

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;

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

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

33 ~~(8)~~(9) "Compensation" means the remuneration paid a member by a participating public
34 employer for personal services rendered by the member to the participating public employer. In
35 the event a member's remuneration is not all paid in money, his or her participating public
36 employer shall fix the value of the portion of the remuneration which is not paid in
37 money: *Provided*, That members hired in a position for the first time on or after July 1, 2014, who
38 receive nonmonetary remuneration shall not have nonmonetary remuneration included in
39 compensation for retirement purposes and nonmonetary remuneration may not be used in
40 calculating a member's final average salary. Any lump sum or other payments paid to members
41 that do not constitute regular salary or wage payments are not considered compensation for the
42 purpose of withholding contributions for the system or for the purpose of calculating a member's
43 final average salary. These payments include, but are not limited to, attendance or performance
44 bonuses, one-time flat fee or lump sum payments, payments paid as a result of excess budget,
45 or employee recognition payments. The board shall have final power to decide whether the
46 payments shall be considered compensation for purposes of this article;

47 ~~(9)~~(10) "Contributing service" means service rendered by a member within this state and
48 for which the member made contributions to a public retirement system account of this state, to
49 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 ~~(12)~~(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 ~~(13)~~(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

101 year from any other participating public employer including the State of West Virginia, without any
102 multiple in excess of one times his or her actual legislative compensation and other compensation,
103 shall be used: *Provided*, That final average salary for any former member of the Legislature or for
104 any member of the Legislature in the year 1971 who, in either event, was a member of the
105 Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on
106 November 30 in any one or more of those three years and who participated in the retirement
107 system as a member of the Legislature in any one or more of those years means: (i) Either,
108 notwithstanding the provisions of this subdivision preceding this proviso, \$1,500 multiplied by
109 eight, plus the highest other compensation the former member or member received in any one of
110 the three years from any other participating public employer including the State of West Virginia;
111 or (ii) final average salary determined in accordance with paragraph (A) or (B) of this subdivision,
112 whichever computation produces the higher final average salary, and in determining the annual
113 compensation under subparagraph (ii) of this paragraph, the legislative compensation of the
114 former member shall be computed on the basis of \$1,500 multiplied by eight, and the legislative
115 compensation of the member shall be computed on the basis set forth in the provisions of this
116 subdivision immediately preceding this paragraph or on the basis of \$1,500 multiplied by eight,
117 whichever computation as to the member produces the higher annual compensation;

118 ~~(14)~~(15) "Internal Revenue Code" means the Internal Revenue Code of 1986, as
119 amended, codified at Title 26 of the United States Code;

120 ~~(15)~~(16) "Limited credited service" means service by employees of the West Virginia
121 Educational Broadcasting Authority, in the employment of West Virginia University, during a
122 period when the employee made contributions to another retirement system, as required by West
123 Virginia University, and did not make contributions to the Public Employees Retirement
124 System: *Provided*, That while limited credited service can be used for the formula set forth in §5-
125 10-21(e) of this code, it may not be used to increase benefits calculated under §5-10-22 of this
126 code;

127 ~~(16)~~(17) "Medical examination" means an in-person or virtual examination of a member's
128 physical or mental health, or both, by a physician or physicians selected or approved by the board;
129 or, at the discretion of the board, a medical record review of the member's physical or mental
130 health, or both, by a physician selected or approved by the board;

131 ~~(17)~~(18) "Member" means any person who has accumulated contributions standing to his
132 or her credit in the members' deposit fund;

133 ~~(18)~~(19) "Participating public employer" means the State of West Virginia, any board,
134 commission, department, institution, or spending unit, and includes any agency created by rule of
135 the Supreme Court of Appeals having full-time employees, which for the purposes of this article
136 is considered a department of state government; and any political subdivision in the state which
137 has elected to cover its employees, as defined in this article, under the West Virginia Public
138 Employees Retirement System;

139 ~~(19)~~(20) "Plan year" means the same as referenced in §5-10-42 of this code;

