

H. B. 2800

(BY DELEGATE(S) PETHTEL, JONES, CRAIG, CANTERBURY,
KUMP, LYNCH AND STOWERS)

**[BY REQUEST OF THE CONSOLIDATED
PUBLIC RETIREMENT BOARD]**

[Introduced March 4, 2013; referred to the
Committee on Pensions and Retirement then Finance.]

A BILL to amend and reenact §18-7A-3, §18-7A-14, §18-7A-17, §18-7A-23, §18-7A-25 and §18-7A-26 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §18-7A-14c, all relating to the Teachers' Retirement System; specifying the time period in which a participating public employer allocates and reports gross salary to the retirement board; including nonteachers within the definition of present member; adding a definition for the terms retire and

retirement; modifying the definition of teacher member; adding a new section relating to correction of errors; requiring nonteachers to file a statement with the retirement board detailing the length of service being claimed for retirement credit; clarifying that members granted prior service credit for qualified military service shall have been honorably discharged from active duty; clarifying provisions for purchasing out of state service credit for members who transferred from the Teachers' Defined Contribution Retirement System; providing that a nonteaching member shall not be considered absent from service while serving as an officer with a statewide professional teaching association; requiring that members make written request to the retirement board to receive credit for service previously credited by the Public Employees Retirement System; providing that all interest paid or transferred on service credit from the Public Employees Retirement System be deposited in the reserve fund; providing that an inactive member may elect to receive an annuity at age sixty; providing that the sole primary beneficiary of a member is eligible for an annuity if the contributor was fifty years old with twenty-five years service; providing that a refund beneficiary shall receive the contributor's

accumulated contributions up to the plan year of contributor's death; providing that a refund beneficiary shall be paid the Teachers' Defined Contribution Retirement System member contributions transferred plus the vested portion of employer contributions and any earnings; providing that an actively contributing member who is at least sixty years of age is eligible for an annuity; providing that any member who has thirty years of total service in the state as a nonteaching member is eligible for an annuity; specifying that anyone who becomes a new member on or after July 1, 2013, shall have five or more years of contributory service to qualify for retirement; providing that a nonteaching member who is fifty-five years of age and has served thirty years in the state is eligible for an annuity; clarifying that a nonteaching member is eligible for disability benefits; clarifying the computation of a member's annuity; providing for the commencement date of disability annuity benefits; and making technical corrections throughout this article.

Be it enacted by the Legislature of West Virginia:

That §18-7A-3, §18-7A-14, §18-7A-17, §18-7A-23, §18-7A-25 and §18-7A-26 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 §18-7A-14c, all to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

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

3 (1) “Accumulated contributions” means all deposits and all
4 deductions from the gross salary of a contributor plus regular
5 interest.

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

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

17 (4) “Annuities” means the annual retirement payments for
18 life granted beneficiaries in accordance with this article.

19 (5) “Average final salary” means the average of the five
20 highest fiscal year salaries earned as a member within the last
21 fifteen fiscal years of total service credit, including military
22 service as provided in this article, or if total service is less than
23 fifteen years, the average annual salary for the period on which
24 contributions were made: *Provided*, That salaries for
25 determining benefits during any determination period may not
26 exceed the maximum compensation allowed as adjusted for cost
27 of living in accordance with section seven, article ten-d, chapter
28 five of this code and Section 401(a)(17) of the Internal Revenue
29 Code.

30 (6) “Beneficiary” means the recipient of annuity payments
31 made under the retirement system.

32 (7) “Contributor” means a member of the retirement system
33 who has an account in the teachers accumulation fund.

34 (8) “Deposit” means a voluntary payment to his or her
35 account by a member.

36 (9) “Employer” means the agency of and within the state
37 which has employed or employs a member.

38 (10) “Employer error” means an omission, misrepresentation
39 or violation of relevant provisions of the West Virginia Code or
40 of the West Virginia Code of State Regulations or the relevant
41 provisions of both the West Virginia Code and of the West
42 Virginia Code of State Regulations by the participating public
43 employer that has resulted in an underpayment or overpayment
44 of contributions required. A deliberate act contrary to the
45 provisions of this section by a participating public employer does
46 not constitute employer error.

47 (11) “Employment term” means employment for at least ten
48 months, a month being defined as twenty employment days.

49 (12) “Gross salary” means the fixed annual or periodic cash
50 wages paid by a participating public employer to a member for
51 performing duties for the participating public employer for
52 which the member was hired. Gross salary shall be allocated and
53 reported in the fiscal year in which the work was done. Gross
54 salary also includes retroactive payments made to a member to
55 correct a clerical error, or made pursuant to a court order or final
56 order of an administrative agency charged with enforcing federal
57 or state law pertaining to the member’s rights to employment or

58 wages, with all retroactive salary payments to be allocated to and
59 considered paid in the periods in which the work was or would
60 have been done. Gross salary does not include lump sum
61 payments for bonuses, early retirement incentives, severance pay
62 or any other fringe benefit of any kind including, but not limited
63 to, transportation allowances, automobiles or automobile
64 allowances, or lump sum payments for unused, accrued leave of
65 any type or character.

66 (13) "Internal Revenue Code" means the Internal Revenue
67 Code of 1986, as it has been amended.

