordance with the provisions of §5-10-44 to recover such annuity payments so that an in-service distribution is not deemed to have been made.

## **ARTICLE 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.**

### **§5-10C-4. Pick-up of members' contributions by participating public employers.**

(a) The State of West Virginia for its public employees and county boards of education for its teachers and nonteachers shall pick-up and pay the contributions which the employees are required by law to make to the retirement system in which they are a member for all compensation earned by its member employees after June 30, 1986. Any political subdivision that is a participating public employer in the West Virginia Public Employees Retirement System shall pick-up and pay the contributions which the employees are required by law to make to the retirement system in which they are members for all compensation earned by its member employees after January 1, 1995. Public employers participating in the Emergency Medical Services Retirement System shall pick-up and pay the contributions which the employees are required by law to make

10 to the system in which they are members for all compensation earned by its member employees  
11 beginning January 1, 2008. Public employers participating in the Municipal Police Officers and  
12 Firefighters Retirement System shall pick-up and pay the contributions which the employees are  
13 required by law to make to the system in which they are members for all compensation earned  
14 by its member employees beginning January 1, 2010. Counties shall pick-up and pay the  
15 contributions which the employees are required by law to make to the Deputy Sheriff Retirement  
16 System in which they are members for all compensation earned by its member employees after  
17 June 30, 1998. Any election made by a political subdivision to pick-up and pay employee  
18 contributions prior to January 1, 1995, remains in effect and is not altered or amended by the  
19 amendments made to this section during the regular legislative session, 1995. Unless a different  
20 commencement date for pick-up is specifically stated in this section, all participating public  
21 employers under this article, with respect to retirement systems subject to this article, shall pick-  
22 up and pay the contributions which their employees are required by law to make to the retirement  
23 system in which they are a member from and after the commencement of the required employee  
24 contributions.

25 (b) When the participating public employer picks up and pays the contributions of its  
26 member employees, the contributions, although designated by statute as employee contributions,  
27 shall be treated as employer contributions in determining the tax treatment thereof under article  
28 twenty-one, chapter eleven of this code and the federal Internal Revenue Code of 1986, as  
29 amended, and the contributions shall not be included in the gross income of the employee in  
30 determining his or her tax treatment under those provisions until they are distributed or made  
31 available to the employee or his or her beneficiary. The participating public employer shall pay  
32 these employee contributions from the same source of funds used in paying compensation to the  
33 employee, by effecting an equal cash reduction in the gross salary of the employee, or by an off-  
34 set against future salary increases, or by a combination of reduction in gross salary and off-set  
35 against future salary increases. In no event shall any employee of a participating public employer

have the right to opt out of pick-up or to elect to receive the picked-up and contributed amounts directly instead of having them paid by the participating public employer into the retirement system pursuant to this article.

(c) When employee contributions are picked up and paid by the participating public employer, they shall be treated by the board of trustees in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions are picked up by the participating public employer.

(d) The amount of employee contributions picked up by the participating public employer shall be paid to the retirement system in the manner and form and in the frequency required by the board of trustees and shall be accompanied by supporting data that the board of trustees may prescribe. When paid to the retirement system, each of these amounts shall be credited to the deposit fund account of the member for whom the contribution was picked up and paid by the participating public employer.

#### **ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.**

##### **§5-10D-6a. Voluntary election by eligible retired public safety officers to have amounts from eligible retirement plan distributed to pay for qualified health insurance premiums.**

(a) ~~Effective on or after January 1, 2007, any~~ Any eligible retired public safety officer who is a participant or member under any eligible retirement plan administered by the board may voluntarily elect to have amounts from an eligible retirement plan distributed ~~in order to pay for qualified health insurance premiums to the eligible retired public safety officer in order to pay for his or her qualified health insurance premiums directly to his or her insurance provider.~~ Alternatively, any eligible retired public safety officer who is a participant or member under any eligible retirement plan administered by the board may voluntarily elect to have amounts from an eligible retirement plan deducted and paid by the board directly to the West Virginia Public Employees Insurance Agency in order to pay for qualified health insurance premiums owed by

10 the eligible retired public safety officer. Such election shall be made in writing, in a form and  
11 manner authorized by the board, and shall be consistent with the provisions of §402(l)(6) of the  
12 Internal Revenue Code as it may be amended from time to time. Said election shall be effective  
13 for all tax years of the eligible retired public safety officer after the election is made, unless and  
14 until otherwise terminated by the eligible retired public safety officer in writing and in a form and  
15 manner authorized by the board: *Provided*, That any election currently on file with the board and  
16 in effect shall be deemed effective for all tax years after the election was made until terminated  
17 by the eligible retired public safety officer in writing and in a form and manner authorized by the  
18 board.

19 (b) The definitions of the following terms contained in §402(l)(4) of the Internal Revenue  
20 Code, as it may be amended from time to time, shall apply for purposes of this section:

- 21 (1)"Eligible retirement plan";  
22 (2)"Eligible retired public safety officer";  
23 (3)"Public safety officer"; and  
24 (4)"Qualified health insurance premiums".

25 (c) The amount which a participant or member may elect to have distributed pursuant to  
26 subsection (a) of this section shall not exceed \$3,000 per taxable year of the participant or  
27 member (or such other limitation amount as is specified in §402(l)(2) of the Internal Revenue  
28 Code, as it may be amended or as the limitation may be adjusted from time to time) and any  
29 amounts so elected to be distributed shall be paid by the board directly to the provider in payment  
30 of the qualified health insurance premiums. "Qualified health insurance premiums" includes  
31 premiums for certain accident or health insurance plans and certain long-term care insurance  
32 contracts.

33 (d) For purposes of this section, all eligible retirement plans administered by the board  
34 shall be treated as a single plan.

## CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

### ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

#### §7-14D-2. Definitions.

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

3 (a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the  
4 member's final average salary multiplied by the member's years of credited service: *Provided*,  
5 That members who are retired on or retire after July 1, 2018, shall have an accrued benefit of two  
6 and one-half percent of the member's final average salary multiplied by the member's years of  
7 credited service. A member's accrued benefit may not exceed the limits of §415 of the Internal  
8 Revenue Code and is subject to the provisions of §7-14D-9a of this code.

9 (b) "Accumulated contributions" means the sum of all amounts deducted from the  
10 compensation of a member, or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code,  
11 either pursuant to §7-14D-7 of this code or §5-10-29 of this code as a result of covered  
12 employment together with regular interest on the deducted amounts.

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

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

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

equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(f) "Annual compensation" means the wages paid to the member during covered employment within the meaning of §3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under §414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash, or noncash fringe benefits or both, deferred compensation, and welfare benefits. Annual compensation 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 §401(a)(17) of the Internal Revenue Code.

