

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 430**

5 (SENATORS JENKINS AND MCCABE, *original sponsors*)

6 \_\_\_\_\_  
7 [Passed April 8, 2013; in effect ninety days from passage.]  
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11 AN ACT to amend and reenact §18-7B-2 of the Code of West Virginia,  
12 1931, as amended; and to amend said code by adding thereto a  
13 new section, designated §18-7B-21, all relating to the  
14 Teachers' Defined Contribution Retirement System; adding a  
15 definition of employment term; and providing for correction of  
16 errors by participating public employers and the Consolidated  
17 Public Retirement Board.

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

19 That §18-7B-2 of the Code of West Virginia, 1931, as amended,  
20 be amended and reenacted; and that said code be amended by adding  
21 thereto a new section, designated §18-7B-21, all to read as  
22 follows:

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

24 **§18-7B-2. Definitions.**

25 As used in this article, unless the context clearly requires

1 a different meaning:

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

11 (2) "Annuity account" or "annuity" means an account  
12 established for each member to record the deposit of member  
13 contributions and employer contributions and interest, dividends or  
14 other accumulations credited on behalf of the member;

15 (3) "Compensation" means the full compensation actually  
16 received by members for service whether or not a part of the  
17 compensation is received from other funds, federal or otherwise,  
18 than those provided by the state or its subdivisions: *Provided,*  
19 That annual compensation for determining contributions during any  
20 determination period may not exceed the maximum compensation  
21 allowed as adjusted for cost of living in accordance with section  
22 seven, article ten-d, chapter five of this code and Section  
23 401(a) (17) of the Internal Revenue Code: *Provided, however,* That  
24 solely for purposes of applying the limitations of Section 415 of  
25 the Internal Revenue Code to any annual addition, "compensation"  
26 has the meaning given it in subsection (d), section thirteen of

1 this article;

2 (4) "Consolidated board" or "board" means the Consolidated  
3 Public Retirement Board created and established pursuant to article  
4 ten-d, chapter five of this code;

5 (5) "Defined contribution system" or "system" means the  
6 Teachers' Defined Contribution Retirement System created and  
7 established by this article;

8 (6) "Employer" means the agency of and within the State of  
9 West Virginia which has employed or employs a member;

10 (7) "Employer contribution" means an amount deposited into the  
11 member's individual annuity account on a periodic basis coinciding  
12 with the employee's regular pay period by an employer from its own  
13 funds;

14 (8) "Employment term" means employment for at least ten months  
15 in any plan year with a month being defined as twenty employment  
16 days;

17 (9) "Existing employer" means any employer who employed or  
18 employs a member of the system;

19 (10) "Existing retirement system" means the State Teachers  
20 Retirement System established in article seven-a of this chapter;

21 (11) "Internal Revenue Code" means the Internal Revenue Code  
22 of 1986, as it has been amended;

23 (12) "Member" or "employee" means the following persons, if  
24 regularly employed for full-time service: (A) Any person employed  
25 for instructional service in the public schools of West Virginia;  
26 (B) principals; (C) public school librarians; (D) superintendents

1 of schools and assistant county superintendents of schools; (E) any  
2 county school attendance director holding a West Virginia teacher's  
3 certificate; (F) members of the research, extension, administrative  
4 or library staffs of the public schools; (G) the State  
5 Superintendent of Schools, heads and assistant heads of the  
6 divisions under his or her supervision or any other employee under  
7 the state superintendent performing services of an educational  
8 nature; (H) employees of the State Board of Education who are  
9 performing services of an educational nature; (I) any person  
10 employed in a nonteaching capacity by the State Board of Education,  
11 any county board of education or the State Department of Education,  
12 if that person was formerly employed as a teacher in the public  
13 schools; (J) all classroom teachers, principals and educational  
14 administrators in schools under the supervision of the Division of  
15 Corrections and the Department of Health and Human Resources; (K)  
16 any person who is regularly employed for full-time service by any  
17 county board of education or the State Board of Education; (L) the  
18 administrative staff of the public schools including deans of  
19 instruction, deans of men and deans of women, and financial and  
20 administrative secretaries; and (M) any person designated as a 21st  
21 Century Learner Fellow pursuant to section eleven, article three,  
22 chapter eighteen-a of this code who elects to remain a member of  
23 the Teachers' Defined Contribution Retirement System established by  
24 this article;