68 (14) "Member" means any person who has accumulated
69 contributions standing to his or her credit in the state Teachers
70 Retirement System. A member shall remain a member until the
71 benefits to which he or she is entitled under this article are paid
72 or forfeited, or until cessation of membership pursuant to section
73 thirteen of this article.

74 (15) "Members of the administrative staff of the public
75 schools" means deans of instruction, deans of men, deans of
76 women, and financial and administrative secretaries.

77 (16) "Members of the extension staff of the public schools"
78 means every agricultural agent, boys' and girls' club agent and

79 every member of the agricultural extension staff whose work is
80 not primarily stenographic, clerical or secretarial.

81 (17) “New entrant” means a teacher who is not a present
82 teacher.

83 (18) “Nonteaching member” means any person, except a
84 teacher member, who is regularly employed for full-time service
85 by: (A) Any county board of education; (B) the State Board of
86 Education; (C) the Higher Education Policy Commission; (D)
87 the West Virginia Council for Community and Technical
88 College Education; or (E) a governing board, as defined in
89 section two, article one, chapter eighteen-b of this code:
90 *Provided*, That any person whose employment with the Higher
91 Education Policy Commission, the West Virginia Council for
92 Community and Technical College Education or a governing
93 board commences on or after July 1, 1991, is not considered a
94 nonteaching member.

95 (19) “Plan year” means the twelve-month period
96 commencing on July 1 and ending the following June 30 of any
97 designated year.

98 (20) “Present member” means a present teacher or
99 nonteacher who is a member of the retirement system.

100 (21) "Present teacher" means any person who was a teacher
101 within the thirty-five years beginning July 1, 1934, and whose
102 membership in the retirement system is currently active.

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

108 (23) "Public schools" means all publicly supported schools,
109 including colleges and universities in this state.

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

114 ~~(25) "Refund interest" means interest compounded,~~
115 ~~according to the formula established in legislative rules, series~~
116 ~~seven of the Consolidated Public Retirement Board, 162 CSR 7.~~

117 ~~(26)~~ (25) "Regular interest" means interest at four percent
118 compounded annually, or a higher earnable rate if set forth in the
119 formula established in legislative rules, series seven of the
120 Consolidated Public Retirement Board, 162 CSR 7.

121 ~~(27)~~ (26) “Regularly employed for full-time service” means
122 employment in a regular position or job throughout the
123 employment term regardless of the number of hours worked or
124 the method of pay.

125 ~~(28)~~ (27) “Required beginning date” means April 1 of the
126 calendar year following the later of: (A) The calendar year in
127 which the member attains age seventy and one-half years; or (B)
128 the calendar year in which the member retires or ceases covered
129 employment under the system after having attained the age of
130 seventy and one-half years.

131 (28) “Retirant” means any member who commences an
132 annuity payable by the retirement system.

133 (29) “Retirement board” means the Consolidated Public
134 Retirement Board created pursuant to article ten-d, chapter five
135 of this code.

136 ~~(29)~~ (30) “Retirement system” means the state Teachers
137 Retirement System established by this article.

138 ~~(30)~~ (31) “Teacher member” means the following persons,
139 if regularly employed for full-time service: (A) Any person
140 employed for instructional service in the public schools of West

141 Virginia; (B) principals; (C) public school librarians; (D)
142 superintendents of schools and assistant county superintendents
143 of schools; (E) any county school attendance director holding a
144 West Virginia teacher's certificate; (F) ~~the executive director of~~
145 ~~the retirement board;~~ ~~(G)~~ members of the research, extension,
146 administrative or library staffs of the public schools; ~~(H)~~ (G) the
147 State Superintendent of Schools, heads and assistant heads of the
148 divisions under his or her supervision, or any other employee
149 under the state superintendent performing services of an
150 educational nature; ~~(H)~~ (H) employees of the State Board of
151 Education who are performing services of an educational nature;
152 ~~(I)~~ (I) any person employed in a nonteaching capacity by the
153 State Board of Education, any county board of education, the
154 State Department of Education or the State Teachers Retirement
155 Board, if that person was formerly employed as a teacher in the
156 public schools; ~~(K)~~ (J) all classroom teachers, principals and
157 educational administrators in schools under the supervision of
158 the Division of Corrections, the Division of Health or the
159 Division of Human Services; ~~(L)~~ (K) an employee of the State
160 Board of School Finance, if that person was formerly employed

161 as a teacher in the public schools; and ~~(M)~~(L) any person
162 designated as a 21st Century Learner Fellow pursuant to section
163 eleven, article three, chapter eighteen-a of this code who elects
164 to remain a member of the State Teachers Retirement System
165 provided in this article.

166 ~~(31)~~ (32) “Total service” means all service as a teacher or
167 nonteacher while a member of the retirement system since last
168 becoming a member and, in addition thereto, credit for prior
169 service, if any.

170 Age in excess of seventy years shall be considered to be
171 seventy years.

§18-7A-14. Contributions by members; contributions by employers; correction of errors; forfeitures.

