

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 419**

(By Senators Jenkins and McCabe)

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

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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 Consolidated Public Retirement Board; defining terms; 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 must be 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 requests 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, must 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.

*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  
2 a different meaning:

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

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

9 (3) “Actuarially equivalent” or “of equal actuarial value”  
10 means a benefit of equal value computed upon the basis of  
11 the mortality table and interest rates as set and adopted by the  
12 Retirement Board in accordance with the provisions of this  
13 article: *Provided*, That when used in the context of  
14 compliance with the federal maximum benefit requirements

15 of Section 415 of the Internal Revenue Code, “actuarially  
16 equivalent” shall be computed using the mortality tables and  
17 interest rates required to comply with those requirements.

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

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

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

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

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

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

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

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

52 (12) “Gross salary” means the fixed annual or periodic  
53 cash wages paid by a participating public employer to a  
54 member for performing duties for the participating public  
55 employer for which the member was hired. Gross salary shall  
56 be allocated and reported in the fiscal year in which the work  
57 was done. Gross salary also includes retroactive payments  
58 made to a member to correct a clerical error, or made  
59 pursuant to a court order or final order of an administrative  
60 agency charged with enforcing federal or state law pertaining  
61 to the member’s rights to employment or wages, with all  
62 retroactive salary payments to be allocated to and considered  
63 paid in the periods in which the work was or would have  
64 been done. Gross salary does not include lump sum payments  
65 for bonuses, early retirement incentives, severance pay or any  
66 other fringe benefit of any kind including, but not limited to,  
67 transportation allowances, automobiles or automobile  
68 allowances, or lump sum payments for unused, accrued leave  
69 of any type or character.

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

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

78 (15) "Members of the administrative staff of the public  
79 schools" means deans of instruction, deans of men, deans of  
80 women, and financial and administrative secretaries.

81 (16) "Members of the extension staff of the public  
82 schools" means every agricultural agent, boys' and girls' club  
83 agent and every member of the agricultural extension staff  
84 whose work is not primarily stenographic, clerical or  
85 secretarial.

86 (17) "New entrant" means a teacher who is not a present  
87 teacher.

88 (18) “Nonteaching member” means any person, except a  
89 teacher member, who is regularly employed for full-time  
90 service by: (A) Any county board of education; (B) the State  
91 Board of Education; (C) the Higher Education Policy  
92 Commission; (D) the West Virginia Council for Community  
93 and Technical College Education; or (E) a governing board,  
94 as defined in section two, article one, chapter eighteen-b of  
95 this code: *Provided*, That any person whose employment  
96 with the Higher Education Policy Commission, the West  
97 Virginia Council for Community and Technical College  
98 Education or a governing board commences on or after July  
99 1, 1991, is not considered a nonteaching member.

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

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

105 (21) “Present teacher” means any person who was a  
106 teacher within the thirty-five years beginning July 1, 1934,

107 and whose membership in the retirement system is currently  
108 active.

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

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

116 (24) "Refund beneficiary" means the estate of a deceased  
117 contributor or a person he or she has nominated as  
118 beneficiary of his or her contributions by written designation  
119 duly executed and filed with the Retirement Board.

120 ~~(25) "Refund interest" means interest compounded;~~  
121 ~~according to the formula established in legislative rules;~~  
122 ~~series seven of the Consolidated Public Retirement Board;~~  
123 ~~†62 CSR 7.~~

124 ~~(26)~~ (25) "Regular interest" means interest at four percent  
125 compounded annually, or a higher earnable rate if set forth in

126 the formula established in legislative rules, series seven of the  
127 ~~Consolidated Public Retirement Board~~ board's Rule, Refund,  
128 Reinstatement, Retroactive Service, Loan And Employer  
129 Error Interest Factors, 162 CSR 7.

130 ~~(27)~~ (26) "Regularly employed for full-time service"  
131 means employment in a regular position or job throughout  
132 the employment term regardless of the number of hours  
133 worked or the method of pay.

134 ~~(28)~~ (27) "Required beginning date" means April 1 of the  
135 calendar year following the later of: (A) The calendar year in  
136 which the member attains age seventy and one-half years; or  
137 (B) the calendar year in which the member retires or ceases  
138 covered employment under the system after having attained  
139 the age of seventy and one-half years.