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

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

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

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

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

(l) "Bona fide separation from service upon retirement" means that a member has completely terminated any employment relationship with the employer or any participating employer in the system for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with a participating



48 employer. For purposes of this definition, an employment relationship includes employment in  
49 any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary or  
50 leased employee basis.

51 ~~(h)~~(m) "County commission" has the meaning ascribed to it in §7-1-1 of this code.

52 ~~(m)~~(n) "Covered employment" means either: (1) Employment as a deputy sheriff and the  
53 active performance of the duties required of a deputy sheriff; (2) the period of time which active  
54 duties are not performed but disability benefits are received under §7-14D-14 or §7-14D-15 of  
55 this code; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or  
56 her employment as a deputy sheriff where the secondary employment requires the deputy sheriff  
57 to be a member of another retirement system which is administered by the Consolidated Public  
58 Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the deputy sheriff  
59 contributes to the fund created in §7-14D-6 of this code the amount specified as the deputy  
60 sheriff's contribution in §7-14D-7 of this code.

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

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

65 ~~(p)~~(q) "Dependent child" means either:

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

67 (A) A natural child of the member;

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

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

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

73 (2) Any unmarried child under age 23:

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

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

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

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

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

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

~~(t)~~(u) "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 Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

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

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

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

~~(x)~~(y) "Hour of service" means:

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

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

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

~~(y)~~(z) "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.

~~(z)~~(aa) "Member" means a person first hired as a deputy sheriff after the effective date of this article, as defined in subdivision (u) of this section, or a deputy sheriff first hired prior to the effective date and who elects to become a member pursuant to §7-14D-5 or §7-14D-17 of this

code. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited or until cessation of membership pursuant to §7-14D-5 of this code.

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

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

~~(cc)~~(dd) "Normal retirement age" means the first to occur of the following: (1) Attainment of age 50 years and the completion of 20 or more years of service; (2) while still in covered employment, attainment of at least age 50 years, and when the sum of current age plus years of service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years, and completion of five years of service; or (4) attainment of age 62 years and completion of five or more years of service.

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

(ff) "Participating public employer" means any county commission of any county in this state employing any deputy sheriff who is a member of the plan.

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

~~(ff)~~(hh) "Plan" means the West Virginia Deputy Sheriff Death, Disability, and Retirement Plan established by this article.

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

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

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

(ll) "Retirant" or "retiree" means any member who commences an annuity payable by the plan.

~~(jj)~~(mm) "Required beginning date" means April 1 of the calendar year following the later of: ~~(i) 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 (ii) the calendar year in which he or she retires or otherwise separates from covered employment~~

(1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

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

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

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

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

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

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

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

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

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

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

**§7-14D-9b. Federal law minimum required distributions.**

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

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



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

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

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

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

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

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

(A) December 31 of the calendar year in which the member would have attained ~~age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949)~~ the applicable age as set forth in the definition of required beginning date; or

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

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary

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

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

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

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

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

**§7-14D-24a. Return to covered employment by retired member.**

1 (a) ~~The~~ Subject to the provisions of subsection (f) of this section, the annuity of any  
2 member who retires under the provisions of this article and who resumes service in covered  
3 employment shall be suspended while the member continues in covered employment. ~~The~~ If there  
4 has been a bona fide separation from service upon retirement, the monthly annuity payment for  
5 the month in which the service resumes shall be prorated to the date of commencement of service,  
6 and the member shall again become a contributing member during resumption of service. At the

7 conclusion of resumed service in covered employment the member shall have his or her annuity  
8 recalculated to take into account the entirety of service in covered employment.

9 (b) Notwithstanding the provisions of subsection (a) of this section, the annuity of a  
10 member who retires under the provisions of this article shall not be suspended if the member  
11 resumes covered employment and the following conditions are met:

12 (1) The member has been retired for at least 180 days;

13 (2) The retired member did not retire as a result of a disability pursuant to the provisions  
14 of §7-14D-14 of this code;

15 (3) The retired member is a certified, or certifiable, law-enforcement officer as provided in  
16 §30-29-5 of this code;

17 (4) The sheriff of the county seeking to re-employ the retired member has fewer than five  
18 deputies in his or her employ and has been unable to recruit additional qualified deputy sheriffs  
19 despite the exercise of due diligence;

20 (5) The re-employment of the retired member is for a period not to exceed five years or  
21 until such time as the sheriff may recruit additional deputy sheriffs to provide for five full-time  
22 deputy sheriffs not hired pursuant to this subsection, whichever is sooner; and the sheriff is  
23 required to post the vacancy until it is filled by a non-retirant;

24 (6) The retired member may not again become a contributing member of the Deputy  
25 Sheriff Retirement System while performing services under the provisions of this subsection; and

26 (7) The employer of any deputy sheriff rehired pursuant to this subsection shall remit an  
27 employer contribution pursuant to §7-14D-7 of this code on the deputy sheriff's monthly salary.

28 (c) Any retired member who is seeking re-employment pursuant to the provisions of this  
29 section shall not be subject to the maximum age restriction set forth in §7-14-8 of this code.

30 (d) Unless acted upon by the Legislature, the provisions of subsections (b) and (c) of this  
31 section will sunset on July 1, 2026. On or before October 1, 2025, any employer of a member of

the Deputy Sheriff Retirement System rehired pursuant to subsection (b) of this section must make a report to the Joint Standing Committee on Pensions and Retirement.

(e) Any member who retired under the early retirement provisions of §7-14D-11(b) of this code, and is subsequently reemployed in covered employment pursuant to subsection (a) of this section, and who again retires shall have his or her retirement annuity recalculated as if he or she were retiring at an age calculated by adding his or her original early retirement age to the number of years and months during which he or she was reemployed and contributing to the plan. In the event the artificially determined age, as determined in accordance with the preceding sentence, exceeds 60, the board shall not make any reduction for early retirement.

(f) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by a participating public employer after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the plan. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or the participating public employer fails to comply with subsection (g) of this section in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement. The board may take any actions necessary or appropriate in accordance with the provisions of § 7-14D-7a to recover such annuity payments so that an in-service distribution is not deemed to have been made.

(g) Prior to any retirant subsequently becoming reemployed by a participating public employer, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis, the participating public employer shall notify the board and the retirant, in writing, if and when any such potential employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of such employment, the participating public employer shall notify the board, in writing, of the retirant's subsequent employment. The retirement board may also require of retirants and the participating public employer such reports, forms and

58 verifications as it deems necessary to ensure that a bona fide separation from service upon  
59 retirement has occurred.

## **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 §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

provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of §415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of §3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of employment or services performed during the plan year plus amounts excluded under §414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits, or both, deferred compensation and welfare benefits. Annual compensation 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 §401(a) (17) of the Internal Revenue Code.