1 (a) At the end of each month every member of the retirement
2 system shall contribute six percent of that member’s monthly
3 gross salary to the retirement board: *Provided*, That any member
4 employed by a state institution of higher education shall
5 contribute on the member’s full earnable compensation, unless
6 otherwise provided in section fourteen-a of this article. The sums
7 are due the state Teachers Retirement System at the end of each
8 calendar month in arrears and shall be paid not later than fifteen

9 days following the end of the calendar month. Each remittance
10 shall be accompanied by a detailed summary of the sums
11 withheld from the compensation of each member for that month
12 on forms, either paper or electronic, provided by the State
13 Teachers Retirement System for that purpose.

14 (b) Annually, the contributions of each member shall be
15 credited to the member's account in the State Teachers
16 Retirement System Fund. The contributions shall be deducted
17 from the salaries of the members as prescribed in this section
18 and every member shall be considered to have given consent to
19 the deductions. No deductions, however, shall be made from the
20 earnable compensation of any member who retired because of
21 age or service and then resumed service unless as provided in
22 section thirteen-a of this article.

23 (c) The aggregate of employer contributions, due and
24 payable under this article, shall equal annually the total
25 deductions from the gross salary of members required by this
26 section. Beginning July 1, 1994, the rate shall be seven and one-
27 half percent; beginning on July 1, 1995, the rate shall be nine
28 percent; beginning on July 1, 1996, the rate shall be ten and one-

29 half percent; beginning on July 1, 1997, the rate shall be twelve
30 percent; beginning on July 1, 1998, the rate shall be thirteen and
31 one-half percent; and beginning on July 1, 1999, and thereafter,
32 the rate shall be fifteen percent: *Provided*, That the rate shall be
33 seven and one-half percent for any individual who becomes a
34 member of the State Teachers Retirement System for the first
35 time on or after July 1, 2005, or any individual who becomes a
36 member of the State Teachers Retirement System as a result of
37 the voluntary transfer contemplated in article seven-d of this
38 chapter.

39 (d) Payment by an employer to a member of the sum
40 specified in the employment contract minus the amount of the
41 employee's deductions shall be considered to be a full discharge
42 of the employer's contractual obligation as to earnable
43 compensation.

44 (e) Each contributor shall file with the retirement board or
45 with the employer to be forwarded to the retirement board an
46 enrollment form showing the contributor's date of birth and
47 other data needed by the retirement board.

48 ~~(f) If any change or employer error in the records of any~~
49 ~~participating public employer or the retirement system results in~~

50 ~~any member receiving from the system more or less than he or~~
51 ~~she would have been entitled to receive had the records been~~
52 ~~correct, the board shall correct the error, and as far as is~~
53 ~~practicable shall adjust the payment of the benefit in a manner~~
54 ~~that the actuarial equivalent of the benefit to which the member~~
55 ~~was correctly entitled shall be paid. Any employer error resulting~~
56 ~~in an underpayment to the retirement system may be corrected~~
57 ~~by the member remitting the required employee contribution and~~
58 ~~the participating public employer remitting the required~~
59 ~~employer contribution. Interest shall accumulate in accordance~~
60 ~~with the legislative rule, Retirement Board Reinstatement~~
61 ~~Interest, 162 CSR 7, and any accumulating interest owed on the~~
62 ~~employee and employer contributions resulting from the~~
63 ~~employer error shall be the responsibility of the participating~~
64 ~~public employer. The participating public employer may remit~~
65 ~~total payment and the employee reimburse the participating~~
66 ~~public employer through payroll deduction over a period~~
67 ~~equivalent to the time period during which the employer error~~
68 ~~occurred.~~

69 ~~(g)~~ (f) Notwithstanding any other provisions of this article,
70 forfeitures under the retirement system shall not be applied to

71 increase the benefits any member would otherwise receive under
72 the retirement system.

§18-7A-14c. Correction of errors; underpayments; overpayments.

1 (a) General rule: If any change or employer error in the
2 records of any employer or the retirement system results in any
3 member, retirant or beneficiary receiving from the plan more or
4 less than he or she would have been entitled to receive had the
5 records been correct, the retirement board shall correct the error.
6 If correction of the error occurs after the effective retirement
7 date of a retirant, and as far as is practicable, the retirement
8 board shall adjust the payment of the benefit in a manner that the
9 actuarial equivalent of the benefit to which the retirant was
10 correctly entitled shall be paid.

11 (b) Underpayments: Any error resulting in an underpayment
12 to the retirement system of required contributions may be
13 corrected by the member or retirant remitting the required
14 member contribution and the employer remitting the required
15 employer contribution. Interest shall accumulate in accordance
16 with the Legislative Rule 162 CSR 7 concerning retirement
17 board refund, reinstatement, retroactive service, loan and

18 employer error interest factors and any accumulating interest
19 owed on the member and employer contributions resulting from
20 an employer error shall be the responsibility of the employer.
21 The employer may remit total payment and the member
22 reimburse the employer through payroll deduction over a period
23 equivalent to the time period during which the employer error
24 occurred. If the correction of an error involving an
25 underpayment of required contributions to the retirement system
26 will result in increased payments to a retirant, including
27 increases to payments already made, any adjustments shall be
28 made only after the retirement board receives full payment of all
29 required member and employer contributions, including interest.

30 (c) Overpayments: (1) When mistaken or excess employer
31 contributions, including any overpayments, have been made to
32 the retirement system by an employer, due to error or other
33 reason, the retirement board shall credit the employer with an
34 amount equal to the erroneous contributions, to be offset against
35 the employer's future liability for employer contributions to the
36 retirement system. Earnings or interest shall not be credited to
37 the employer.