140 (28) "Retirant" means any member who commences an  
141 annuity payable by the retirement system.

142 (29) "Retirement board" means the Consolidated Public  
143 Retirement Board created pursuant to article ten-d, chapter  
144 five of this code.

145       ~~(29)~~ (30) “Retirement system” means the State Teachers  
146 Retirement System established by this article.

147       ~~(30)~~ (31) “Teacher member” means the following  
148 persons, if regularly employed for full-time service: (A) Any  
149 person employed for instructional service in the public  
150 schools of West Virginia; (B) principals; (C) public school  
151 librarians; (D) superintendents of schools and assistant  
152 county superintendents of schools; (E) any county school  
153 attendance director holding a West Virginia teacher’s  
154 certificate; ~~(F) the executive director of the retirement board;~~  
155 ~~(G)~~ members of the research, extension, administrative or  
156 library staffs of the public schools; ~~(H)~~(G) the State  
157 Superintendent of Schools, heads and assistant heads of the  
158 divisions under his or her supervision or any other employee  
159 under the state superintendent performing services of an  
160 educational nature; ~~(I)~~(H) employees of the State Board of  
161 Education who are performing services of an educational  
162 nature; ~~(J)~~ (I) any person employed in a nonteaching capacity  
163 by the State Board of Education, any county board of

164 education, the State Department of Education or the State  
165 Teachers Retirement Board, if that person was formerly  
166 employed as a teacher in the public schools; ~~(K)~~ (J) all  
167 classroom teachers, principals and educational administrators  
168 in schools under the supervision of the Division of  
169 Corrections, the Division of Health or the Division of Human  
170 Services; ~~(L)~~ (K) an employee of the State Board of School  
171 Finance, if that person was formerly employed as a teacher  
172 in the public schools; and ~~(M)~~ (L) any person designated as  
173 a 21st Century Learner Fellow pursuant to section eleven,  
174 article three, chapter eighteen-a of this code who elects to  
175 remain a member of the State Teachers Retirement System  
176 provided in this article.

177 ~~(31)~~ (32) “Total service” means all service as a teacher or  
178 nonteacher while a member of the retirement system since  
179 last becoming a member and, in addition thereto, credit for  
180 prior service, if any.

181 Age in excess of seventy years shall be considered to be  
182 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  
2 retirement system shall contribute six percent of that  
3 member's monthly gross salary to the retirement board:  
4 *Provided*, That any member employed by a state institution  
5 of higher education shall contribute on the member's full  
6 earnable compensation, unless otherwise provided in section  
7 fourteen-a of this article. The sums are due the State Teachers  
8 Retirement System at the end of each calendar month in  
9 arrears and shall be paid not later than fifteen days following  
10 the end of the calendar month. Each remittance shall be  
11 accompanied by a detailed summary of the sums withheld  
12 from the compensation of each member for that month on  
13 forms, either paper or electronic, provided by the State  
14 Teachers Retirement System for that purpose.

15 (b) Annually, the contributions of each member shall be  
16 credited to the member's account in the State Teachers

17 Retirement System Fund. The contributions shall be deducted  
18 from the salaries of the members as prescribed in this section  
19 and every member shall be considered to have given consent  
20 to the deductions. No deductions, however, shall be made  
21 from the earnable compensation of any member who retired  
22 because of age or service and then resumed service unless as  
23 provided in section thirteen-a of this article.

24 (c) The aggregate of employer contributions, due and  
25 payable under this article, shall equal annually the total  
26 deductions from the gross salary of members required by this  
27 section. Beginning July 1, 1994, the rate shall be seven and  
28 one-half percent; beginning on July 1, 1995, the rate shall be  
29 nine percent; beginning on July 1, 1996, the rate shall be ten  
30 and one-half percent; beginning on July 1, 1997, the rate  
31 shall be twelve percent; beginning on July 1, 1998, the rate  
32 shall be thirteen and one-half percent; and beginning on July  
33 1, 1999, and thereafter, the rate shall be fifteen percent:  
34 *Provided*, That the rate shall be seven and one-half percent

35 for any individual who becomes a member of the State  
36 Teachers Retirement System for the first time on or after July  
37 1, 2005, or any individual who becomes a member of the  
38 State Teachers Retirement System as a result of the voluntary  
39 transfer contemplated in article seven-d of this chapter.

