

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-FIRST LEGISLATURE**  
**REGULAR SESSION, 2013**



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 430**

(SENATORS JENKINS AND McCABE, *original sponsors*)

[PASSED APRIL 8, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]

**E N R O L L E D**

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AN ACT 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; and providing for 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) employee  
7 contributions; and (C) forfeitures. Repayment of cashouts or  
8 contributions as described in Section 415(k)(3) of the Internal  
9 Revenue Code, rollover contributions and picked-up  
10 employee contributions to a defined benefit plan shall not be  
11 treated as annual additions, consistent with the requirements  
12 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” has the meaning given it in subsection (d),  
31 section thirteen of this article;

32 (4) “Consolidated board” or “board” means the  
33 Consolidated Public Retirement Board created and  
34 established 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 (9) “Existing employer” means any employer who  
48 employed or employs a member of the system;

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

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

54 (12) “Member” or “employee” means the following  
55 persons, if regularly employed for full-time service: (A) Any  
56 person employed for instructional service in the public  
57 schools of West Virginia; (B) principals; (C) public school  
58 librarians; (D) superintendents of schools and assistant  
59 county superintendents of schools; (E) any county school  
60 attendance director holding a West Virginia teacher’s  
61 certificate; (F) members of the research, extension,  
62 administrative or library staffs of the public schools; (G) the  
63 State Superintendent of Schools, heads and assistant heads of

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

85 (13) "Member contribution" means an amount reduced  
86 from the employee's regular pay periods, and deposited into  
87 the member's individual annuity account within the  
88 Teachers' Defined Contribution Retirement System;

89 (14) "Permanent, total disability" means a mental or  
90 physical incapacity requiring absence from employment  
91 service for at least six months: *Provided*, That the incapacity  
92 is shown by an examination by a physician or physicians  
93 selected by the board: *Provided, however*, That for employees  
94 hired on or after July 1, 2005, "permanent, total disability"  
95 means an inability to engage in substantial gainful activity by  
96 reason of any medically determinable physical or mental  
97 impairment that can be expected to result in death, or has

98 lasted or can be expected to last for a continuous period of  
99 not less than twelve months and the incapacity is so severe  
100 that the member is likely to be permanently unable to perform  
101 the duties of the position the member occupied immediately  
102 prior to his or her disabling injury or illness;

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

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

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

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

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

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



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman Senate Committee*

.....  
*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the .....

Day of ....., 2013.

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*Governor*