38 (2) When mistaken or excess member contributions,
39 including any overpayments, have been made to the retirement
40 system, due to error or other reason, the retirement board shall
41 have sole authority for determining the means of return, offset or
42 credit to or for the benefit of the member of the amounts, and
43 may use any means authorized or permitted under the provisions
44 of Section 401(a), et seq. of the Internal Revenue Code and
45 guidance issued thereunder applicable to governmental plans.
46 Alternatively, in its full and complete discretion, the retirement
47 board may require the employer to pay the member the amounts
48 as wages, with the retirement board crediting the employer with
49 a corresponding amount to offset against its future contributions
50 to the retirement system: *Provided*, That the wages paid to the
51 member shall not be considered compensation for any purposes
52 under this article. Earnings or interest shall not be returned,
53 offset, or credited under any of the means used by the retirement
54 board for returning mistaken or excess member contributions,
55 including any overpayments, to a member.

**§18-7A-17. Statement and computation of teachers' service;
qualified military service.**

1 (a) Under rules adopted by the retirement board, each
2 teacher and nonteaching member shall file a detailed statement

3 of his or her length of service as a teacher or nonteacher for
4 which he or she claims credit. The Retirement Board shall
5 determine what part of a year is the equivalent of a year of
6 service. In computing the service, however, it shall credit no
7 period of more than a month's duration during which a member
8 was absent without pay, nor shall it credit for more than one year
9 of service performed in any calendar year.

10 (b) For the purpose of this article, the retirement board shall
11 grant prior service credit to ~~new entrants and other~~ members of
12 the retirement system for who were honorably discharged from
13 active duty service in any of the Armed Forces of the United
14 States in any period of national emergency within which a
15 federal Selective Service Act was in effect. For purposes of this
16 section, "Armed Forces" includes Women's Army Corps,
17 women's appointed volunteers for emergency service, Army
18 Nurse Corps, SPARS, Women's Reserve and other similar units
19 officially parts of the military service of the United States. The
20 military service is considered equivalent to public school
21 teaching, and the salary equivalent for each year of that service
22 is the actual salary of the member as a teacher for his or her first

23 year of teaching after discharge from military service. Prior
24 service credit for military service shall not exceed ten years for
25 any one member, nor shall it exceed twenty-five percent of total
26 service at the time of retirement. Notwithstanding the preceding
27 provisions of this subsection, contributions, benefits and service
28 credit with respect to qualified military service shall be provided
29 in accordance with Section 414(u) of the Internal Revenue Code.
30 For purposes of this section, “qualified military service” has the
31 same meaning as in Section 414(u) of the Internal Revenue
32 Code. The Retirement Board is authorized to determine all
33 questions and make all decisions relating to this section and,
34 pursuant to the authority granted to the retirement board in
35 section one, article ten-d, chapter five of this code, may
36 promulgate rules relating to contributions, benefits and service
37 credit to comply with Section 414(u) of the Internal Revenue
38 Code. No military service credit may be used in more than one
39 retirement system administered by the Consolidated Public
40 Retirement Board.

41 (c) For service as a teacher in the employment of the federal
42 government, or a state or territory of the United States, or a

43 governmental subdivision of that state or territory, the retirement
44 board shall grant credit to the member: *Provided*, That the
45 member shall pay to the system ~~double the amount he or she~~
46 ~~contributed~~ twelve percent of that member's gross salary earned
47 during the first full year of current employment whether a
48 member of the Teachers' Retirement System or the Teachers'
49 Defined Contribution Retirement System, times the number of
50 years for which credit is granted, plus interest at a rate to be
51 determined by the retirement board. The interest shall be
52 deposited in the reserve fund and service credit granted at the
53 time of retirement shall not exceed the lesser of ten years or fifty
54 percent of the member's total service as a teacher in West
55 Virginia. Any ~~transfer~~ purchase of out-of-state service, as
56 provided in this article, shall not be used to establish eligibility
57 for a retirement allowance and the retirement board shall grant
58 credit for the ~~transferred~~ purchased service as additional service
59 only: *Provided, however*, That a ~~transfer~~ purchase of out-of-state
60 service is prohibited if the service is used to obtain a retirement
61 benefit from another retirement system: *Provided further*, That
62 salaries paid to members for service prior to entrance into the

63 retirement system shall not be used to compute the average final
64 salary of the member under the retirement system.

65 ~~(d) Service credit for members or retired members shall not~~
66 ~~be denied on the basis of minimum income rules promulgated by~~
67 ~~the Teachers' Retirement Board: *Provided*, That the member or~~
68 ~~retired member shall pay to the system the amount he or she~~
69 ~~would have contributed during the year or years of public school~~
70 ~~service for which credit was denied as a result of the minimum~~
71 ~~income rules of the Teachers Retirement Board.~~

72 ~~(e)~~ (d) No members shall be considered absent from service
73 while serving as a member or employee of the Legislature of the
74 State of West Virginia during any duly constituted session of
75 that body or while serving as an elected member of a county
76 commission during any duly constituted session of that body.

