

E N G R O S S E D
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 430

(By Senators Jenkins and McCabe)

[Originating in the Committee on Finance;
reported March 22, 2013.]

A BILL to amend and reenact §18-7B-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18-7B-21, all relating to the Teachers' Defined Contribution Retirement System; adding a definition of "employment term"; making a technical correction; and adding a provision relating to correction of errors by participating public employers and the Consolidated Public Retirement Board.

Be it enacted by the Legislature of West Virginia:

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

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

§18-7B-2. Definitions.

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

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

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

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

32 (4) “Consolidated board” or “board” means the
33 Consolidated Public Retirement Board created and established
34 pursuant to article ten-d, chapter five of this code;

35 (5) “Defined contribution system” or “system” means the
36 Teachers’ Defined Contribution Retirement System created
37 and established by this article;

38 (6) “Employer” means the agency of and within the State
39 of West Virginia which has employed or employs a member;

40 (7) “Employer contribution” means an amount deposited
41 into the member’s individual annuity account on a periodic
42 basis coinciding with the employee’s regular pay period by
43 an employer from its own funds;

44 (8) “Employment term” means employment for at least
45 ten months in any plan year with a month being defined as
46 twenty employment days;

47 ~~(8)~~ (9) “Existing employer” means any employer who
48 employed or employs a member of the ~~existing retirement~~
49 system;

50 ~~(9)~~ (10) “Existing retirement system” means the State
51 Teachers’ Retirement System established in article seven-a of
52 this chapter;

53 ~~(10)~~ (11) “Internal Revenue Code” means the Internal
54 Revenue Code of 1986, as it has been amended;

55 ~~(11)~~ (12) “Member” or “employee” means the following
56 persons, if regularly employed for full-time service: (A) Any
57 person employed for instructional service in the public
58 schools of West Virginia; (B) principals; (C) public school
59 librarians; (D) superintendents of schools and assistant
60 county superintendents of schools; (E) any county school
61 attendance director holding a West Virginia teacher’s
62 certificate; (F) members of the research, extension,
63 administrative or library staffs of the public schools; (G) the
64 State Superintendent of Schools, heads and assistant heads of
65 the divisions under his or her supervision or any other
66 employee under the state superintendent performing services
67 of an educational nature; (H) employees of the State Board of

68 Education who are performing services of an educational
69 nature; (I) any person employed in a nonteaching capacity by
70 the State Board of Education, any county board of education
71 or the State Department of Education, if that person was
72 formerly employed as a teacher in the public schools; (J) all
73 classroom teachers, principals and educational administrators
74 in schools under the supervision of the Division of
75 Corrections and the Department of Health and Human
76 Resources; (K) any person who is regularly employed for
77 full-time service by any county board of education or the
78 State Board of Education; (L) the administrative staff of the
79 public schools including deans of instruction, deans of men
80 and deans of women, and financial and administrative
81 secretaries; and (M) any person designated as a 21st Century
82 Learner Fellow pursuant to section eleven, article three,
83 chapter eighteen-a of this code who elects to remain a
84 member of the Teachers' Defined Contribution Retirement
85 System established by this article;

86 ~~(12)~~ (13) “Member contribution” means an amount
87 reduced from the employee’s regular pay periods, and
88 deposited into the member’s individual annuity account
89 within the Teachers’ Defined Contribution Retirement
90 System;

91 ~~(13)~~ (14) “Permanent, total disability” means a mental or
92 physical incapacity requiring absence from employment
93 service for at least six months: *Provided*, That the incapacity
94 is shown by an examination by a physician or physicians
95 selected by the board: *Provided, however*, That for
96 employees hired on or after July 1, 2005, “permanent, total
97 disability” means an inability to engage in substantial gainful
98 activity by reason of any medically determinable physical or
99 mental impairment that can be expected to result in death, or
100 has lasted or can be expected to last for a continuous period
101 of not less than twelve months and the incapacity is so severe
102 that the member is likely to be permanently unable to
103 perform the duties of the position the member occupied
104 immediately prior to his or her disabling injury or illness;

105 ~~(14)~~ (15) “Plan year” means the twelve-month period
106 commencing on July 1 of any designated year and ending on
107 the following June 30;

108 ~~(15)~~ (16) “Public schools” means all publicly supported
109 schools, including normal schools, colleges and universities
110 in this state;

111 ~~(16)~~ (17) “Regularly employed for full-time service”
112 means employment in a regular position or job throughout
113 the employment term regardless of the number of hours
114 worked or the method of pay;

115 ~~(17)~~ (18) “Required beginning date” means April 1 of the
116 calendar year following the later of: (A) The calendar year
117 in which the member attains age seventy and one-half years;
118 or (B) the calendar year in which the member retires or
119 otherwise ceases employment with a participating employer
120 after having attained the age of seventy and one-half years;

121 ~~(18)~~ (19) “Retirement” means a member’s withdrawal
122 from the active employment of a participating employer and
123 completion of all conditions precedent to retirement;

124 ~~(19)~~ (20) “Year of employment service” means
125 employment for at least ten months, with a month being
126 defined as twenty employment days: *Provided*, That no more
127 than one year of service may be accumulated in any twelve-
128 month period.

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

1 (a) *General rule.* – If any change or employer error in the
2 records of any existing employer or the retirement system
3 results in a member, retirant or beneficiary receiving from the
4 system more or less than he or she would have been entitled
5 to receive had the records been correct, the board shall
6 correct the error. If correction of the error occurs after
7 retirement, the board shall adjust the payment of the benefit
8 in an amount computed by the board to which the retirant
9 was correctly entitled.

10 (b) *Underpayments.* – Any error resulting in an
11 underpayment to the retirement system of required
12 contributions may be corrected by the member or retirant

13 remitting the required employee contribution and the existing
14 employer remitting the required employer contribution.
15 Interest accumulates in accordance with the board's Rule,
16 Refund, Reinstatement, Retroactive Service, Loan and
17 Employer Error Interest Factors, 162 CSR 7, and any
18 accumulating interest owed on the employee and employer
19 contributions resulting from an employer error is the
20 responsibility of the participating public employer. The
21 existing employer may remit total payment and the employee
22 may reimburse the existing employer through payroll
23 deduction over a period equivalent to the time period during
24 which the employer error occurred. If the correction of an
25 error involving an underpayment of required contributions to
26 the retirement system will result in increased payments to a
27 retirant, including increases to payments already made, any
28 adjustments may be made only after the board receives full
29 payment of all required employee and employer
30 contributions, including interest.

31 (c) *Overpayments.* – (1) When mistaken or excess
32 employer contributions, including any overpayments, have
33 been made to the retirement system by an existing employer,
34 due to error or other reason, the board shall credit the existing
35 employer with an amount computed by the board, to be offset
36 against the existing employer’s future liability for employer
37 contributions to the system.

38 (2) When mistaken or excess employee contributions,
39 including any overpayments, have been made to the
40 retirement system, due to error or other reason, the board has
41 sole authority for determining the means of return, offset or
42 credit to or for the benefit of the employee of the amounts,
43 and may use any means authorized or permitted under the
44 provisions of Section 401(a), et seq., of the Internal Revenue
45 Code and guidance issued thereunder applicable to
46 governmental plans. Alternatively, in its full and complete
47 discretion, the board may require the existing employer to
48 pay the employee the amounts as wages, with the board

49 crediting the existing employer with an amount to offset
50 against its future contributions to the plan: *Provided*, That the
51 wages paid to the employee are not considered compensation
52 for any purposes under this article.