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

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

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

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

(j) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with any participating public employer in the plan for a period of at least 60 consecutive days from the effective date of retirement and without

a prearranged agreement to return to employment with a participating public employer. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis.

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

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

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

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

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

~~(e)~~(p) "Effective date" means January 1, 2010.

~~(p)~~(q) "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.

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

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

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

~~(t)~~(u) "Hour of service" means: (1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and (2) each hour for which a member is paid or entitled to payment for covered employment during a plan



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

~~(u)~~(v) "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.

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

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

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

~~(y)~~(z) (1) "Municipal police officer" means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal policemen's pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal policemen's pension and relief fund as provided in §8-

22-16 of this code: *Provided*, That municipal police officer also means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid police department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

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

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

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

~~(bb)~~(cc) "Normal retirement age" means the first to occur of the following: (1) Attainment of age 50 years and the completion of 20 or more years of regular contributory service; (2) while

still in covered employment, attainment of at least age 50 years and when the sum of current age plus regular contributory service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years and completion of 10 years of regular contributory service; or (4) attainment of age 62 years and completion of five or more years of regular contributory service.

(dd) "Participating public employer" means a municipality or municipal subdivision participating in this plan.

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

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

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

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

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

~~(hh)~~(jj) "Required beginning date" means April 1 of the calendar year following the later of:  
~~(1) 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 (2) the calendar year in which he or she retires or otherwise separates from covered employment~~ (1) the calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

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

(ii)(ll) "Retirement income payments" means the monthly retirement income payments payable.

(jj)(mm) "Spouse" means the person to whom the member is legally married on the annuity starting date.

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

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

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

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

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

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

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

**§8-22A-11. Federal law minimum required distributions.**

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this plan. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the plan to the

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

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

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the plan has been distributed, then the remaining

portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

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

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

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

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

(A) December 31 of the calendar year in which the member would have attained ~~age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949)~~ the applicable age as set forth in the definition of required beginning date; or

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

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the

retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however,* That the election is timely made in a form acceptable to the board on or before the following:

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

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

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

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

**§8-22A-34. Return to covered employment by retirant.**

(a) ~~The~~ Subject to the provisions of subsection (b) of this section, the annuity of any member who retires under the provisions of this article and who resumes service in covered employment shall be suspended while the member continues in covered employment. ~~The~~ If there has been a bona fide separation from service upon retirement, the monthly annuity payment for the month in which the service resumes shall be pro-rated to the date of commencement of service, and the member shall again become a contributing member during resumption of service. At the conclusion of resumed service in covered employment, the member shall have his or her annuity recalculated to take into account the entirety of service in covered employment.

(b) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by a participating public employer after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the



12 plan. If a retirant fails to have a bona fide separation from service upon retirement or if such  
13 retirant or the participating public employer fails to comply with subsection (c) of this section in a  
14 manner satisfactory to the board, then the member's retirement shall be voided and the member  
15 shall repay to the system the gross amount of all annuity payments received related to such  
16 voided retirement. The board may take any actions necessary or appropriate in accordance with  
17 the provisions of §8-22A-8a of this code to recover such annuity payments so that an in-service  
18 distribution is not deemed to have been made.

19 (c) Prior to any retirant subsequently becoming reemployed by a participating public  
20 employer, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased  
21 employee basis, the participating public employer shall notify the board and the retirant, in writing,  
22 if and when any such potential employment will negatively impact the retirant's retired status or  
23 benefits. Upon the retirant's acceptance of such employment, the participating public employer  
24 shall notify the board, in writing, of the retirant's subsequent employment. The retirement board  
25 may also require of retirants and the participating public employer such reports, forms and  
26 verifications as it deems necessary to ensure that a bona fide separation from service upon  
27 retirement has occurred.

## **CHAPTER 15. PUBLIC SAFETY.**

### **ARTICLE 2. WEST VIRGINIA STATE POLICE.**

#### **§15-2-45. Federal law minimum required distributions.**

1 The requirements of this section apply to any distribution of a member's or beneficiary's  
2 interest and take precedence over any inconsistent provisions of this code. This section applies  
3 to plan years beginning after December 31, 1986. Notwithstanding anything in the retirement  
4 system to the contrary, the payment of benefits under this article shall be determined and made  
5 in accordance with §401(a)(9) of the Internal Revenue Code and the federal regulations  
6 promulgated thereunder as applicable to governmental plans, including without limitation the

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

(a) The payment of benefits under the fund to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary, or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system. For purposes of this section, the term "required beginning date" means April 1 of the calendar year following the later of: ~~(i) 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~~ ~~(ii) the calendar year in which the member retires or otherwise ceases providing covered service under this fund~~ (1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

32           (C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that  
33           the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the  
34           Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended  
35           from time to time. Benefit payments under this section shall not be delayed pending, or contingent  
36           upon, receipt of an application for retirement from the member.

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

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

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

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

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

54           (A) December 31 of the calendar year in which the member would have attained ~~age 70.5~~  
55           ~~(if born before July 1, 1949) or age 72 (if born after June 30, 1949)~~ the applicable age as set forth  
56           in the definition of required beginning date; or

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

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

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

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

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

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

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

### **§15-2A-2. Definitions.**

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

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

(2) "Active military duty" means full-time active duty with the armed forces of the United States, namely, the United States Air Force, Army, Coast Guard, Marines or Navy; and service with the National Guard or reserve military forces of any of the armed forces when the employee has been called to active full-time duty.

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

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

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

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

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

(8) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with the agency for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with the agency. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis.

~~(8)~~(9) "Dependent child" means any unmarried child or children born to or adopted by a member or retirant of the fund who:

(A) Is under the age of 18;

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

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

~~(9)~~(10) "Dependent parent" means the member's or retirant's parent or step-parent claimed as a dependent by the member or retirant for federal income tax purposes at the time of the member's or retirant's death.

~~(40)~~(11) "Employee" means any person regularly employed in the service of the agency as a law-enforcement officer after March 12, 1994, and who is eligible to participate in the fund.

~~(44)~~(12) "Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, the West Virginia Code of State Regulations, or the relevant provisions of both the West Virginia Code and the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

~~(42)~~(13) "Final average salary" means the average of the highest annual compensation received for employment with the agency, including compensation paid for overtime service, received by the employee during any five calendar years within the employee's last 10 years of service: *Provided*, That annual compensation 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 § 401(a)(17) of the Internal Revenue Code.

~~(43)~~(14) "Fund", "plan", "system" or "retirement system" means the West Virginia State Police Retirement Fund created and established by this article.