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

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

49 ~~(f) If any change or employer error in the records of any~~  
50 ~~participating public employer or the retirement system results~~  
51 ~~in any member receiving from the system more or less than~~  
52 ~~he or she would have been entitled to receive had the records~~  
53 ~~been correct, the board shall correct the error, and as far as is~~

~~54 practicable shall adjust the payment of the benefit in a  
55 manner that the actuarial equivalent of the benefit to which  
56 the member was correctly entitled shall be paid. Any  
57 employer error resulting in an underpayment to the retirement  
58 system may be corrected by the member remitting the  
59 required employee contribution and the participating public  
60 employer remitting the required employer contribution.  
61 Interest shall accumulate in accordance with the legislative  
62 rule, Retirement Board Reinstatement Interest, 162 CSR 7,  
63 and any accumulating interest owed on the employee and  
64 employer contributions resulting from the employer error  
65 shall be the responsibility of the participating public  
66 employer. The participating public employer may remit total  
67 payment and the employee reimburse the participating public  
68 employer through payroll deduction over a period equivalent  
69 to the time period during which the employer error occurred.~~

70 (g) (f) Notwithstanding any other provisions of this  
71 article, forfeitures under the retirement system shall not be  
72 applied to increase the benefits any member would otherwise  
73 receive under 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  
3 any member, retirant or beneficiary receiving from the plan  
4 more or less than he or she would have been entitled to  
5 receive had the records been correct, the retirement board  
6 shall correct the error. If correction of the error occurs after  
7 the effective retirement date of a retirant, and as far as is  
8 practicable, the retirement board shall adjust the payment of  
9 the benefit in a manner that the actuarial equivalent of the  
10 benefit to which the retirant was correctly entitled shall be  
11 paid.

12 (b) Underpayments: Any error resulting in an  
13 underpayment to the retirement system of required  
14 contributions may be corrected by the member or retirant  
15 remitting the required member contribution and the employer  
16 remitting the required employer contribution. Interest shall  
17 accumulate in accordance with the board's Rule, Refund,  
18 Reinstatement, Retroactive Service, Loan And Employer

19 Error Interest Factors, 162 CSR 7, concerning retirement  
20 board refund, reinstatement, retroactive service, loan and  
21 employer error interest factors and any accumulating interest  
22 owed on the member and employer contributions resulting  
23 from an employer error is the responsibility of the employer.  
24 The employer may remit total payment and the member  
25 reimburse the employer through payroll deduction over a  
26 period equivalent to the time period during which the  
27 employer error occurred. If the correction of an error  
28 involving an underpayment of required contributions to the  
29 retirement system will result in increased payments to a  
30 retirant, including increases to payments already made, any  
31 adjustments shall be made only after the retirement board  
32 receives full payment of all required member and employer  
33 contributions, including interest.

34 (c) Overpayments: (1) When mistaken or excess  
35 employer contributions, including any overpayments, have  
36 been made to the retirement system by an employer, due to  
37 error or other reason, the retirement board shall credit the

38 employer with an amount equal to the erroneous  
39 contributions, to be offset against the employer's future  
40 liability for employer contributions to the retirement system.  
41 Earnings or interest shall not be credited to the employer.

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

58 credited under any of the means used by the retirement board  
59 for returning mistaken or excess member contributions,  
60 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  
3 statement of his or her length of service as a teacher or  
4 nonteacher for which he or she claims credit. The retirement  
5 board shall determine what part of a year is the equivalent of  
6 a year of service. In computing the service, however, it shall  
7 credit no period of more than a month's duration during  
8 which a member was absent without pay, nor shall it credit  
9 for more than one year of service performed in any calendar  
10 year.