140 ~~(20)~~(21) "Political subdivision" means the State of West Virginia, a county, city or town in
141 the state; a school corporation or corporate unit; any separate corporation or instrumentality
142 established by one or more counties, cities or towns, as permitted by law; any corporation or
143 instrumentality supported in most part by counties, cities or towns; and any public corporation
144 charged by law with the performance of a governmental function and whose jurisdiction is
145 coextensive with one or more counties, cities or towns: *Provided*, That any mental health agency
146 participating in the Public Employees Retirement System before July 1, 1997, is considered a
147 political subdivision solely for the purpose of permitting those employees who are members of the
148 Public Employees Retirement System to remain members and continue to participate in the
149 retirement system at their option after July 1, 1997: *Provided, however*, That the Regional
150 Community Policing Institute which participated in the Public Employees Retirement System
151 before July 1, 2000, is considered a political subdivision solely for the purpose of permitting those

152 employees who are members of the Public Employees Retirement System to remain members
153 and continue to participate in the Public Employees Retirement System after July 1, 2000;

154 ~~(21)~~(22) "Prior service" means service rendered prior to July 1, 1961, to the extent credited
155 a member as provided in this article;

156 ~~(22)~~(23) "Regular interest" means the rate or rates of interest per annum, compounded
157 annually, as the board of trustees adopts from time to time;

158 ~~(23)~~(24) "Required beginning date" means April 1 of the calendar year following the later
159 of: ~~(A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or~~
160 ~~age 72 (if born after June 30, 1949); or (B) the calendar year in which a member ceases providing~~
161 ~~service covered under this retirement system to a participating employer~~

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

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

166 (C) The applicable age is:

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

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

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

174 ~~(24)~~(25) "Retirant" means any member who commences an annuity payable by the
175 retirement system;

176 ~~(25)~~(26) "Retirement" means a member's withdrawal from the employ of a participating
177 public employer and the commencement of an annuity by the retirement system;

178 ~~(26)~~(27) "Retirement system" or "system" means the West Virginia Public Employees
179 Retirement System created and established by this article;

180 ~~(27)~~(28) "Retroactive service" means: (1) Service between July 1, 1961, and the date an
181 employer decides to become a participating member of the Public Employees Retirement System;
182 (2) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost
183 in accordance with 162 CSR 5.12; and (3) service of any member of a legislative body or
184 employees of the State Legislature whose term of employment is otherwise classified as
185 temporary for which the employee is eligible, but for which the employee did not elect to participate
186 at that time;

187 ~~(28)~~(29) "Service" means personal service rendered to a participating public employer by
188 an employee of a participating public employer;

189 ~~(29)~~(30) "Special needs trust" means a trust established pursuant to §44D-8B-13 of this
190 code for an individual beneficiary with a disability and such special needs trust is or will become
191 irrevocable by the time the retirant names the special needs trust as the beneficiary of retirant's
192 annuity benefits in place of the individual beneficiary and terminates upon the death of the
193 individual beneficiary with no further annuity benefits being payable; and

194 ~~(30)~~(31) "State" means the State of West Virginia.

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

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

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

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

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

1 The requirements of this section apply to any distribution of a member's or beneficiary's
2 interest and take precedence over any inconsistent provisions of this code. This provision applies
3 to plan years beginning after December 31, 1986. Notwithstanding anything in this code to the
4 contrary, the payment of benefits under this article shall be determined and made in accordance
5 with §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 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 shall
19 not 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
30 the remaining portion of that interest shall be distributed at least as rapidly as under the method
31 of distribution being used at the date of his or her death.

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

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

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

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

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

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

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

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

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

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

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

69 (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.

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

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

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

27 (c) Subject to the provisions of subsection (i) of this section, if a retirant becomes regularly
28 employed on a full-time basis by a participating public employer, payment of his or her annuity
29 shall be suspended during the period of his or her reemployment and he or she shall become a
30 contributing member to the retirement system. If his or her reemployment is for a period of one
31 year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased
32 annuity due to the additional employment, the annuity to be computed according to §5-10-22 of
33 this code. If his or her reemployment is for a period less than one year, he or she may request in
34 writing that the employee and employer retirement contributions submitted during reemployment
35 be credited to the participating public employer pursuant to §5-10-44 of this code, and his or her
36 previous annuity shall be reinstated effective the first day of the month following termination of
37 reemployment and the board's receipt of written notice thereof. Subject to the provisions of
38 subsection (i) of this section, a retirant may accept legislative per diem, temporary full-time, or
39 temporary part-time employment from a participating employer without suspending his or her
40 retirement annuity so long as he or she does not receive annual compensation in excess of
41 \$25,000.