~~(44)~~(15) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

~~(45)~~(16) "Law-enforcement officer" means an individual employed or otherwise engaged in either a public or private position which involves the rendition of services relating to enforcement of federal, state or local laws for the protection of public or private safety, including, but not limited to, positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any other law-enforcement position which requires certification, but excluding positions held by elected sheriffs or appointed chiefs of police whose duties are purely administrative in nature.

~~(46)~~(17) "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.

~~(47)~~(18) "Member" means any person who has contributions standing to his or her credit in the fund and who has not yet entered into retirement status.

~~(48)~~(19) "Month of service" means each month for which an employee is paid or entitled to payment for at least one hour of service for which contributions were remitted to the fund. These months shall be credited to the member for the calendar year in which the duties are performed.

~~(49)~~(20) "Partially disabled" means an employee's inability, on a probable permanent basis, to perform the essential duties of a law-enforcement officer by reason of any medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months, but which impairment does not preclude the employee from engaging in other types of nonlaw-enforcement employment.

~~(20)~~(21) "Physical or mental impairment" means an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques.

~~(24)~~(22) "Plan year" means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

~~(22)~~(23) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by § 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

~~(23)~~(24) "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 he or she retires or otherwise separates from service with the agency~~ (1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

~~(24)~~(25) "Retirant" or "retiree" means any member who commences an annuity payable by the retirement system.

~~(25)~~(26) "Salary" means the compensation of an employee, excluding any overtime payments.



~~(26)~~(27) "Surviving spouse" means the person to whom the member or retirant was legally married at the time of the member's or retirant's death and who survived the member or retirant.

~~(27)~~(28) "Totally disabled" means an employee's probable permanent inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subdivision, an employee is totally disabled only if his or her physical or mental impairments are so severe that he or she is not only unable to perform his or her previous work as an employee of the agency, but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the employee lives; (B) a specific job vacancy exists; or (C) the employee would be hired if he or she applied for work.

~~(28)~~(29) "Years of service" means the months of service acquired by a member while in active employment with the agency divided by 12. Years of service shall be calculated in years and fraction of a year from the date of active employment of the member with the agency through the date of termination of employment or retirement from the agency. If a member returns to active employment with the agency following a previous termination of employment with the agency and the member has not received a refund of contributions plus interest for the previous employment under §15-2A-8 of this code, service shall be calculated separately for each period of continuous employment and years of service shall be the total service for all periods of employment. Years of service shall exclude any periods of employment with the agency for which a refund of contributions plus interest has been paid to the member unless the employee repays the previous withdrawal, as provided in §15-2A-8 of this code, to reinstate the years of service.

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

The requirements of this section apply to any distribution of a member's interest and take precedence over any inconsistent provisions of this retirement system. This section applies to

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

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

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

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

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

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

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

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

(A) December 31 of the calendar year in which the member would have attained ~~age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949)~~ the applicable age as set forth in the definition of required beginning date; or

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

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

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

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

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

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

**§15-2A-6e. State police reemployment.**

(a) Notwithstanding any provision of this article to the contrary, a retirant who becomes reemployed by the agency after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the retirement system. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or the agency fails to comply with subsection (b) of this section in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement; provided further that the board may take any actions necessary or appropriate in accordance with the provisions of §15-2A-23 of this code to recover such annuity payments so that an in-service distribution is not deemed to have been made.

(b) Prior to any retirant subsequently becoming employed by the agency, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis, the agency shall notify the board and the retirant, in writing, if and when any such potential employment will negatively impact the retirant's retired status or benefits. Upon the retirant's

15 acceptance of such employment, the agency shall notify the board, in writing, of the retirant's  
16 subsequent employment. The retirement board may also require of retirants and the agency such  
17 reports, forms and verifications as it deems necessary to ensure that a bona fide separation from  
18 service has occurred.

## 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-tenths percent per year  
4 of the member's final average salary for the first 20 years of credited service. Additionally, two  
5 percent per year for 21 through 25 years and one and one-half percent per year for each year  
6 over 25 years will be credited with a maximum benefit of 67 percent. A member's accrued benefit  
7 may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the  
8 provisions of §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  
12 one-half percent once the plan funding reaches the 70 percent support objective as of any later  
13 actuarial valuation date.

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

(3) For 911 personnel with assets transferred pursuant to §16-5V-6d of this code who did not elect to pay back higher past contributions with interest, "accrued benefit" means, on behalf of the member, two percent per year of the member's final average salary for all credited service that was credited as a result of transferred assets. Additionally, two and three-quarter percent for the first 20 years of new credited service earned from date of membership in this plan will be credited. Additionally, two percent per year for 21 through 25 years of new credited service earned from date of membership in this plan and one and one-half percent per year for each year over 25 years earned from date of membership in this plan will be credited. A maximum benefit of 90 percent of a member's final average salary may be paid. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §16-5V-12 of this code.

(4) For 911 personnel with assets transferred pursuant to §16-5V-6d of this code who did elect to pay back higher past contributions, with interest, for eligible 911 service credit, "accrued benefit" means on behalf of the member two percent per year of the member's final average salary for all non-911 credited service that was credited as a result of transferred assets. Additionally, two and three-quarter percent for the first 20 years of 911 credited service will be credited. Additionally, two percent per year for 21 through 25 years of 911 credited service and one and one-half percent per year for each year over 25 years of 911 credited service will be credited. A maximum benefit of 90 percent of a member's final average salary may be paid. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §16-5V-12 of this code.

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

(c) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the

member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

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

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of § 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under § 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits. Annual compensation 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 § 401(a)(17) of the Internal Revenue Code.

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

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

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

(i) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with any participating public employer in the system for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with a participating employer. For

purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary, or leased employee basis.

~~(j)~~(j) "Contributing service" or "contributory service" means service rendered by a member while employed by a participating public employer for which the member made contributions to the plan. Contributory service that was transferred in full from the Public Employees Retirement System will qualify as contributory service in this plan.

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

~~(k)~~(l) "County firefighter" means an individual employed in full-time employment as a firefighter with a county commission.

~~(j)~~(m) "Covered employment" means: (1) Employment as a full-time emergency medical technician, emergency medical technician/paramedic, or emergency medical services/registered nurse, and the active performance of the duties required of emergency medical services officers; or (2) employment as a full-time employee of a county 911 public safety answering point; or (3) employment as a full-time county firefighter; or (4) the period of time during which active duties are not performed but disability benefits are received under this article; or (5) concurrent employment by an emergency medical services officer, 911 personnel, or county firefighter in a job or jobs in addition to his or her employment as an emergency medical services officer, 911 personnel, or county firefighter where the secondary employment requires the emergency medical services officer, 911 personnel, or county firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided*, That the emergency medical services officer, 911 personnel, or county firefighter contributes to the fund created in this article the amount specified as the member's contribution in §16-5V-8 of this code.



