

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4219**

BY DELEGATES ESPINOSA, STATLER, UPSON, COOPER,

DEAN, WILSON AND HIGGINBOTHAM

[Introduced January 19, 2018; Referred  
to the Committee on Pensions and Retirement then  
Finance.]



1 A BILL to amend and reenact §18-7A-3 of the Code of West Virginia, 1931, as amended; and to  
2 amend and reenact §18-7B-2 of said code, all relating to permitting employees of  
3 educational services cooperatives to participate in the State Teachers Retirement System;  
4 and permitting persons employed for instructional services by educational services  
5 cooperatives to participate in the State Teachers' Defined Contribution Retirement  
6 System.

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

**ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

**§18-7A-3. Definitions.**

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

2 (1) "Accumulated contributions" means all deposits and all deductions from the gross  
3 salary of a contributor plus regular interest.

4 (2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on  
5 behalf of a retired member.

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

12 (4) "Annuities" means the annual retirement payments for life granted beneficiaries in  
13 accordance with this article.

14 (5) "Average final salary" means the average of the five highest fiscal year salaries earned  
15 as a member within the last fifteen fiscal years of total service credit, including military service as  
16 provided in this article, or if total service is less than fifteen years, the average annual salary for  
17 the period on which contributions were made: *Provided*, That salaries for determining benefits

18 during any determination period may not exceed the maximum compensation allowed as adjusted  
19 for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal  
20 Revenue Code.

21 (6) "Beneficiary" means the recipient of annuity payments made under the retirement  
22 system.

23 (7) "Contributor" means a member of the retirement system who has an account in the  
24 Teachers Accumulation Fund.

25 (8) "Deposit" means a voluntary payment to his or her account by a member.

26 (9) "Employer" means the agency of and within the state which has employed or employs  
27 a member.

28 (10) "Employer error" means an omission, misrepresentation or violation of relevant  
29 provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the  
30 relevant provisions of both the West Virginia Code and of the West Virginia Code of State  
31 Regulations by the participating public employer that has resulted in an underpayment or  
32 overpayment of contributions required. A deliberate act contrary to the provisions of this section  
33 by a participating public employer does not constitute employer error.

34 (11) "Employment term" means employment for at least ten months, a month being  
35 defined as twenty employment days.

36 (12) "Gross salary" means the fixed annual or periodic cash wages paid by a participating  
37 public employer to a member for performing duties for the participating public employer for which  
38 the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the  
39 work was done. Gross salary also includes retroactive payments made to a member to correct a  
40 clerical error, or made pursuant to a court order or final order of an administrative agency charged  
41 with enforcing federal or state law pertaining to the member's rights to employment or wages, with  
42 all retroactive salary payments to be allocated to and considered paid in the periods in which the  
43 work was or would have been done. Gross salary does not include lump sum payments for

44 bonuses, early retirement incentives, severance pay or any other fringe benefit of any kind  
45 including, but not limited to, transportation allowances, automobiles or automobile allowances, or  
46 lump sum payments for unused, accrued leave of any type or character.

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

49 (14) "Member" means any person who has accumulated contributions standing to his or  
50 her credit in the State Teachers Retirement System. A member shall remain a member until the  
51 benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of  
52 membership pursuant to §18-7A-13 of this code.

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

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

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

59 (18) "Nonteaching member" means any person, except a teacher member, who is  
60 regularly employed for full-time service by: (A) Any county board of education or educational  
61 services cooperative; (B) the State Board of Education; (C) the Higher Education Policy  
62 Commission; (D) the West Virginia Council for Community and Technical College Education; or  
63 (E) a governing board, as defined in §18B-1-2 of this code: *Provided*, That any person whose  
64 employment with the Higher Education Policy Commission, the West Virginia Council for  
65 Community and Technical College Education or a governing board commences on or after July  
66 1, 1991, is not considered a nonteaching member.

67 (19) "Plan year" means the twelve-month period commencing on July 1 and ending the  
68 following June 30 of any designated year.

69 (20) "Present member" means a present teacher or nonteacher who is a member of the  
70 retirement system.

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

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

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

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

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

84 (26) "Regularly employed for full-time service" means employment in a regular position or  
85 job throughout the employment term regardless of the number of hours worked or the method of  
86 pay.