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

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

48 (2) Notwithstanding the provisions of subsection (c) of this section, a retired magistrate
49 who is recalled and assigned to temporary service as a senior magistrate by the West Virginia
50 Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of
51 §50-1-6a of this code while continuing to receive his or her annuity, subject to the provisions of
52 subsection (i) of this section.

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

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

61 (2) Suspend the payment of his or her annuity and become a contributing member of the
62 retirement system as provided in subsection (c) of this section. Notwithstanding the provisions of
63 this subsection, a member who is participating in the system as an elected public official may not
64 retire from his or her elected position and commence to receive an annuity from the system and
65 then be elected or reappointed to the same position unless and until a continuous 12-month period
66 has passed since his or her retirement from the position: *Provided*, That a former employee of the
67 Legislature may not be reemployed by the Legislature on a per diem basis until at least 60 days
68 after the employee has retired: *Provided, however*, That the limitation on compensation provided
69 by subsection (c) of this section does not apply to the reemployed former employee: *Provided*
70 *further*, That in no event may reemployment by the Legislature of a per diem employee exceed
71 175 days per calendar year.

72 (f) Subject to the provisions of subsection (i) of this section, a member who is participating
73 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

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

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

ARTICLE 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.

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

1 (a) The State of West Virginia for its public employees and county boards of education for
2 its teachers and nonteachers shall pick-up and pay the contributions which the employees are
3 required by law to make to the retirement system in which they are a member for all compensation
4 earned by its member employees after June 30, 1986. Any political subdivision that is a
5 participating public employer in the West Virginia Public Employees Retirement System shall pick-
6 up and pay the contributions which the employees are required by law to make to the retirement
7 system in which they are members for all compensation earned by its member employees after
8 January 1, 1995. Public employers participating in the Emergency Medical Services Retirement
9 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

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

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

43 (d) The amount of employee contributions picked up by the participating public employer
44 shall be paid to the retirement system in the manner and form and in the frequency required by
45 the board of trustees and shall be accompanied by supporting data that the board of trustees may
46 prescribe. When paid to the retirement system, each of these amounts shall be credited to the
47 deposit fund account of the member for whom the contribution was picked up and paid by the
48 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.

1 (a) ~~Effective on or after January 1, 2007, any~~ Any eligible retired public safety officer who
2 is a participant or member under any eligible retirement plan administered by the board may
3 voluntarily elect to have amounts from an eligible retirement plan distributed ~~in order to pay for~~
4 ~~qualified health insurance premiums to the eligible retired public safety officer in order to pay for~~
5 his or her qualified health insurance premiums directly to his or her insurance provider.
6 Alternatively, any eligible retired public safety officer who is a participant or member under any
7 eligible retirement plan administered by the board may voluntarily elect to have amounts from an
8 eligible retirement plan deducted and paid by the board directly to the West Virginia Public
9 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

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

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

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

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

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

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

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

44 (l) "Bona fide separation from service upon retirement" means that a member has
45 completely terminated any employment relationship with the employer or any participating
46 employer in the system for a period of at least 60 consecutive days from the effective date of
47 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

166 ~~(jj)(mm)~~ "Required beginning date" means April 1 of the calendar year following the later
167 of: ~~(i) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age~~
168 ~~72 (if born after June 30, 1949); or (ii) the calendar year in which he or she retires or otherwise~~
169 ~~separates from covered employment~~

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

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

174 The applicable age is:

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

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

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

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

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

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

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

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

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

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

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

209	Hours of Service	Years of Service Credited
210	Less than 500	0
211	500 to 999	1/3
212	1,000 to 1,499	2/3
213	1,500 or more	1

214 During a member's first and last years of covered employment, the member shall be
215 credited with one-twelfth of a year of service for each month during the plan year in which the
216 member is credited with an hour of service. A member is not entitled to credit for years of service
217 for any time period during which he or she received disability payments under §7-14D-14 or §7-
218 14D-15 of this code. Except as specifically excluded, years of service include covered
219 employment prior to the effective date. Years of service which are credited to a member prior to
220 his or her receipt of accumulated contributions upon termination of employment pursuant to §7-
221 14D-13 or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the
222 member repays the accumulated contributions with interest pursuant to §7-14D-13 of this code
223 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51 (g) Prior to any retirant subsequently becoming reemployed by a participating public
52 employer, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased
53 employee basis, the participating public employer shall notify the board and the retirant, in writing,
54 if and when any such potential employment will negatively impact the retirant's retired status or
55 benefits. Upon the retirant's acceptance of such employment, the participating public employer
56 shall notify the board, in writing, of the retirant's subsequent employment. The retirement board
57 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