~~(m)~~(n) "Credited service" means the sum of a member's years of service, active military duty, disability service, service transferred from the Public Employees Retirement System and accrued annual and sick leave service.

~~(n)~~(o) "Dependent child" means either:

(1) An unmarried person under age eighteen who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

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

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

(2) Any unmarried child under age 23:

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

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

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

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

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

~~(q)~~(r) "Early retirement age" means age 45 or over and completion of 20 years of contributory service.

~~(r)~~(s) "Effective date" means January 1, 2008.

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

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

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

~~(v)~~(w) "Full-time employment" means permanent employment of an employee by a participating public employer in a position which normally requires 12 months per year service and requires at least 1,040 hours per year service in that position.

~~(w)~~(x) "Fund" means the West Virginia Emergency Medical Services Retirement Fund created by this article.

~~(x)~~(y) "Hour of service" means:

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

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

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

~~(y)~~ (z) "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.

~~(z)~~(aa) "Member" means either: (1) A person first hired as an emergency medical services officer by an employer which is a participating public employer of the Emergency Medical Services Retirement System after the effective date of this article, as defined in subsection (r) of this section; or (2) an emergency medical services officer of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to the effective date and who elects to become a member pursuant to this article; or (3) a person first hired by a county 911 public safety answering center after the participating public employer elects to participate in the Emergency Medical Services Retirement System; or (4) a county firefighter hired on or after June 10, 2022; or (5) a county firefighter of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to June 10, 2022, and who elects to become a member pursuant to §16-5V-6a of this code; or (6) a person first hired by a county 911 public safety answering center prior to July 1, 2022, and who elects to become a member pursuant to §16-5V-6c of this code. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

~~(aa)~~(bb) "Monthly salary" means the W-2 reportable compensation received by a member during the month.

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

~~(cc)~~(dd) "Normal retirement age" means the first to occur of the following:

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

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

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

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

~~(dd)~~(ee) "Participating public employer" means: (1) Any county commission, political subdivision, or county 911 public safety answering point in the state which has elected to cover its emergency medical services officers or 911 personnel, as defined in this article, under the West Virginia Emergency Medical Services Retirement System; or (2) any county commission who employs county firefighters.

~~(ee)~~(ff) "Plan" means the West Virginia Emergency Medical Services Retirement System established by this article.

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

~~(gg)~~(hh) "Political subdivision" means a county, city, or town in the state; 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 public corporation established under §7-15-4 of this code is considered a political subdivision solely for the purposes of this article.

~~(hh)~~(ii) "Public Employees Retirement System" means the West Virginia Public Employees Retirement System created by West Virginia Code.

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

~~(jj)(kk)~~ "Required beginning date" means April 1 of the calendar year following the later of:  
(1) ~~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 (2) the calendar year in which he or she retires or otherwise separates from covered employment~~ (1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

~~(kk)(ll)~~ "Retirant" means any member who commences an annuity payable by the plan.

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

~~(mm)(nn)~~ "Retirement income payments" means the monthly retirement income payments payable under the plan.

~~(nn)(oo)~~ "Spouse" means the person to whom the member is legally married on the annuity starting date.

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

~~(pp)(qq)~~ "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be

expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

For purposes of this subsection:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as an emergency medical services officer, 911 personnel, or county firefighter but also cannot, considering his or her age, education, and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration.

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

~~(qq)~~(rr) "Year of service" means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon 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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268 During a member's first and last years of covered employment, the member shall be  
 269 credited with one twelfth of a year of service for each month during the plan year in which the  
 270 member is credited with an hour of service for which contributions were received by the fund. A  
 271 member is not entitled to credit for years of service for any time period during which he or she  
 272 received disability payments under §16-5V-19 or §16-5V-20 of this code. Except as specifically  
 273 excluded, years of service include covered employment prior to the effective date.

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

279 ~~(rr)~~(ss) "911 personnel" means an individual employed in full-time employment with a  
 280 county 911 public safety answering point.

**§16-5V-13. Federal law minimum required distributions.**

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



the context or definition in this article. The following provisions apply to payments of benefits required under this article:

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

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

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

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

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

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

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

(A) December 31 of the calendar year in which the member would have attained ~~age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949)~~ the applicable age as set forth in the definition of required beginning date; or

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

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

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

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

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

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

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

**§16-5V-35. Return to covered employment by retirant.**

(a) ~~The~~ Subject to the provisions of subsection (b) of this section, the annuity of any member who retires under the provisions of this article and who resumes service in covered employment shall be suspended while the member continues in covered employment. ~~The~~ If there has been a bona fide separation from service upon retirement, the monthly annuity payment for the month in which the service resumes shall be pro-rated to the date of commencement of service, and the member shall again become a contributing member during resumption of service. At the conclusion of resumed service in covered employment the member shall have his or her annuity recalculated to take into account the entirety of service in covered employment.

(b) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by a participating public employer after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the plan. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or the participating public employer fails to comply with subsection (c) of this section in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement. The board may take any actions necessary or appropriate in accordance with the provisions of §16-5V-8a to recover such annuity payments so that an in-service distribution is not deemed to have been made.

19        (c) Prior to any retirant subsequently becoming reemployed by a participating public  
20 employer, including on a permanent, full-time, part-time, substitute, per diem, temporary or leased  
21 employee basis, the participating public employer shall notify the board and the retirant, in writing,  
22 if and when any such potential employment will negatively impact the retirant's retired status or  
23 benefits. Upon the retirant's acceptance of such employment, the participating public employer  
24 shall notify the board, in writing, of the retirant's subsequent employment. The retirement board  
25 may also require of retirants and the participating public employer such reports, forms and  
26 verifications as it deems necessary to ensure that a bona fide separation from service upon  
27 retirement has occurred.

28        ~~(b)~~(d) Any retirant who retired under the early retirement provisions of §16-5V-16 of this  
29 code, and is subsequently reemployed in covered employment pursuant to this section, and who  
30 again retires shall have his or her retirement annuity recalculated as if he or she were retiring at  
31 an age calculated by adding his or her original early retirement age to the number of years and  
32 months during which he or she was reemployed and contributing to the plan. In the event the  
33 artificially determined age, as determined in accordance with the preceding sentence, exceeds  
34 60, the board shall not make any reduction for early retirement.

## **CHAPTER 18. EDUCATION.**

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

#### **§18-7A-3. Definitions.**

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

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

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

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

"Annuities" means the annual retirement payments for life granted beneficiaries in accordance with this article.

"Average final salary" means the average of the five highest fiscal year salaries earned as a member within the last 15 fiscal years of total service credit, including military service as provided in this article, or if total service is less than 15 years, the average annual salary for the period on which contributions were made: *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 § 401(a)(17) of the Internal Revenue Code.