11 (b) For the purpose of this article, the retirement board  
12 shall grant prior service credit to ~~new entrants and other~~  
13 members of the retirement system for who were honorably  
14 discharged from active duty service in any of the armed  
15 forces of the United States in any period of national

16 emergency within which a federal Selective Service Act was  
17 in effect. For purposes of this section, “armed forces”  
18 includes Women’s Army Corps, women’s appointed  
19 volunteers for emergency service, Army Nurse Corps,  
20 SPARS, Women’s Reserve and other similar units officially  
21 parts of the military service of the United States. The military  
22 service is considered equivalent to public school teaching,  
23 and the salary equivalent for each year of that service is the  
24 actual salary of the member as a teacher for his or her first  
25 year of teaching after discharge from military service. Prior  
26 service credit for military service shall not exceed ten years  
27 for any one member, nor shall it exceed twenty-five percent  
28 of total service at the time of retirement. Notwithstanding the  
29 preceding provisions of this subsection, contributions,  
30 benefits and service credit with respect to qualified military  
31 service shall be provided in accordance with Section 414(u)  
32 of the Internal Revenue Code. For purposes of this section,  
33 “qualified military service” has the same meaning as in  
34 Section 414(u) of the Internal Revenue Code. The retirement

35 board ~~is authorized to~~ shall determine all questions and make  
36 all decisions relating to this section and, pursuant to the  
37 authority granted to the retirement board in section one,  
38 article ten-d, chapter five of this code, may promulgate rules  
39 relating to contributions, benefits and service credit to  
40 comply with Section 414(u) of the Internal Revenue Code.  
41 ~~No~~ Military service credit may not be used in more than one  
42 retirement system administered by the Consolidated Public  
43 Retirement Board.

44 (c) For service as a teacher in the employment of the  
45 federal government, or a state or territory of the United  
46 States, or a governmental subdivision of that state or  
47 territory, the retirement board shall grant credit to the  
48 member: *Provided*, That the member shall pay to the system  
49 ~~double the amount he or she contributed~~ twelve percent of  
50 that member's gross salary earned during the first full year of  
51 current employment whether a member of the Teachers'  
52 Retirement System or the Teachers' Defined Contribution  
53 Retirement System, times the number of years for which

54 credit is granted, plus interest at a rate to be determined by  
55 the retirement board. The interest shall be deposited in the  
56 reserve fund and service credit granted at the time of  
57 retirement shall not exceed the lesser of ten years or fifty  
58 percent of the member's total service as a teacher in West  
59 Virginia. Any ~~transfer~~ purchase of out-of-state service, as  
60 provided in this article, shall not be used to establish  
61 eligibility for a retirement allowance and the retirement board  
62 shall grant credit for the ~~transferred~~ purchased service as  
63 additional service only: *Provided, however,* That a ~~transfer~~  
64 purchase of out-of-state service is prohibited if the service is  
65 used to obtain a retirement benefit from another retirement  
66 system: *Provided further,* That salaries paid to members for  
67 service prior to entrance into the retirement system shall not  
68 be used to compute the average final salary of the member  
69 under the retirement system.

70 ~~(d) Service credit for members or retired members shall~~  
71 ~~not be denied on the basis of minimum income rules~~  
72 ~~promulgated by the Teachers' Retirement Board: *Provided,*~~  
73 ~~That the member or retired member shall pay to the system~~

74 ~~the amount he or she would have contributed during the year~~  
75 ~~or years of public school service for which credit was denied~~  
76 ~~as a result of the minimum income rules of the Teachers~~  
77 ~~Retirement Board.~~

78 (e) ~~(d) No members shall~~ A member shall not be  
79 considered absent from service while serving as a member or  
80 employee of the Legislature of the State of West Virginia  
81 during any duly constituted session of that body or while  
82 serving as an elected member of a county commission during  
83 any duly constituted session of that body.

84 (f) ~~(e) No members shall~~ A member shall not be  
85 considered absent from service as a teacher or nonteacher  
86 while serving as an officer with a statewide professional  
87 teaching association, or who has served in that capacity, and  
88 ~~no retired teacher~~ retirant, who served in that capacity while  
89 a member, shall be considered to have been absent from  
90 service as a teacher by reason of that service: *Provided*, That  
91 the period of service credit granted for that service shall not  
92 exceed ten years: *Provided, however*, That a member or  
93 ~~retired teacher~~ retirant who is serving or has served as an

94 officer of a statewide professional teaching association shall  
95 make deposits to the Teachers Retirement ~~Board~~ System, for  
96 the time of any absence, in an amount double the amount  
97 which he or she would have contributed in his or her regular  
98 assignment for a like period of time.