98 year but where no duties are performed due to vacation, holiday, illness, incapacity including
99 disability, layoff, jury duty, military duty, leave of absence, or any combination thereof and without
100 regard to whether the employment relationship has terminated. Hours under this subdivision shall
101 be calculated and credited pursuant to West Virginia Division of Labor rules. A member may not
102 be credited with any hours of service for any period of time he or she is receiving benefits under
103 §8-22A-17 and §8-22A-18 of this code; and (3) each hour for which back pay is either awarded
104 or agreed to be paid by the employing municipality, irrespective of mitigation of damages. The
105 same hours of service may not be credited both under subdivision (1) or (2) of this subsection
106 and under this subdivision. Hours under this paragraph shall be credited to the member for the
107 plan year or years to which the award or agreement pertains, rather than the plan year in which
108 the award, agreement or payment is made.

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

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

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

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

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

124 22-16 of this code: *Provided*, That municipal police officer also means an individual employed as
125 a member of a paid police department by a West Virginia municipality or municipal subdivision
126 which is authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid
127 police department does not mean a department whose employees are paid nominal salaries or
128 wages or are paid only for services actually rendered on an hourly basis.

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

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

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

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

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

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

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

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

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

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

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

170 ~~(hh)~~(jj) "Required beginning date" means April 1 of the calendar year following the later of:
171 ~~(1) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age~~
172 ~~72 (if born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise~~
173 ~~separates from covered employment~~ (1) the calendar year in which the member attains the
174 applicable age as set forth in this paragraph; or

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

177 The applicable age is:

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

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

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

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

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

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

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

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

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

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

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

213	Hours of Service	Year of Service Credited
214	Less than 500	0
215	500 to 999	1/3
216	1,000 to 1,499	2/3
217	1,500 or more	1

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

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

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

4 contrary, the payment of benefits under this article shall be determined and made in accordance
5 with §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
25 MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent
26 on, receipt of an application for retirement from the member.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) ~~The~~ Subject to the provisions of subsection (b) 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 pro-rated to the date of commencement of
6 service, and the member shall again become a contributing member during resumption of service.
7 At the conclusion of resumed service in covered employment, the member shall have his or her
8 annuity recalculated to take into account the entirety of service in covered employment.

9 (b) Notwithstanding any provision of this article to the contrary, a retirant who becomes
10 employed by a participating public employer after the effective date of his or her retirement must
11 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

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 fund to any member shall be distributed to him or
14 her not later than the required beginning date, or be distributed to him or her commencing not
15 later than the required beginning date, in accordance with regulations prescribed under section
16 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the
17 member and his or her beneficiary, or over a period not extending beyond the life expectancy of
18 the member and his or her beneficiary: *Provided*, That the requirements of this section may not
19 be construed to grant a right to a form of benefit which is not otherwise available to a particular
20 member under this retirement system. For purposes of this section, the term "required beginning
21 date" means April 1 of the calendar year following the later of: ~~(i) The calendar year in which the~~
22 ~~member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or~~
23 ~~(ii) the calendar year in which the member retires or otherwise ceases providing covered service~~
24 ~~under this fund~~ (1) The calendar year in which the member attains the applicable age as set forth
25 in this paragraph; or

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

28 The applicable age is:

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

30 (B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains
31 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

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

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

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

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

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

78 (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.

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

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

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

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

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

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

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

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

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

27 ~~(8)~~(9) "Dependent child" means any unmarried child or children born to or adopted by a
28 member or retirant of the fund who:

29 (A) Is under the age of 18;

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

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

35 ~~(9)~~(10) "Dependent parent" means the member's or retirant's parent or step-parent
36 claimed as a dependent by the member or retirant for federal income tax purposes at the time of
37 the member's or retirant's death.

38 ~~(10)~~(11) "Employee" means any person regularly employed in the service of the agency
39 as a law-enforcement officer after March 12, 1994, and who is eligible to participate in the fund.