87 (27) "Required beginning date" means April 1 of the calendar year following the later of:  
88 (A) The calendar year in which the member attains age seventy and one-half years; or (B) the  
89 calendar year in which the member retires or ceases covered employment under the system after  
90 having attained the age of seventy and one-half years.

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

93 (29) "Retirement board" means the Consolidated Public Retirement Board created  
94 pursuant to §5-10D-1 *et seq.* of this code.

95 (30) "Retirement system" means the State Teachers Retirement System established by  
96 this article.

97 (31) "Teacher member" means the following persons, if regularly employed for full-time  
98 service: (A) Any person employed for instructional service in the public schools of West Virginia;  
99 (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county  
100 superintendents of schools; (E) any county school attendance director holding a West Virginia  
101 teacher's certificate; (F) members of the research, extension, administrative or library staffs of the  
102 public schools; (G) the State Superintendent of Schools, heads and assistant heads of the  
103 divisions under his or her supervision, or any other employee under the state superintendent  
104 performing services of an educational nature; (H) employees of the State Board of Education who  
105 are performing services of an educational nature; (I) any person employed in a nonteaching  
106 capacity by the State Board of Education, any county board of education, the State Department  
107 of Education or the State Teachers Retirement Board, if that person was formerly employed as a  
108 teacher in the public schools; (J) all classroom teachers, principals and educational administrators  
109 in schools under the supervision of the Division of Corrections, the Division of Health or the  
110 Division of Human Services; (K) an employee of the State Board of School Finance, if that person  
111 was formerly employed as a teacher in the public schools; (L) employees of an educational  
112 services cooperative who are performing services of an educational nature; and ~~(L)~~ (M) any  
113 person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who  
114 elects to remain a member of the State Teachers Retirement System provided in this article.

115 (32) "Total service" means all service as a teacher or nonteacher while a member of the  
116 retirement system since last becoming a member and, in addition thereto, credit for prior service,  
117 if any.

118 Age in excess of seventy years shall be considered to be seventy years.

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

### **§18-7B-2. Definitions.**

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

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

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

11 (3) "Compensation" means the full compensation actually received by members for service  
12 whether or not a part of the compensation is received from other funds, federal or otherwise, than  
13 those provided by the state or its subdivisions: *Provided*, That annual compensation for  
14 determining contributions during any determination period may not exceed the maximum  
15 compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and  
16 Section 401(a)(17) of the Internal Revenue Code: *Provided, however*, That solely for purposes of  
17 applying the limitations of Section 415 of the Internal Revenue Code to any annual addition,  
18 "compensation" has the meaning given it in §18-7B-13d of this code.

19 (4) "Consolidated board" or "board" means the Consolidated Public Retirement Board  
20 created and established pursuant to §5-10D-1 *et seq.* of this code;

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

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

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



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

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

32 (10) "Existing retirement system" means the State Teachers Retirement System  
33 established in §18-7A-1 *et seq.* of this code;

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

36 (12) "Member" or "employee" means the following persons, if regularly employed for full-  
37 time service: (A) Any person employed for instructional service in the public schools of West  
38 Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant  
39 county superintendents of schools; (E) any county school attendance director holding a West  
40 Virginia teacher's certificate; (F) members of the research, extension, administrative or library  
41 staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads  
42 of the divisions under his or her supervision or any other employee under the state superintendent  
43 performing services of an educational nature; (H) employees of the State Board of Education who  
44 are performing services of an educational nature; (I) any person employed in a nonteaching  
45 capacity by the State Board of Education, any county board of education or the State Department  
46 of Education, if that person was formerly employed as a teacher in the public schools; (J) all  
47 classroom teachers, principals and educational administrators in schools under the supervision  
48 of the Division of Corrections and the Department of Health and Human Resources; (K) any  
49 person who is regularly employed for full-time service by any county board of education,  
50 educational services cooperative or the State Board of Education; (L) the administrative staff of  
51 the public schools including deans of instruction, deans of men and deans of women, and financial  
52 and administrative secretaries; and (M) any person designated as a 21st Century Learner Fellow

53 pursuant to §18A-3-11 of this code who elects to remain a member of the Teachers' Defined  
54 Contribution Retirement System established by this article;

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to permit employees of educational services cooperatives to participate in the State Teachers Retirement System. The bill permits persons employed for instructional services by educational services cooperatives to participate in the State Teachers' Defined Contribution Retirement System.

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