99 ~~(g)~~ (f) The Teachers Retirement ~~Board~~ System shall grant  
100 service credit to any former or present member of the West  
101 Virginia Public Employees Retirement System who has been  
102 a contributing member of the Teachers' Retirement System  
103 for more than three years, for service previously credited by  
104 the Public Employees Retirement System upon his or her  
105 written request and: (1) Shall require the transfer of the  
106 member's Public Employees Retirement System accumulated  
107 contributions to the Teachers Retirement System; or (2) shall  
108 require a repayment of the amount withdrawn from the  
109 Public Employees Retirement System, plus interest at a rate  
110 to be determined by the retirement board, compounded  
111 annually from the date of withdrawal to the date of payment,  
112 any time prior to the member's effective retirement date:

113 *Provided*, That there shall be added by the member to the  
114 amounts transferred or repaid under this subsection an  
115 amount which shall be sufficient to equal the contributions he  
116 or she would have made had the member been under the  
117 Teachers Retirement System during the period of his or her  
118 membership in the Public Employees Retirement System.  
119 ~~plus interest at a rate to be determined by the board~~  
120 ~~compounded annually from the date of withdrawal to the date~~  
121 ~~of payment~~ The All interest paid or transferred shall be  
122 deposited in the reserve fund.

123 (h) (g) For service as a teacher in an elementary or  
124 secondary parochial school, located within this state and fully  
125 accredited by the West Virginia Department of Education,  
126 the retirement board shall grant credit to the member:  
127 *Provided*, That the member shall pay to the system ~~double~~  
128 ~~the amount contributed~~ twelve percent of that member's  
129 gross salary earned during the first full year of current  
130 employment whether a member of the Teachers' Retirement  
131 System or the Teachers' Defined Contribution Retirement

132 System, times the number of years for which credit is  
133 granted, plus interest at a rate to be determined by the  
134 retirement board. The interest shall be deposited in the  
135 reserve fund and service granted at the time of retirement  
136 shall not exceed the lesser of ten years or fifty percent of the  
137 member's total service as a teacher in the West Virginia  
138 public school system. Any transfer of parochial school  
139 service, as provided in this section, may not be used to  
140 establish eligibility for a retirement allowance and the  
141 retirement board shall grant credit for the transfer as  
142 additional service only: *Provided, however,* That a transfer of  
143 parochial school service is prohibited if the service is used to  
144 obtain a retirement benefit from another retirement system.

145 (i) (h) Active members who previously worked in CETA  
146 (Comprehensive Employment and Training Act) may receive  
147 service credit for time served in that capacity: *Provided,* That  
148 in order to receive service credit under the provisions of this  
149 subsection the following conditions must be met: (1) The  
150 member must have moved from temporary employment with

151 the participating employer to permanent full-time  
152 employment with the participating employer within one  
153 hundred twenty days following the termination of the  
154 member's CETA employment; (2) the retirement board must  
155 receive evidence that establishes to a reasonable degree of  
156 certainty as determined by the retirement board that the  
157 member previously worked in CETA; and (3) the member  
158 shall pay to the retirement board an amount equal to the  
159 employer and employee contribution plus interest at the  
160 amount set by the retirement board for the amount of service  
161 credit sought pursuant to this subsection: *Provided, however,*  
162 That the maximum service credit that may be obtained under  
163 the provisions of this subsection is two years: *Provided*  
164 *further,* That a member must apply and pay for the service  
165 credit allowed under this subsection and provide all  
166 necessary documentation by March 31, 2003: *And provided*  
167 *further,* That the retirement board shall exercise due diligence  
168 to notify affected employees of the provisions of this  
169 subsection.

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

174       ~~(k)~~ (j) A member who withdrew from membership may  
175 regain his or her former membership rights as specified in  
176 section thirteen of this article only in case he or she has  
177 served two years since his or her last withdrawal.