"Beneficiary" means the recipient of annuity payments made under the retirement system.

"Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with the employer or any participating employer in the system for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with a participating employer. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis.

"Contributor" means a member of the retirement system who has an account in the Teachers Accumulation Fund.

"Deposit" means a voluntary payment to his or her account by a member.

"Electing charter school" means a public charter school established pursuant to §18-5G-1 *et seq.* of this code which has elected to participate in this retirement system as permitted in the definitions of "Nonteaching member" and "Teacher member" in this section.

"Employer" means the agency of and within the state which has employed or employs a member, a county board of education which has employed or employs a member, or an electing charter school which has employed or employs a member. "Participating public employer" or "participating employer" means "employer" unless the context clearly requires otherwise.

"Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, or 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.

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

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

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

"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.

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

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

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

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

"Nonteaching member" means any person, except a teacher member, who is regularly employed for full-time service by: (A) Any county board of education or educational services cooperative; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for Community and Technical College Education; (E) a governing board, as defined in §18B-1-2 of this code; or (F) a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the retirement systems under this article and §18-7B-1 *et seq.* of this code, subject to §18-7B-7a of this code: *Provided*, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for

Community and Technical College Education, or a governing board commences on or after July 1, 1991, is not considered a nonteaching member.

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

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

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

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

"Public schools" means all publicly supported schools, including colleges and universities, in this state. Unless the context clearly requires otherwise, "public school" may not include a public charter school which is not an "electing charter school" as defined herein.

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

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

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

"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 the member retires, or ceases~~



~~covered employment under the retirement system~~ (1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

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

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

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

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

(A) Any person employed by a public school for instructional service in the public schools of West Virginia; (B) principals employed by a public school; (C) librarians employed by a public school; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an

educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education, or the State Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and Rehabilitation, the Division of Health, or the Division of Human Services; (K) an employee of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools; (L) employees of an educational services cooperative who are performing services of an educational nature; (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the State Teachers Retirement System provided in this article; and (N) any person employed for instructional service or as a principal or librarian by a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the retirement systems under this article and §18-7B-1 *et seq.* of this code.

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

Age more than 70 years shall be considered to be 70 years.

**§18-7A-13a. Resumption of service by ~~retired teachers~~ retirants.**

(a) For the purpose of this section, reemployment of a ~~former or retired teacher~~ retirant as a teacher or nonteacher may in no way impair the ~~teacher's~~ retirant's eligibility for a prior service pension or any other benefit provided by this article, except as provided in subsection (f) of this section.

(b) ~~Retired teachers~~ Retirants who qualified for an annuity because of age or service may not receive prior service allowance from the retirement board when employed as a teacher or

7 nonteacher and when regularly employed by ~~the State of West Virginia~~ a public school. The  
8 payment of the allowance shall be discontinued on the first day of the month within which the  
9 employment begins and shall be resumed on the first day of the month succeeding the month  
10 within which the employment ceases. The annuity paid the ~~teacher~~ retirant on first retirement  
11 resulting from the ~~Teachers' Accumulation Fund and the Employers' Accumulation~~ Teachers'  
12 Retirement System Fund shall continue throughout the ~~governmental~~ public-school service and  
13 thereafter according to the option selected by the ~~teacher~~ retirant upon first retirement.

14 (c) ~~Retired teachers~~ Retirants who qualified for an annuity because of disability may  
15 receive no further retirement payments if the retirement board finds that the disability of the  
16 ~~teacher~~ retirant no longer exists; payment shall be discontinued on the first day of the month within  
17 which the finding is made. If the ~~retired teacher~~ retirant returns to service as a teacher or  
18 nonteacher, he or she shall contribute to the Teachers' ~~Accumulation~~ Retirement System Fund  
19 as a member of the system. His or her prior service eligibility, if any, shall not be impaired because  
20 of his or her disability retirement. ~~His or her accumulated contributions which were transferred to~~  
21 ~~the benefit fund upon his or her retirement shall be returned to his or her individual account in the~~  
22 ~~Teachers' Accumulation Fund, minus retirement payments received which were not supported by~~  
23 ~~such contributions and interest.~~ Upon subsequent retirement, he or she shall receive credit for all  
24 contributory experience, anything to the contrary in this article notwithstanding.

25 (d) Notwithstanding any provision of this code to the contrary, a person who retires under  
26 the system provided by this article may subsequently become employed on either a full-time  
27 basis, part-time basis, or contract basis by any institution of higher education without any loss of  
28 retirement annuity or retirement benefits if the person's retirement commences between the  
29 effective date of the enactment of this section in 2002 and December 31, 2002: *Provided*, That  
30 the person may not be eligible to participate in any other state retirement system provided by this  
31 code.

(e) The retirement board may require of the ~~retired teachers~~ retirants and their employers such reports, forms and verifications as it deems necessary to effectuate the provisions of this section and to ensure that a bona fide separation from service upon retirement has occurred.

(f) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by a participating employer after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity payable under the system. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or his or her employer fails to comply with subsection (e) of this section in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement; provided further that the board may take any actions necessary or appropriate in accordance with the provisions of §18-7A-14c of this code to recover such annuity payments so that an in-service distribution is not deemed to have been made.

~~(f)~~(g) Prior to any retirant subsequently becoming employed with an employer on a permanent (regularly employed for full-time service or part-time service), substitute, per diem, leased employee or temporary basis, the employer shall notify the retirement board and the retirant, in writing, when the retirant's potential permanent, substitute, per diem, leased employee or temporary employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of either permanent, substitute, per diem, leased employee or temporary employment, the employer shall notify the retirement board, in writing, of the retirant's subsequent employment.

**§18-7A-28b. Federal law minimum required distributions.**

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

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

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

28 (b) If a member dies after distribution to him or her has commenced pursuant to this  
29 section but before his or her entire interest in the retirement system has been distributed, then

the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

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

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

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

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

(A) December 31 of the calendar year in which the member would have attained ~~age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949)~~ the applicable age as set forth in the definition of required beginning date; or

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

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the

retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however,* That the election is timely made in a form acceptable to the board on or before the following:

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

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

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

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

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

### **§18-7B-2. Definitions.**

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

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

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

"Compensation" means the full compensation actually received by members for service whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions: *Provided*, That annual compensation for determining contributions 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 §401(a)(17) of the Internal Revenue Code: *Provided, however*, That solely for purposes of applying the limitations of §415 of the Internal Revenue Code to any annual addition, "compensation" has the meaning given it in §18-7B-13(d) of this code.

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

"Defined contribution system" or "system" means the Teachers' Defined Contribution Retirement System created and established by this article.