40 ~~(11)~~(12) "Employer error" means an omission, misrepresentation, or deliberate act in
41 violation of relevant provisions of the West Virginia Code, the West Virginia Code of State
42 Regulations, or the relevant provisions of both the West Virginia Code and the West Virginia Code
43 of State Regulations by the participating public employer that has resulted in an underpayment or
44 overpayment of contributions required.

45 ~~(12)~~(13) "Final average salary" means the average of the highest annual compensation
46 received for employment with the agency, including compensation paid for overtime service,
47 received by the employee during any five calendar years within the employee's last 10 years of
48 service: *Provided*, That annual compensation for determining benefits during any determination
49 period may not exceed the maximum compensation allowed as adjusted for cost of living in
50 accordance with §5-10D-7 of this code and § 401(a)(17) of the Internal Revenue Code.

51 ~~(13)~~(14) "Fund", "plan", "system" or "retirement system" means the West Virginia State
52 Police Retirement Fund created and established by this article.

53 ~~(44)~~(15) "Internal Revenue Code" means the Internal Revenue Code of 1986, as
54 amended.

55 ~~(45)~~(16) "Law-enforcement officer" means an individual employed or otherwise engaged
56 in either a public or private position which involves the rendition of services relating to enforcement
57 of federal, state or local laws for the protection of public or private safety, including, but not limited
58 to, positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any
59 other law-enforcement position which requires certification, but excluding positions held by
60 elected sheriffs or appointed chiefs of police whose duties are purely administrative in nature.

61 ~~(46)~~(17) "Medical examination" means an in-person or virtual examination of a member's
62 physical or mental health, or both, by a physician or physicians selected or approved by the board;
63 or, at the discretion of the board, a medical record review of the member's physical or mental
64 health, or both, by a physician selected or approved by the board.

65 ~~(47)~~(18) "Member" means any person who has contributions standing to his or her credit
66 in the fund and who has not yet entered into retirement status.

67 ~~(48)~~(19) "Month of service" means each month for which an employee is paid or entitled
68 to payment for at least one hour of service for which contributions were remitted to the fund. These
69 months shall be credited to the member for the calendar year in which the duties are performed.

70 ~~(49)~~(20) "Partially disabled" means an employee's inability, on a probable permanent
71 basis, to perform the essential duties of a law-enforcement officer by reason of any medically
72 determinable physical or mental impairment which has lasted or can be expected to last for a
73 continuous period of not less than 12 months, but which impairment does not preclude the
74 employee from engaging in other types of nonlaw-enforcement employment.

75 ~~(20)~~(21) "Physical or mental impairment" means an impairment that results from an
76 anatomical, physiological or psychological abnormality that is demonstrated by medically
77 accepted clinical and laboratory diagnostic techniques.

78 ~~(24)~~(22) "Plan year" means the 12-month period commencing on July 1 of any designated
79 year and ending the following June 30.

80 ~~(22)~~(23) "Qualified public safety employee" means any employee of a participating state
81 or political subdivision who provides police protection, fire-fighting services or emergency medical
82 services for any area within the jurisdiction of the state or political subdivision, or such other
83 meaning given to the term by § 72(t)(10)(B) of the Internal Revenue Code or by Treasury
84 Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

85 ~~(23)~~(24) "Required beginning date" means April 1 of the calendar year following the later
86 of: ~~(A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or~~
87 ~~age 72 (if born after June 30, 1949); or (B) the calendar year in which he or she retires or otherwise~~
88 ~~separates from service with the agency~~ (1) The calendar year in which the member attains the
89 applicable age as set forth in this paragraph; or

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

92 The applicable age is:

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

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

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

100 ~~(24)~~(25) "Retirant" or "retiree" means any member who commences an annuity payable
101 by the retirement system.

102 ~~(25)~~(26) "Salary" means the compensation of an employee, excluding any overtime
103 payments.

104 ~~(26)~~(27) "Surviving spouse" means the person to whom the member or retirant was legally
105 married at the time of the member's or retirant's death and who survived the member or retirant.