77 ~~(f)~~ (e) No member shall be considered absent from service
78 as a teacher or nonteacher while serving as an officer with a
79 statewide professional teaching association, or who has served
80 in that capacity, and no ~~retired teacher~~ retirant, who served in
81 that capacity while a member, shall be considered to have been
82 absent from service as a teacher by reason of that service:

83 *Provided*, That the period of service credit granted for that
84 service shall not exceed ten years: *Provided, however*, That a
85 member or ~~retired teacher~~ retirant who is serving or has served
86 as an officer of a statewide professional teaching association
87 shall make deposits to the Teachers Retirement ~~Board~~ System,
88 for the time of any absence, in an amount double the amount
89 which he or she would have contributed in his or her regular
90 assignment for a like period of time.

91 ~~(g)~~ (f) The Teachers Retirement ~~Board~~ System shall grant
92 service credit to any former or present member of the West
93 Virginia Public Employees Retirement System who has been a
94 contributing member of the Teachers' Retirement System for
95 more than three years, for service previously credited by the
96 Public Employees Retirement System upon his or her written
97 request and: (1) Shall require the transfer of the member's Public
98 Employees Retirement System accumulated contributions to the
99 Teachers Retirement System; or (2) shall require a repayment of
100 the amount withdrawn from the Public Employees Retirement
101 System, plus interest at a rate to be determined by the retirement
102 board, compounded annually from the date of withdrawal to the

1103 date of payment, any time prior to the member's effective
1104 retirement date: *Provided,* That there shall be added by the
1105 member to the amounts transferred or repaid under this
1106 subsection an amount which shall be sufficient to equal the
1107 contributions he or she would have made had the member been
1108 under the Teachers Retirement System during the period of his
1109 or her membership in the Public Employees Retirement System.
1110 ~~plus interest at a rate to be determined by the board compounded~~
1111 ~~annually from the date of withdrawal to the date of payment~~ The
1112 All interest paid or transferred shall be deposited in the reserve
1113 fund.

1114 (h) (g) For service as a teacher in an elementary or secondary
1115 parochial school, located within this state and fully accredited by
1116 the West Virginia Department of Education, the retirement board
1117 shall grant credit to the member: *Provided,* That the member
1118 shall pay to the system ~~double the amount contributed~~ twelve
1119 percent of that member's gross salary earned during the first full
1120 year of current employment whether a member of the Teachers'
1121 Retirement System or the Teachers' Defined Contribution
1122 Retirement System, times the number of years for which credit

123 is granted, plus interest at a rate to be determined by the
124 retirement board. The interest shall be deposited in the reserve
125 fund and service granted at the time of retirement shall not
126 exceed the lesser of ten years or fifty percent of the member's
127 total service as a teacher in the West Virginia public school
128 system. Any transfer of parochial school service, as provided in
129 this section, may not be used to establish eligibility for a
130 retirement allowance and ~~the board~~ retirement board shall grant
131 credit for the transfer as additional service only: *Provided*,
132 *however*, That a transfer of parochial school service is prohibited
133 if the service is used to obtain a retirement benefit from another
134 retirement system.

135 (†) (h) Active members who previously worked in CETA
136 (Comprehensive Employment and Training Act) may receive
137 service credit for time served in that capacity: *Provided*, That in
138 order to receive service credit under the provisions of this
139 subsection the following conditions must be met: (1) The
140 member must have moved from temporary employment with the
141 participating employer to permanent full-time employment with
142 the participating employer within one hundred twenty days

143 following the termination of the member's CETA employment;
144 (2)the ~~board~~ retirement board must receive evidence that
145 establishes to a reasonable degree of certainty as determined by
146 the ~~board~~ retirement board that the member previously worked
147 in CETA; and (3) the member shall pay to the ~~board~~ retirement
148 board an amount equal to the employer and employee
149 contribution plus interest at the amount set by the ~~board~~
150 retirement board for the amount of service credit sought pursuant
151 to this subsection: *Provided, however,* That the maximum
152 service credit that may be obtained under the provisions of this
153 subsection is two years: *Provided further,* That a member must
154 apply and pay for the service credit allowed under this
155 subsection and provide all necessary documentation by March
156 31,2003: *And provided further,* That the ~~board~~ retirement board
157 shall exercise due diligence to notify affected employees of the
158 provisions of this subsection.

159 ~~(j)~~ (i) If a member is not eligible for prior service credit or
160 pension as provided in this article, then his or her prior service
161 shall not be considered a part of his or her total service.

162 ~~(k)~~ (j) A member who withdrew from membership may
163 regain his or her former membership rights as specified in

164 section thirteen of this article only in case he or she has served
165 two years since his or her last withdrawal.

166 (†) (k) Subject to the provisions of subsections (a) through
167 (l), inclusive, of this section, the ~~board~~ retirement board shall
168 verify as soon as practicable the statements of service submitted.
169 The retirement board shall issue prior service certificates to all
170 persons eligible for the certificates under the provisions of this
171 article. The certificates shall state the length of the prior service
172 credit, but in no case shall the prior service credit exceed forty
173 years.