"Electing charter school" means a public charter school established pursuant to §18-5G-1 *et seq.* of this code which has elected to participate in this retirement system as permitted in the definition of "Member" or "employee" in this section.

"Employer" means the agency of and within the State of West Virginia which has employed or employs a member, a county board of education which has employed or employs a member, or an electing charter school which has employed or employs a member. "Participating public employer" or "participating employer" means "employer" unless the context clearly requires otherwise.

"Employer contribution" means an amount deposited into the member's individual annuity account on a periodic basis coinciding with the employee's regular pay period by an employer from its own funds.

"Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, 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.

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

"Existing employer" means any employer who employed or employs a member of the system.

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

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

"Member" or "employee" means the following persons, if regularly employed for full-time service: (A) Any person employed by a public school for instructional service in the public schools of West Virginia; (B) principals employed by a public school; (C) librarians employed by a public school; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, an electing charter school, or the State Department of Education, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and the Department of Human Services; (K) any person who is regularly employed for full-time service by any county board of education, electing charter school, educational services cooperative, or the State Board of Education; (L) the administrative staff of

the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the Teachers' Defined Contribution Retirement System established by this article; and (N) any person employed by a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the retirement systems under this article, subject to §18-7B-7a and §18-7A-1 *et seq.* of this code.

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

"Permanent, total disability" means a mental or physical incapacity requiring absence from employment service for at least six months: *Provided*, That the incapacity is shown by an examination by a physician or physicians selected by the board: *Provided, however*, That for employees hired on or after July 1, 2005, "permanent, total disability" means an inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months and the incapacity is so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness.

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

"Public schools" means all publicly supported schools, including normal schools, colleges, and universities, in this state. Unless the context clearly requires otherwise, "public school" shall not include a public charter school which is not an "electing charter school" as defined herein.

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

"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 the member retires or otherwise ceases employment with a participating employer~~ (1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

"Retirement" means a member's withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement.

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

**§18-7B-12a. Federal minimum required distributions.**

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this defined contribution system.

This section applies to plan years beginning after December 31, 1986. Notwithstanding anything

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

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

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the system has been distributed, then the remaining

portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death (subject to the provisions of subsection (g) of this section).

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

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

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

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

(A) December 31 of the calendar year in which the member would have attained ~~age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949)~~ the applicable age as set forth in the definition of required beginning date; or

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

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining

whether any portion of the distribution is an eligible rollover distribution (subject to the provisions of subsection (g) of this section, if applicable): *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

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

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

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

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

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

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

(1) *10-Year Rule*. — If the distributee of a deceased member's account is a designated beneficiary who is not an "Eligible Designated Beneficiary," then the system will distribute the

member's vested account in full no later than December 31 of the 10<sup>th</sup> year following the year of the member's death.

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

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

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

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

#### **§20-18-2. Definitions.**

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

(a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the member's final average salary multiplied by the member's years of credited service: *Provided*, That members who retire after July 1, 2025, shall have an accrued benefit of two and one-half percent of the member's final average salary multiplied by the member's years of credited service. A member's accrued benefit may not exceed the limits of §415 of the Internal Revenue Code and is subject to the provisions of §20-18-13 of this code.

(b) "Accumulated contributions" means the sum of all amounts deducted from the annual compensation of a member or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code, either pursuant to §20-18-8(a) or §5-10-29 of this code as a result of covered employment together with regular interest on the deducted amounts.

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

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

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

(f) "Annual compensation" means the wages paid to the member during covered employment within the meaning of §3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under §414(h)(2) of the Internal Revenue Code and less reimbursements or other expense



allowances, cash or noncash fringe benefits or both, deferred compensation, and welfare benefits. Annual compensation 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 §401(a)(17) of the Internal Revenue Code.

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

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

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

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

(k) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with the Division of Natural Resources for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with the division. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis.

~~(k)~~(l) "Covered employment" means either: (1) Employment as a Natural Resources Police Officer and the active performance of the duties required of a Natural Resources Police Officer; (2) the period of time which active duties are not performed but disability benefits are received under §20-18-21 or §20-18-22 of this code; or (3) concurrent employment by a Natural Resources Police Officer in a job or jobs in addition to his or her employment as a Natural Resources Police Officer where the secondary employment requires the Natural Resources Police Officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That the Natural

Resources Police Officer contributes to the fund created in §20-18-7 of this code the amount specified as the Natural Resource Police Officer's contribution in §20-18-8 of this code.

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

~~(m)~~(n) "Dependent child" means either:

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

(A) A natural child of the member;

(B) A legally adopted child of the member;

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

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

(2) Any unmarried child under age 23:

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

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

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

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

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

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

~~(e)~~(r) "Division of Natural Resources" or "division" means the West Virginia Division of Natural Resources.

~~(+)~~(s) "Effective date" means January 2, 2021.

~~(s)~~(t) "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 Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

~~(t)~~(u) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under §20-18-21 or §20-18-22 of this code then "final average salary" means the average of the monthly salary determined paid to the member during that period determined as if the disability first commenced after the effective date of this article with monthly compensation equal to that average monthly compensation which the member was receiving in the plan year prior to the initial disability multiplied by 12.

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

~~(v)~~(w) "Hour of service" means:

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

(2) Each hour for which a member is paid but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof, and without regard to whether the employment relationship has terminated. Hours under this paragraph shall be calculated and credited pursuant to West

Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under §20-18-21 or §20-18-22 of this code; and

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

~~(w)~~(x) "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.

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

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

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

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

137 ~~(bb)~~(cc) "Normal retirement age" means the first to occur of the following: (1) Attainment  
138 of age 55 years and the completion of 15 or more years of service; (2) while still in covered  
139 employment, attainment of at least age 55 years, and when the sum of current age plus years of  
140 service equals or exceeds 70 years; or (3) attainment of at least age 62 years, and completion of  
141 10 years of service: *Provided*, That any member shall in qualifying for retirement pursuant to this  
142 article have 10 or more years of service, all of which years shall be actual, contributory ones.

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

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

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

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

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

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

(ii)(ii) "Required beginning date" means April 1 of the calendar year following the later of:  
~~(i) The calendar year in which the member attains age 72; or (ii) the calendar year in which the member retires or otherwise separates from covered employment~~ (1) the calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of § 401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

(jj)(kk) "Retirant" means any member who commences an annuity payable by the retirement system.