178       ~~(l)~~ (k) Subject to the provisions of subsections (a) through  
179 (l), inclusive, of this section, the retirement board shall verify  
180 as soon as practicable the statements of service submitted.  
181 The retirement board shall issue prior service certificates to  
182 all persons eligible for the certificates under the provisions of  
183 this article. The certificates shall state the length of the prior  
184 service credit, but in no case shall the prior service credit  
185 exceed forty years.

186       ~~(m)~~ (l) Notwithstanding any provision of this article to  
187 the contrary, when a member is or has been elected to serve  
188 as a member of the Legislature, and the proper discharge of

189 his or her duties of public office require that member to be  
190 absent from his or her teaching or administrative duties, the  
191 time served in discharge of his or her duties of the legislative  
192 office ~~are~~ shall be credited as time served for purposes of  
193 computing service credit: *Provided*, That the retirement  
194 board may not require any additional contributions from that  
195 member in order for the retirement board to credit him or her  
196 with the contributing service credit earned while discharging  
197 official legislative duties: *Provided, however*, That nothing  
198 in this section may be construed to relieve the employer from  
199 making the employer contribution at the member's regular  
200 salary rate or rate of pay from that employer on the  
201 contributing service credit earned while the member is  
202 discharging his or her official legislative duties. These  
203 employer payments shall commence as of June 1, 2000:  
204 *Provided further*, That any member to which the provisions  
205 of this subsection apply may elect to pay to the retirement  
206 board an amount equal to what his or her contribution would

207 have been for those periods of time he or she was serving in  
208 the Legislature. The periods of time upon which the member  
209 paid his or her contribution shall then be included for  
210 purposes of determining his or her final average salary as  
211 well as for determining years of service: *And provided*  
212 *further*, That a member using the provisions of this  
213 subsection is not required to pay interest on any contributions  
214 he or she may decide to make.

215 (m) ~~(n)~~ (m) The Teachers Retirement ~~Board~~ System shall  
216 grant service credit to any former member of the State Police  
217 Death, Disability and Retirement System who has been a  
218 contributing member for more than three years, for service  
219 previously credited by the State Police Death, Disability and  
220 Retirement System; and: (1) Shall require the transfer of the  
221 member's contributions to the Teachers Retirement System;  
222 or (2) shall require a repayment of the amount withdrawn any  
223 time prior to the member's retirement: *Provided*, That the  
224 member shall add to the amounts transferred or repaid under  
225 this paragraph an amount which is sufficient to equal the

226 contributions he or she would have made had the member  
227 been under the Teachers Retirement System during the  
228 period of his or her membership in the State Police Death,  
229 Disability and Retirement System plus interest at a rate to be  
230 determined by the retirement board compounded annually  
231 from the date of withdrawal to the date of payment. The  
232 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  
3 follows:

4 (1) A contributor who withdraws from service for any  
5 cause other than death, disability or retirement shall, upon  
6 application, be paid his or her accumulated contributions up  
7 to the end of the fiscal year preceding the year in which  
8 application is made, after offset of any outstanding loan  
9 balance, plus accrued loan interest, pursuant to section thirty-  
10 four of this article. ~~but~~ In no event shall interest be paid  
11 beyond the end of five years following the year in which the

12 last contribution was made: *Provided*, That the contributor,  
13 at the time of application, is then no longer under contract,  
14 verbal or otherwise, to serve as a teacher; or

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

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

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

41 (2) If the facts do not permit payment under subdivision  
42 (1) of this subsection, then the following sum shall be paid to  
43 the refund beneficiary of the contributor: (A) The  
44 contributor's accumulated contributions up to the plan year  
45 of his or her death plus an amount equal to his or her  
46 ~~employee member~~ member contributions. Provided, That the latter  
47 sum shall emanate from the Employer's Accumulation Fund;  
48 and (B) the refund beneficiary of any individual who became  
49 a member of the retirement system as a result of the voluntary  
50 transfer contemplated in article seven-d of this chapter shall

51 also be paid the member contributions plus the vested portion  
52 of employer contributions made on his or her behalf to the  
53 Teachers' Defined Contribution Retirement System, plus any  
54 earnings thereon, as of June 30, 2008, as stated by the  
55 retirement board.