174 (†) (l) Notwithstanding any provision of this article to the
175 contrary, when a member is or has been elected to serve as a
176 member of the Legislature, and the proper discharge of his or her
177 duties of public office require that member to be absent from his
178 or her teaching or administrative duties, the time served in
179 discharge of his or her duties of the legislative office are credited
180 as time served for purposes of computing service credit:
181 *Provided, That the* ~~board~~ retirement board may not require any
182 additional contributions from that member in order for the ~~board~~
183 retirement board to credit him or her with the contributing

184 service credit earned while discharging official legislative duties:
185 *Provided, however,* That nothing in this section may be
186 construed to relieve the employer from making the employer
187 contribution at the member's regular salary rate or rate of pay
188 from that employer on the contributing service credit earned
189 while the member is discharging his or her official legislative
190 duties. These employer payments shall commence as of June
191 1,2000: *Provided further,* That any member to which the
192 provisions of this subsection apply may elect to pay to the ~~board~~
193 retirement board an amount equal to what his or her contribution
194 would have been for those periods of time he or she was serving
195 in the Legislature. The periods of time upon which the member
196 paid his or her contribution shall then be included for purposes
197 of determining his or her final average salary as well as for
198 determining years of service: *And provided further,* That a
199 member using the provisions of this subsection is not required to
200 pay interest on any contributions he or she may decide to make.

201 (n) (m) The Teachers Retirement ~~Board~~ System shall grant
202 service credit to any former member of the State Police Death,
203 Disability and Retirement System who has been a contributing

204 member for more than three years, for service previously
205 credited by the State Police Death, Disability and Retirement
206 System; and: (1) Shall require the transfer of the member's
207 contributions to the Teachers Retirement System; or (2) shall
208 require a repayment of the amount withdrawn any time prior to
209 the member's retirement: *Provided*, That the member shall add
210 to the amounts transferred or repaid under this paragraph an
211 amount which is sufficient to equal the contributions he or she
212 would have made had the member been under the Teachers
213 Retirement System during the period of his or her membership
214 in the State Police Death, Disability and Retirement System plus
215 interest at a rate to be determined by the ~~board~~ retirement board
216 compounded annually from the date of withdrawal to the date of
217 payment. The interest paid shall be deposited in the reserve fund.

§18-7A-23. Withdrawal and death benefits.

1 (a) Benefits upon withdrawal from service prior to
2 retirement under the provisions of this article shall be as follows:

3 (1) A contributor who withdraws from service for any cause
4 other than death, disability or retirement shall, upon application,
5 be paid his or her accumulated contributions up to the end of the

6 fiscal year preceding the year in which application is made, after
7 offset of any outstanding loan balance, plus accrued loan
8 interest, pursuant to section thirty-four of this article, but in no
9 event shall interest be paid beyond the end of five years
10 following the year in which the last contribution was made:
11 *Provided*, That the contributor, at the time of application, is then
12 no longer under contract, verbal or otherwise, to serve as a
13 teacher; or

14 (2) If the ~~contributor~~ inactive member has completed twenty
15 years of total service, he or she may elect to receive at ~~retirement~~
16 age sixty an annuity which shall be computed as provided in this
17 article: *Provided*, That if the ~~contributor~~ inactive member has
18 completed at least five, but fewer than twenty, years of total
19 service in this state, he or she may elect to receive at age sixty-
20 two an annuity which shall be computed as provided in this
21 article. The ~~contributor~~ inactive member must notify the
22 retirement board in writing concerning the election. If the
23 ~~contributor~~ inactive member has completed fewer than five years
24 of service in this state, he or she shall be subject to the
25 provisions as outlined in subdivision (1) of this subsection.

26 (b) Benefits upon the death of a contributor prior to
27 retirement under the provisions of this article shall be paid as
28 follows:

29 (1) If the contributor was at least fifty years old and if his or
30 her total service as a teacher or nonteaching member was at least
31 twenty-five years at the time of his or her death, then the
32 surviving spouse of the deceased, provided the spouse is
33 designated as the sole primary refund beneficiary, is eligible for
34 an annuity computed as though the deceased were actually a
35 ~~retired teacher~~ retirant at the time of death and had selected a
36 survivorship option which pays the spouse the same monthly
37 amount which would have been received by the deceased; or

38 (2) If the facts do not permit payment under subdivision (1)
39 of this subsection, then the following sum shall be paid to the
40 refund beneficiary of the contributor: (A) The contributor's
41 accumulated contributions up to the plan year of his or her death
42 plus an amount equal to his or her ~~employee~~ member
43 contributions. Provided, That the latter sum shall emanate from
44 the Employer's Accumulation Fund; and (B) the refund
45 beneficiary of any individual who became a member of the

46 retirement system as a result of the voluntary transfer
47 contemplated in article seven-d of this chapter shall also be paid
48 the member contributions plus the vested portion of employer
49 contributions made on his or her behalf to the Teachers' Defined
50 Contribution Retirement System, plus any earnings thereon, as
51 of June 30, 2008, as stated by the retirement board.

§18-7A-25. Eligibility for retirement allowance.

1 (a) Any actively contributing member who has attained the
2 age of sixty years or any member who has ~~had~~ thirty-five years
3 of total service as a teacher or nonteaching member in West
4 Virginia, regardless of age, is eligible for an annuity. No new
5 entrant nor present member is eligible for an annuity, however,
6 if either has less than five years of service to his or her credit:
7 Provided, That on and after July 1, 2013, any person who
8 becomes a new member of this retirement system shall, in
9 qualifying for retirement under this section, have five or more
10 years of contributory service, all of which shall be actual,
11 contributory ones.