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

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

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

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

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

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

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

~~(pp)~~(qq) *Year of service.* — A member shall, except in his or her first and last years of covered employment, or within the plan year of the effective date, be credited with year of service

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

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

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

**§20-18-14. Federal law minimum required distributions.**

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this plan. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the plan to the contrary, the payment of benefits under this article shall be determined and made in accordance with §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of §401(a)(9)(G) and the regulations thereunder, and the



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

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

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

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

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

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

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

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

(A) December 31 of the calendar year in which the member would have attained ~~age 72~~ the applicable age as set forth in the definition of required beginning date; or

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

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

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

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

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

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

**§20-18-30. Return to covered employment by retired member.**

~~The~~ (a) Subject to the provisions of subsection (b) of this section, the annuity of any member who retires under the provisions of this article and who resumes service in covered employment shall be suspended while the member continues in covered employment. ~~The~~ If there has been a bona fide separation from service upon retirement, the monthly annuity payment for the month in which the service resumes shall be prorated to the date of commencement of service, and the member shall again become a contributing member during resumption of service. At the conclusion of resumed service in covered employment the member shall have his or her annuity recalculated to take into account the entirety of service in covered employment.

(b) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by the division after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the retirement system. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or the division fails to comply with subsection (c) of this section in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement. The board may take any actions necessary or appropriate in accordance with the provisions of §20-18-9 to recover such annuity payments so that an in-service distribution is not deemed to have been made.

18       (c) Prior to any retirant subsequently becoming employed by the division, whether on a  
19 permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis, the  
20 division shall notify the board and the retirant, in writing, if and when any such potential  
21 employment will negatively impact the retirant's retired status or benefits. Upon the retirant's  
22 acceptance of such employment, the division shall notify the board, in writing, of the retirant's  
23 subsequent employment. The retirement board may also require of retirants and the participating  
24 public employer such reports, forms and verifications as it deems necessary to ensure that a bona  
25 fide separation from service upon retirement has occurred.

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

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

#### **§51-9-1a. Definitions.**

1       (a) Notwithstanding any other provision of this code to the contrary, as used in this article,  
2 the term "judge", "judge of any court of record", or "judge of any court of record of this state"  
3 means, refers to, and includes judges of the several family courts, circuit courts, judges of the  
4 Intermediate Court of Appeals, and justices of the Supreme Court of Appeals.

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

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

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

(e) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with the Supreme Court for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with the Supreme Court. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis.

~~(e)~~(f) "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 Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

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

~~(g)~~(h) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

~~(h)~~(i) "Member" means a judge participating in this system.

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

~~(j)~~ (k) "Required beginning date" means April 1 of the calendar year following the later of:  
~~(1) 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 (2) the calendar year in which the member retires or otherwise separates from covered employment under this retirement system~~ (1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

41 (A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

42 (B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains  
43 age 73 before January 1, 2033; or

44 (C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that  
45 the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the  
46 Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended  
47 from time to time.

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

49 ~~(k)~~(m) "Retirement system" or "system" means the Judges' Retirement System created  
50 and established by this article. Notwithstanding any other provision of law to the contrary, the  
51 provisions of this article are applicable only to family court judges, circuit judges, judges of the  
52 Intermediate Court of Appeals, and justices of the Supreme Court of Appeals in the manner  
53 specified in this article.

**§51-9-10. Services of senior judges and justices.**

1 (a) The Legislature finds that:

2 (1) Section seven, article VIII of the Constitution of West Virginia expressly requires the  
3 Legislature to fix judicial salaries by statute, providing that: "[j]ustices, judges and magistrates  
4 shall receive the salaries fixed by law".

5 (2) Occasionally, circumstances may require the extended assignment of senior judges  
6 and justices, necessitating the Legislature to prescribe such circumstances when the limitations  
7 on compensation of senior judges and justices receiving retirement benefits may be exceeded.

8 (b) The Legislature recognizes and acknowledges the authority of the West Virginia  
9 Supreme Court of Appeals to recall retired judges and justices for temporary assignment and to  
10 create a panel of senior judges and justices to utilize the talent and experience of former  
11 intermediate court, circuit court, family court judges, and supreme court justices of this  
12 state: *Provided*, That extended assignment of retired judges and justices must not be utilized in

such a way as to threaten the qualified status of the Judges' Retirement System under applicable provisions of the Internal Revenue Code, including Treasury Regulation §1.401(a)-1(b)(1) requiring that a qualified plan must be established primarily to provide payment of definitely determinable benefits to its employees after retirement or attainment of normal retirement age.

(c) Senior intermediate court judges, circuit court judges, and justices recalled and assigned to service shall receive per diem compensation set by the Supreme Court of Appeals, but not to exceed \$430 for each day actually served: *Provided*, That the combined total of per diem compensation and retirement benefits paid to a senior judge or justice during a single calendar year may not exceed the annual salary of a sitting circuit judge, except as set forth in subsection (d) of this section.

(d) Notwithstanding subsection (c) of this section, for purposes of maintaining judicial efficacy and continuity in judicial decision making, a senior judge or justice may continue to receive per diem compensation after the combined total of per diem compensation and retirement benefits paid to the senior judge or justice during that calendar year exceeds the annual salary of a sitting circuit judge if the Chief Justice of the Supreme Court of Appeals enters an administrative order certifying there are certain extraordinary circumstances involving the necessary absence of a sitting judicial officer because of a protracted, but temporary, illness or medical condition, or a lengthy suspension which necessitate the extended assignment of the senior judge or justice. Immediately upon entering such an order, the Chief Justice shall submit copies of the order to the State Auditor and the State Treasurer.

(e) In addition to the per diem compensation authorized by this section, senior judges and justices recalled to service may be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

(f) Senior family court judges recalled and assigned to service shall receive per diem compensation set by the Supreme Court of Appeals, but not to exceed \$325 for each day actually served: *Provided*, That the combined total per diem compensation and retirement benefits paid

to a senior family court judge during a single calendar year may not exceed the annual salary of a sitting family court judge, except as set forth in subsection (d) of this section. In addition to the per diem compensation authorized by this section, senior family court judges recalled to service may be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

(g) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by the Supreme Court after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the retirement system. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or the participating public employer fails to comply with subsection (h) of this section in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement. The board may take any actions necessary or appropriate in accordance with the provisions of § 51-9-18 to recover such annuity payments so that an in-service distribution is not deemed to have been made.

(h) Prior to any retirant subsequently becoming reemployed by the Supreme Court, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis, the Supreme Court shall notify the board and the retirant, in writing, if and when any such potential employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of such employment, the participating public employer shall notify the board, in writing, of the retirant's subsequent employment. The retirement board may also require of retirants and the Supreme Court such reports, forms and verifications as it deems necessary to ensure that a bona fide separation from service from retirement has occurred.

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

The requirements of this section apply to any distribution of a member's or beneficiaries' interest and take precedence over any inconsistent provisions of this retirement system. This



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

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

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

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

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

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

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

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

(A) December 31 of the calendar year in which the member would have attained ~~age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949)~~ the applicable age as set forth in the definition of required beginning date; or

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

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

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

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

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

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