106 ~~(27)~~(28) "Totally disabled" means an employee's probable permanent inability to engage
107 in substantial gainful activity by reason of any medically determined physical or mental impairment
108 that can be expected to result in death or that has lasted or can be expected to last for a
109 continuous period of not less than 12 months. For purposes of this subdivision, an employee is
110 totally disabled only if his or her physical or mental impairments are so severe that he or she is
111 not only unable to perform his or her previous work as an employee of the agency, but also cannot,
112 considering his or her age, education and work experience, engage in any other kind of substantial
113 gainful employment which exists in the state regardless of whether: (A) The work exists in the
114 immediate area in which the employee lives; (B) a specific job vacancy exists; or (C) the employee
115 would be hired if he or she applied for work.

116 ~~(28)~~(29) "Years of service" means the months of service acquired by a member while in
117 active employment with the agency divided by 12. Years of service shall be calculated in years
118 and fraction of a year from the date of active employment of the member with the agency through
119 the date of termination of employment or retirement from the agency. If a member returns to active
120 employment with the agency following a previous termination of employment with the agency and
121 the member has not received a refund of contributions plus interest for the previous employment
122 under §15-2A-8 of this code, service shall be calculated separately for each period of continuous
123 employment and years of service shall be the total service for all periods of employment. Years
124 of service shall exclude any periods of employment with the agency for which a refund of
125 contributions plus interest has been paid to the member unless the employee repays the previous
126 withdrawal, as provided in §15-2A-8 of this code, to reinstate the years of service.

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

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

3 plan years beginning after December 31, 1986. Notwithstanding anything in the retirement system
4 to the contrary, the payment of benefits under this article shall be determined and made in
5 accordance with §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

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

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

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

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

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

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

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

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

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

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

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

§15-2A-6e. State police reemployment.

1 (a) Notwithstanding any provision of this article to the contrary, a retirant who becomes
2 reemployed by the agency after the effective date of his or her retirement must have a bona fide
3 separation from service upon retirement to be eligible for an annuity under the retirement system.
4 If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or
5 the agency fails to comply with subsection (b) of this section in a manner satisfactory to the board,
6 then the member's retirement shall be voided and the member shall repay to the system the gross
7 amount of all annuity payments received related to such voided retirement; provided further that
8 the board may take any actions necessary or appropriate in accordance with the provisions of
9 §15-2A-23 of this code to recover such annuity payments so that an in-service distribution is not
10 deemed to have been made.

11 (b) Prior to any retirant subsequently becoming employed by the agency, whether on a
12 permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis, the
13 agency shall notify the board and the retirant, in writing, if and when any such potential
14 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.

18 (3) For 911 personnel with assets transferred pursuant to §16-5V-6d of this code who did
19 not elect to pay back higher past contributions with interest, "accrued benefit" means, on behalf
20 of the member, two percent per year of the member's final average salary for all credited service
21 that was credited as a result of transferred assets. Additionally, two and three-quarter percent for
22 the first 20 years of new credited service earned from date of membership in this plan will be
23 credited. Additionally, two percent per year for 21 through 25 years of new credited service earned
24 from date of membership in this plan and one and one-half percent per year for each year over
25 25 years earned from date of membership in this plan will be credited. A maximum benefit of 90
26 percent of a member's final average salary may be paid. A member's accrued benefit may not
27 exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of
28 §16-5V-12 of this code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

100 (A) A natural child of the member;

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

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

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

106 (2) Any unmarried child under age 23:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

170 ~~(z)~~(aa) "Member" means either: (1) A person first hired as an emergency medical services
171 officer by an employer which is a participating public employer of the Emergency Medical Services
172 Retirement System after the effective date of this article, as defined in subsection (r) of this
173 section; or (2) an emergency medical services officer of an employer which is a participating public
174 employer of the Public Employees Retirement System first hired prior to the effective date and
175 who elects to become a member pursuant to this article; or (3) a person first hired by a county
176 911 public safety answering center after the participating public employer elects to participate in
177 the Emergency Medical Services Retirement System; or (4) a county firefighter hired on or after
178 June 10, 2022; or (5) a county firefighter of an employer which is a participating public employer
179 of the Public Employees Retirement System first hired prior to June 10, 2022, and who elects to
180 become a member pursuant to §16-5V-6a of this code; or (6) a person first hired by a county 911
181 public safety answering center prior to July 1, 2022, and who elects to become a member pursuant
182 to §16-5V-6c of this code. A member shall remain a member until the benefits to which he or she
183 is entitled under this article are paid or forfeited.