12 (b) Any member who has attained the age of fifty-five years
13 and who has served thirty years as a teacher or nonteaching
14 member in West Virginia is eligible for an annuity.

15 (c) Any member who has served at least thirty but less than
16 thirty-five years as a teacher or nonteaching member in West
17 Virginia and is less than fifty-five years of age is eligible for an
18 annuity, but the annuity shall be the reduced actuarial equivalent
19 of the annuity the member would have received if the member
20 were age fifty-five at the time such annuity was applied for.

21 (d) The request for any annuity shall be made by the member
22 in writing to the retirement board, but in case of retirement for
23 disability, the written request may be made by either the member
24 or the employer.

25 (e) A member is eligible for annuity for disability if he or
26 she satisfies the conditions in either subdivision (1) or (2) of this
27 subsection and meets the conditions of subdivision (3) of this
28 subsection as follows:

29 (1) His or her service as a teacher or nonteaching member in
30 West Virginia must total at least ten years and service as a
31 teacher or nonteaching member must have been terminated
32 because of disability, which disability must have caused absence
33 from service for at least six months before his or her application
34 for disability annuity is approved.

35 (2) His or her service as a teacher or nonteaching member in
36 West Virginia must total at least five years and service as a
37 teacher or nonteaching member must have been terminated
38 because of disability, which disability must have caused absence
39 from service for at least six months before his or her application
40 for disability annuity is approved and the disability is a direct
41 and total result of an act of student violence directed toward the
42 member.

43 (3) An examination by a physician or physicians selected by
44 the retirement board must show that the member is at the time
45 mentally or physically incapacitated for service as a teacher or
46 nonteaching member, that for that service the disability is total
47 and likely to be permanent and that he or she should be retired
48 in consequence of the disability.

49 (f) Continuance of the disability of the ~~retired member~~
50 retirant shall be established by medical examination, as
51 prescribed in subdivision (3), subsection (e) of this section,
52 annually for five years after retirement, and thereafter at such
53 times required by the retirement board. Effective July 1,1998, a
54 member who has retired because of a disability may select an

55 option of payment under the provisions of section twenty-eight
56 of this article: *Provided*, That any option selected under the
57 provisions of section twenty-eight of this article shall be in all
58 respects the actuarial equivalent of the straight life annuity
59 benefit the disability ~~retiree~~ retirant receives or would receive if
60 the options under said section were not available and that no
61 beneficiary or beneficiaries of the disability ~~annuitant~~ retirant
62 may receive a greater benefit, nor receive any benefit for a
63 greater length of time, than the beneficiary or beneficiaries
64 would have received had the disability ~~retiree~~ retirant not made
65 any election of the options available under said section. In
66 determining the actuarial equivalence, the retirement board shall
67 take into account the life expectancies of the member and the
68 beneficiary: *Provided, however*, That the life expectancies may
69 at the discretion of the retirement board be established by an
70 underwriting medical director of a competent insurance company
71 offering annuities. Payment of the disability annuity provided in
72 this article shall cease immediately if the retirement board finds
73 that the disability of the ~~retired teacher~~ retirant no longer exists,
74 or if the ~~retired teacher~~ retirant refuses to submit to medical
75 examination as required by this section.

§18-7A-26. Computation of annuities.

1 (a) ~~Annuitants~~ Retirants whose annuities were approved by
2 the retirement board effective before July 1, 1980, shall be paid
3 the annuities which were approved by the retirement board.

4 (b) Annuities approved by the retirement board effective
5 after June 30, 1980, shall be computed as provided in this
6 section.

7 (c) Upon establishment of eligibility for a retirement
8 allowance, a member shall be granted an annuity which shall be
9 ~~the sum of the following~~ two percent of the member's average
10 salary multiplied by his or her total service credit, subject to
11 reduction if necessary to comply with the maximum benefit
12 provisions of Section 415 of the Internal Revenue Code and
13 section twenty-eight-a of this article.

14 (1) ~~Two percent of the member's average salary multiplied~~
15 ~~by his or her total service credit as a teacher.~~ In this subdivision
16 subsection "average salary" means the average of the highest
17 annual salaries received by the member during any five plan
18 years contained within his or her last fifteen years of total
19 service credit: *Provided*, That the highest annual salary used in

20 this calculation for certain members employed by the West
21 Virginia Higher Education Policy Commission under its control
22 shall be \$4,800, as provided by section fourteen-a of this article.

23 ~~(2) The actuarial equivalent of the voluntary deposits of the~~
24 ~~member in his or her individual account up to the time of his or~~
25 ~~her retirement, with regular interest.~~

26 (d) The disability annuities of all ~~teachers retired for~~
27 ~~disability~~ disabled retirants shall be based upon a disability table
28 prepared by a competent actuary approved by the retirement
29 board. Disability annuity benefits will begin the first day of the
30 month following the latter of: (1) Six months of absence caused
31 by said disability; (2) date of written report by physician selected
32 by retirement board stating member is mentally or physically
33 incapacitated for service and that disability is total and likely to
34 be permanent; and (3) termination of employment.