25       (13) "Member contribution" means an amount reduced from the  
26 employee's regular pay periods, and deposited into the member's

1 individual annuity account within the Teachers' Defined  
2 Contribution Retirement System;

3 (14) "Permanent, total disability" means a mental or physical  
4 incapacity requiring absence from employment service for at least  
5 six months: *Provided*, That the incapacity is shown by an  
6 examination by a physician or physicians selected by the board:  
7 *Provided, however*, That for employees hired on or after July 1,  
8 2005, "permanent, total disability" means an inability to engage in  
9 substantial gainful activity by reason of any medically  
10 determinable physical or mental impairment that can be expected to  
11 result in death, or has lasted or can be expected to last for a  
12 continuous period of not less than twelve months and the incapacity  
13 is so severe that the member is likely to be permanently unable to  
14 perform the duties of the position the member occupied immediately  
15 prior to his or her disabling injury or illness;

16 (15) "Plan year" means the twelve-month period commencing on  
17 July 1 of any designated year and ending on the following June 30;

18 (16) "Public schools" means all publicly supported schools,  
19 including normal schools, colleges and universities in this state;

20 (17) "Regularly employed for full-time service" means  
21 employment in a regular position or job throughout the employment  
22 term regardless of the number of hours worked or the method of pay;

23 (18) "Required beginning date" means April 1 of the calendar  
24 year following the later of: (A) The calendar year in which the  
25 member attains age seventy and one-half years; or (B) the calendar  
26 year in which the member retires or otherwise ceases employment

1 with a participating employer after having attained the age of  
2 seventy and one-half years;

3 (19) "Retirement" means a member's withdrawal from the active  
4 employment of a participating employer and completion of all  
5 conditions precedent to retirement;

6 (20) "Year of employment service" means employment for at  
7 least ten months, with a month being defined as twenty employment  
8 days: *Provided*, That no more than one year of service may be  
9 accumulated in any twelve-month period.

10 **§18-7B-21. Correction of errors; underpayments; overpayments.**

11 (a) *General rule.* - If any change or employer error in the  
12 records of any existing employer or the retirement system results  
13 in a member, retirant or beneficiary receiving from the system more  
14 or less than he or she would have been entitled to receive had the  
15 records been correct, the board shall correct the error. If  
16 correction of the error occurs after retirement, the board shall  
17 adjust the payment of the benefit in an amount computed by the  
18 board to which the retirant was correctly entitled.

19 (b) *Underpayments.* - Any error resulting in an underpayment to  
20 the retirement system of required contributions may be corrected by  
21 the member or retirant remitting the required employee contribution  
22 and the existing employer remitting the required employer  
23 contribution. Interest accumulates in accordance with the board's  
24 Rule, Refund, Reinstatement, Retroactive Service, Loan and Employer  
25 Error Interest Factors, 162 CSR 7, and any accumulating interest  
26 owed on the employee and employer contributions resulting from an

1 employer error is the responsibility of the participating public  
2 employer. The existing employer may remit total payment and the  
3 employee may reimburse the existing employer through payroll  
4 deduction over a period equivalent to the time period during which  
5 the employer error occurred. If the correction of an error  
6 involving an underpayment of required contributions to the  
7 retirement system will result in increased payments to a retirant,  
8 including increases to payments already made, any adjustments may  
9 be made only after the board receives full payment of all required  
10 employee and employer contributions, including interest.

11 (c) *Overpayments.* - (1) When mistaken or excess employer  
12 contributions, including any overpayments, have been made to the  
13 retirement system by an existing employer, due to error or other  
14 reason, the board shall credit the existing employer with an amount  
15 computed by the board, to be offset against the existing employer's  
16 future liability for employer contributions to the system.

17 (2) When mistaken or excess employee contributions, including  
18 any overpayments, have been made to the retirement system, due to  
19 error or other reason, the board has sole authority for determining  
20 the means of return, offset or credit to or for the benefit of the  
21 employee of the amounts, and may use any means authorized or  
22 permitted under the provisions of Section 401(a), et seq., of the  
23 Internal Revenue Code and guidance issued thereunder applicable to  
24 governmental plans. Alternatively, in its full and complete  
25 discretion, the board may require the existing employer to pay the  
26 employee the amounts as wages, with the board crediting the

1 existing employer with an amount to offset against its future  
2 contributions to the plan: *Provided*, That the wages paid to the  
3 employee are not considered compensation for any purposes under  
4 this article.