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

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

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

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

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

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

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

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

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

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

211 ~~(gg)~~(hh) "Political subdivision" means a county, city, or town in the state; any separate
212 corporation or instrumentality established by one or more counties, cities, or towns, as permitted
213 by law; any corporation or instrumentality supported in most part by counties, cities, or towns; and
214 any public corporation charged by law with the performance of a governmental function and
215 whose jurisdiction is coextensive with one or more counties, cities, or towns: *Provided*, That any
216 public corporation established under §7-15-4 of this code is considered a political subdivision
217 solely for the purposes of this article.

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

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

222 ~~(jj)(kk)~~ "Required beginning date" means April 1 of the calendar year following the later of:
223 ~~(1) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age~~
224 ~~72 (if born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise~~
225 ~~separates from covered employment~~ (1) The calendar year in which the member attains the
226 applicable age as set forth in this paragraph; or

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

229 The applicable age is:

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

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

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

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

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

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

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

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

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

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

250 For purposes of this subsection:

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

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

264 ~~(qq)~~(rr) "Year of service" means a member shall, except in his or her first and last years
265 of covered employment, be credited with years of service credit based upon the hours of service
266 performed as covered employment and credited to the member during the plan year based upon
267 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
--------------	---

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 ~~(ff)~~(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

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

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

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

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

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

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

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

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

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

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

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

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

62 of the survivor benefit, election of life expectancy treatment must be made on or before the earlier
63 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.

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

1 (a) ~~The~~ Subject to the provisions of subsection (b) 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 pro-rated to the date of commencement of
6 service, and the member shall again become a contributing member during resumption of service.
7 At the conclusion of resumed service in covered employment the member shall have his or her
8 annuity recalculated to take into account the entirety of service in covered employment.

9 (b) Notwithstanding any provision of this article to the contrary, a retirant who becomes
10 employed by a participating public employer after the effective date of his or her retirement must
11 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 §16-5V-8a to recover such annuity payments so that an in-service distribution is
18 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.

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

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

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

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

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

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

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

32 "Electing charter school" means a public charter school established pursuant to §18-5G-
33 1 *et seq.* of this code which has elected to participate in this retirement system as permitted in the
34 definitions of "Nonteaching member" and "Teacher member" in this section.

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

39 "Employer error" means an omission, misrepresentation, or deliberate act in violation of
40 relevant provisions of the West Virginia Code, or the West Virginia Code of State Regulations, or
41 the relevant provisions of both the West Virginia Code and of the West Virginia Code of State
42 Regulations by the participating public employer that has resulted in an underpayment or
43 overpayment of contributions required.

44 "Employment term" means employment for at least 10 months, a month being defined as
45 20 employment days.

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

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

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

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

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

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

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

73 "Nonteaching member" means any person, except a teacher member, who is regularly
74 employed for full-time service by: (A) Any county board of education or educational services
75 cooperative; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D)
76 the West Virginia Council for Community and Technical College Education; (E) a governing board,
77 as defined in §18B-1-2 of this code; or (F) a public charter school established pursuant to §18-
78 5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant
79 to §18-5G-7 of this code a determination to participate in the retirement systems under this article
80 and §18-7B-1 *et seq.* of this code, subject to §18-7B-7a of this code: *Provided*, That any person
81 whose employment with the Higher Education Policy Commission, the West Virginia Council for

82 Community and Technical College Education, or a governing board commences on or after July
83 1, 1991, is not considered a nonteaching member.

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

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

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

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

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

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

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

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

104 "Required beginning date" means April 1 of the calendar year following the later of: (A)
105 ~~The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72~~
106 ~~(if born after June 30, 1949); or (B) the calendar year in which the member retires, or ceases~~

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

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

111 The applicable age is:

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

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

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

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

121 "Retirement board" means the Consolidated Public Retirement Board created pursuant to
122 § 5-10D-1 *et seq.* of this code.

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

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

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

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

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

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

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

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

5 (b) ~~Retired teachers~~ Retirants who qualified for an annuity because of age or service may
6 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.

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

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

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

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

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

5 and made in accordance with §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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

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

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

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

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

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

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

23 "Electing charter school" means a public charter school established pursuant to §18-5G-
24 1 *et seq.* of this code which has elected to participate in this retirement system as permitted in the
25 definition of "Member" or "employee" in this section.