35 (e) Upon the death of ~~an annuitant~~ a retirant who qualified
36 for an annuity as the surviving spouse of an active member or
37 because of permanent disability, the estate of the deceased or
38 beneficiary designated for such purpose shall be paid the
39 difference, if any, between the member's contributions with

40 regular interest thereon, and the sum of the annuity payments.
41 Upon the death of a spouse who was named as the member's
42 survivor, a retirant may elect an annuity option approved by the
43 retirement board in an amount adjusted on a fair basis to be of
44 equal actuarial value as the annuity prospectively in effect
45 relative to the surviving member at the time the new option is
46 elected.

47 (f) All annuities shall be paid in twelve monthly payments.
48 In computing the monthly payments, fractions of a cent shall be
49 considered a cent. The monthly payments shall cease with the
50 payment for the month within which the beneficiary dies, and
51 shall begin with the payment for the month succeeding the
52 month within which the ~~annuitant~~ retirant became eligible under
53 this article for the annuity granted; in no case, however, shall an
54 ~~annuitant~~ a retirant receive more than four monthly payments
55 which are retroactive after the retirement board receives his or
56 her application for annuity. The monthly payments shall be made
57 on the twenty-fifth day of each month, except the month of
58 December, when the payment shall be made on December 18. If
59 the date of payment falls on a holiday, Saturday or Sunday, then
60 the payment shall be made on the preceding workday.

61 (g) In case the retirement board receives data affecting the
62 approved annuity of a ~~retired teacher~~ retirant, the annuity shall
63 be changed in accordance with the data, the change being
64 effective with the payment for the month within which the
65 retirement board received the new data.

66 (h) Any person who has attained the age of sixty-five and
67 who has served at least twenty-five years as a teacher or
68 nonteacher prior to July 1, 1941, is eligible for prior service
69 credit and for prior service pensions as prescribed in this section.

NOTE: The purpose of this bill is to specify the time period for allocating and reporting gross salary to the retirement board, to add the term “nonteachers” to the definition of “present member”, to add a definition for the terms “retire” and “retirement”, to add a new section relating to correction of errors, to modify the definition of “teacher member”, to require nonteachers to provide a written statement to the retirement board for years of service being claimed, to clarify that members granted prior service credit for qualified military service must be honorably discharged from active duty, to clarify provisions for purchasing out of state service credit for members who transferred from the TDC Plan, to require members to make written request to the retirement board to receive previously credited service from PERS, to require that all interest paid or transferred on previously credited PERS service be deposited in the reserve fund, to provide that an inactive member may elect to receive an annuity at age 60, to allow a sole primary beneficiary of a member is eligible for an annuity if the contributor was 50 years old with 25 years of service, to allow a refund beneficiary to receive the member’s contributions and vested employer contributions plus any earnings transferred from the TDC Plan, to provide that an actively contributing member who is at least age 60 is eligible to receive an annuity, to provide that any member who has 30 years of in state service as a nonteaching member is eligible to receive an annuity, to require that anyone who becomes a new member on or after July 1, 2013 to have at least 5 years of contributory service, to allow a nonteaching member who is 50 and has 30 years of in state service to be eligible for an annuity, to clarify the computation of a member’s annuity, to provide for the commencement date of disability annuity benefits, and to make technical corrections.

This bill was recommended for introduction and passage during the 2013 Regular Session of the Legislature by the Consolidated Public Retirement Board.

§18-7A-14c is new; therefore, it has been completely underscored.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

The Committee on Finance moves to amend the title of the bill to read as follows:

H. B. 2800 - “A BILL to amend and reenact §18-7A-3, §18-7A-14, §18-7A-17, §18-7A-23, §18-7A-25 and §18-7A-26 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §18-7A-14c, all relating to the Teachers’ Retirement System; specifying the time period in which a participating public employer allocates and reports gross salary to the retirement board; including nonteachers within the definition of present member; defining retire and retirement; modifying the definition of teacher member; providing for the correction of errors; requiring nonteachers to file a statement with the retirement board detailing the length of service being claimed for retirement credit; requiring that members granted prior service credit for qualified military service shall have been honorably discharged from active duty; providing for purchasing out of state service credit for members who transferred from the Teachers’ Defined Contribution Retirement System; providing that a nonteaching member shall not be considered absent from service while serving as an officer with a statewide professional teaching association; requiring that members make written request to the retirement board to receive credit for service previously credited by the Public Employees Retirement System; providing that all interest paid or transferred on service credit from the Public Employees Retirement System be deposited in the reserve fund; providing that an inactive member may elect to receive an annuity at age sixty; providing that the sole primary beneficiary of a member is eligible for an annuity if the contributor was fifty years old with twenty-five years service; providing that a refund beneficiary shall receive the contributor’s accumulated contributions up to the plan year of contributor’s death; providing that a refund beneficiary shall be paid the Teachers’ Defined Contribution Retirement System member contributions transferred plus the vested portion of employer contributions and any earnings; providing that an actively contributing member who is at least sixty years of age is eligible for an annuity; providing that any member who has thirty years of total service in the state as a nonteaching member is eligible for an annuity; specifying that anyone who becomes a new member on or after July 1, 2013, shall have five or more years of actual contributory service to qualify for retirement; providing that a nonteaching member who is fifty-five years of age and has served thirty years in the state is eligible for an annuity; providing that a nonteaching member is eligible for disability benefits; providing for the computation of a member’s annuity; and providing for the commencement date of disability annuity benefits.”