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

1 (a) Any actively contributing member who has attained  
2 the age of sixty years or any member who has ~~had~~ thirty-five  
3 years of total service as a teacher or nonteaching member in  
4 West Virginia, regardless of age, is eligible for an annuity.  
5 ~~No~~ A new entrant ~~nor~~ or a present member is not eligible for  
6 an annuity, however, if either he or she has less than five  
7 years of service to his or her credit: Provided, That on and  
8 after July 1, 2013, any person who becomes a new member  
9 of this retirement system shall, in qualifying for retirement  
10 under this section, have five or more years of contributory  
11 service, all of which shall be actual, contributory ones.

12 (b) Any member who has attained the age of fifty-five  
13 years and who has served thirty years as a teacher or

14 nonteaching member in West Virginia is eligible for an  
15 annuity.

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

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

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

31 (1) His or her service as a teacher or nonteaching member  
32 in West Virginia must total at least ten years and service as

33 a teacher or nonteaching member must have been terminated  
34 because of disability, which ~~disability~~ must have caused  
35 absence from service for at least six months before his or her  
36 application for a disability annuity is approved.

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

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

51 (f) Continuance of the disability of the ~~retired member~~  
52 retirant shall be established by medical examination, as  
53 prescribed in subdivision (3), subsection (e) of this section,  
54 annually for five years after retirement, and thereafter at ~~such~~  
55 times required by the retirement board. Effective July 1,  
56 1998, a member who has retired because of a disability may  
57 select an option of payment under the provisions of section  
58 twenty-eight of this article: *Provided*, That any option  
59 selected under the provisions of section twenty-eight of this  
60 article shall be in all respects the actuarial equivalent of the  
61 straight life annuity benefit the disability ~~retiree~~ retirant  
62 receives or would receive if the options under said section  
63 were not available and that no beneficiary or beneficiaries of  
64 the disability ~~annuitant~~ retirant may receive a greater benefit,  
65 nor receive any benefit for a greater length of time, than the  
66 beneficiary or beneficiaries would have received had the  
67 disability ~~retiree~~ retirant not made any election of the options  
68 available under said section. In determining the actuarial

69 equivalence, the retirement board shall take into account the  
70 life expectancies of the member and the beneficiary:  
71 *Provided, however,* That the life expectancies may at the  
72 discretion of the retirement board be established by an  
73 underwriting medical director of a competent insurance  
74 company offering annuities. Payment of the disability annuity  
75 provided in this article shall cease immediately if the  
76 retirement board finds that the disability of the ~~retired teacher~~  
77 retirant no longer exists, or if the ~~retired teacher~~ retirant  
78 refuses to submit to medical examination as required by this  
79 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  
9 ~~be the sum of the following~~ two percent of the member's  
10 average salary multiplied by his or her total service credit,  
11 subject to reduction if necessary to comply with the  
12 maximum benefit provisions of Section 415 of the Internal  
13 Revenue Code and section twenty-eight-a of this article.

14 ~~(1) Two percent of the member's average salary~~  
15 ~~multiplied by his or her total service credit as a teacher. In~~  
16 this ~~subdivision~~ subsection "average salary" means the  
17 average of the highest annual salaries received by the  
18 member during any five plan years contained within his or  
19 her last fifteen years of total service credit: *Provided*, That  
20 the highest annual salary used in this calculation for certain  
21 members employed by the West Virginia Higher Education  
22 Policy Commission under its control shall be \$4,800, as  
23 provided by section fourteen-a of this article.

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

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

37 (e) Upon the death of ~~an annuitant~~ a retirant who  
38 qualified for an annuity as the surviving spouse of an active  
39 member or because of permanent disability, the estate of the  
40 deceased or beneficiary designated for such purpose shall be  
41 paid the difference, if any, between the member's  
42 contributions with regular interest thereon, and the sum of the  
43 annuity payments. Upon the death of a spouse who was  
44 named as the member's survivor, a retirant may elect an  
45 annuity option approved by the retirement board in an

46 amount adjusted on a fair basis to be of equal actuarial value  
47 as the annuity prospectively in effect relative to the surviving  
48 member at the time the new option is elected.

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

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

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