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

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

34 "Employer error" means an omission, misrepresentation, or deliberate act in violation of
35 relevant provisions of the West Virginia Code, the West Virginia Code of State Regulations, or
36 the relevant provisions of both the West Virginia Code and of the West Virginia Code of State

37 Regulations by the participating public employer that has resulted in an underpayment or
38 overpayment of contributions required.

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

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

43 "Existing retirement system" means the State Teachers Retirement System established in
44 §18-7A-1 *et seq.* of this code.

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

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

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

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

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

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

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

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

90 "Required beginning date" means April 1 of the calendar year following the later of: ~~(A)~~
91 ~~The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72~~
92 ~~(if born after June 30, 1949); or (B) the calendar year in which the member retires or otherwise~~
93 ~~ceases employment with a participating employer~~ (1) The calendar year in which the member
94 attains the applicable age as set forth in this paragraph; or

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

97 The applicable age is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

80 (1) *10-Year Rule*. — If the distributee of a deceased member's account is a designated
81 beneficiary who is not an "Eligible Designated Beneficiary," then the system will distribute the

82 member's vested account in full no later than December 31 of the 10th year following the year of
83 the member's death.

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

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

CHAPTER 20. NATURAL RESOURCES.

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

§20-18-2. Definitions.

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

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

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

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

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

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

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

29 allowances, cash or noncash fringe benefits or both, deferred compensation, and welfare benefits.
30 Annual compensation for determining benefits during any determination period may not exceed
31 the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of
32 this code and §401(a)(17) of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

61 (A) A natural child of the member;

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

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

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

67 (2) Any unmarried child under age 23:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

116 ~~(x)~~(y) "Member" means a person first hired as a Natural Resources Police Officer, as
117 defined in subsection ~~(z)~~(aa) of this section, on or after January 2, 2021, or a Natural Resources
118 Police Officer first hired prior to the effective date and who elects to become a member pursuant
119 to § 20-18-6 of this code. A member shall remain a member until the benefits to which he or she
120 is entitled under this article are paid or forfeited or until cessation of membership pursuant to §20-
121 18-6 of this code.

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

124 ~~(z)~~(aa) "Natural Resources Police Officer" means any person regularly employed in the
125 service of the division as a law-enforcement officer on or after the effective date of this article,
126 and who is eligible to participate in the fund. The term shall not include Emergency Natural
127 Resources Police Officers as defined in §20-7-1(c) of this code, Special Natural Resources Police
128 Officers as defined in §20-7-1(d) of this code, Forestry Special Natural Resources Police Officers
129 as defined in §20-7-1(e) of this code, or Federal Law Enforcement Officer as defined in §20-7-1b
130 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.

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

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

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

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

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

171 The applicable age is:

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

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

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

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

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

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

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

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

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

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

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

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

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

209	Hours of Service	Years of Service Credited
210	Less than 500	0
211	500 to 999	1/3
212	1,000 to 1,499	2/3
213	1,500 or more	1

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

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

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

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

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

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

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

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

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

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

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

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

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

66 (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.

1 ~~The~~ (a) Subject to the provisions of subsection (b) 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 any provision of this article to the contrary, a retirant who becomes
10 employed by the division after the effective date of his or her retirement must have a bona fide
11 separation from service upon retirement to be eligible for an annuity under the retirement system.
12 If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or
13 the division fails to comply with subsection (c) of this section in a manner satisfactory to the board,
14 then the member's retirement shall be voided and the member shall repay to the system the gross
15 amount of all annuity payments received related to such voided retirement. The board may take
16 any actions necessary or appropriate in accordance with the provisions of §20-18-9 to recover
17 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.

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

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

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

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

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

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

33 ~~(j)~~ (k) "Required beginning date" means April 1 of the calendar year following the later of:
34 ~~(1) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age~~
35 ~~72 (if born after June 30, 1949); or (2) the calendar year in which the member retires or otherwise~~
36 ~~separates from covered employment under this retirement system~~ (1) The calendar year in which
37 the member attains the applicable age as set forth in this paragraph; or

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

40 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

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

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

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

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

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

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

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

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

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

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

3 section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the
4 retirement system to the contrary, the payment of benefits under this article shall be determined
5 and made in accordance with §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

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

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

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

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

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

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

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

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

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

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

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