

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 26

SENATOR BLAIR, *original sponsor*

[Originating in the Committee on Pensions; Reported
on February 7, 2019]

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 full-time employees of
3 educational services cooperatives to participate in the State Teachers Retirement System;
4 and permitting full-time employees of educational services cooperatives to participate in
5 the State Teachers' Defined Contribution Retirement 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 15 fiscal years of total service credit, including military service as
16 provided in this article, or if total service is less than 15 years, the average annual salary for the
17 period on which contributions were made: *Provided*, That salaries for determining benefits during
18 any determination period may not exceed the maximum compensation allowed as adjusted for

19 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 10 months, a month being defined
35 as 20 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 12-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 35 years beginning
72 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 70 and one-half years; or (B) the calendar
89 year in which the member retires or ceases covered employment under the system after having
90 attained the age of 70 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
102 the 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
108 a teacher in the public schools; (J) all classroom teachers, principals, and educational
109 administrators in schools under the supervision of the Division of Corrections, the Division of
110 Health, or the Division of Human Services; (K) an employee of the State Board of School Finance,
111 if that person was formerly employed as a teacher in the public schools; (L) employees of an
112 educational services cooperative who are performing services of an educational nature; and ~~(L)~~
113 (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code
114 who 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 70 years shall be considered to be 70 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 ~~(4)~~ “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 cash-outs
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 may not be
7 treated as annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-
8 1.

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

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

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

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

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

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

29 ~~(8)~~ “Employment term” means employment for at least 10 months in any plan year with a
30 month being defined as 20 employment days.

31 ~~(9)~~ “Existing employer” means any employer who employed or employs a member of the
32 system.

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

35 ~~(11)~~ “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been
36 amended.

37 ~~(12)~~ “Member” or “employee” means the following persons, if regularly employed for full-
38 time service: (A) Any person employed for instructional service in the public schools of West
39 Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant
40 county superintendents of schools; (E) any county school attendance director holding a West
41 Virginia teacher’s certificate; (F) members of the research, extension, administrative, or library
42 staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads
43 of the divisions under his or her supervision, or any other employee under the state superintendent
44 performing services of an educational nature; (H) employees of the State Board of Education who
45 are performing services of an educational nature; (I) any person employed in a nonteaching
46 capacity by the State Board of Education, any county board of education, or the State Department
47 of Education, if that person was formerly employed as a teacher in the public schools; (J) all
48 classroom teachers, principals, and educational administrators in schools under the supervision
49 of the Division of Corrections and the Department of Health and Human Resources; (K) any
50 person who is regularly employed for full-time service by any county board of education,
51 educational services cooperative, or the State Board of Education; (L) the administrative staff of
52 the public schools including deans of instruction, deans of men and deans of women, and financial
53 and administrative secretaries; and (M) any person designated as a 21st Century Learner Fellow
54 pursuant to §18A-3-11 of this code who elects to remain a member of the Teachers’ Defined

55 Contribution Retirement System established by this article.

56 ~~(43)~~ “Member contribution” means an amount reduced from the employee’s regular pay
57 periods, and deposited into the member’s individual annuity account within the Teachers’ Defined
58 Contribution Retirement System.

59 ~~(44)~~ “Permanent, total disability” means a mental or physical incapacity requiring absence
60 from employment service for at least six months: *Provided*, That the incapacity is shown by an
61 examination by a physician or physicians selected by the board: *Provided, however*, That for
62 employees hired on or after July 1, 2005, “permanent, total disability” means an inability to engage
63 in substantial gainful activity by reason of any medically determinable physical or mental
64 impairment that can be expected to result in death, or has lasted or can be expected to last for a
65 continuous period of not less than 12 months and the incapacity is so severe that the member is
66 likely to be permanently unable to perform the duties of the position the member occupied
67 immediately prior to his or her disabling injury or illness.

68 ~~(45)~~ “Plan year” means the 12-month period commencing on July 1 of any designated
69 year and ending on the following June 30.

70 ~~(46)~~ “Public schools” means all publicly supported schools, including normal schools,
71 colleges, and universities in this state.

72 ~~(47)~~ “Regularly employed for full-time service” means employment in a regular position or
73 job throughout the employment term regardless of the number of hours worked or the method of
74 pay.

75 ~~(48)~~ “Required beginning date” means April 1 of the calendar year following the later of:
76 (A) The calendar year in which the member attains age 70 and one-half years; or (B) the calendar
77 year in which the member retires or otherwise ceases employment with a participating employer
78 after having attained the age of 70 and one-half years.

79 ~~(49)~~ “Retirement” means a member’s withdrawal from the active employment of a
80 participating employer and completion of all conditions precedent to retirement.

81 ~~(20)~~ “Year of employment service” means employment for at least ten months, with a
82 month being defined as 20 employment days: *Provided*, That no more than one year of service
83 may be accumulated in any 12-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 by educational services cooperatives to participate in the State Teachers’ Defined Contribution Retirement System.