

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **Senate Bill 46**

By Senators Rucker and Deeds

[Introduced January 11, 2023; referred  
to the Committee on Pensions]

1 A BILL to amend and reenact §18-7A-3 of the Code of West Virginia, 1931, as amended, relating  
 2 to allowing the West Virginia Professional Charter School Board to vote for its executive  
 3 director and any other employees to participate in the Teachers' Retirement System; and  
 4 making participation retroactive to the effective date of the employment of the board's first  
 5 employee if the board votes to participate on or before September 1, 2023.

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

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

6 "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 the  
 9 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 "Annuities" means the annual retirement payments for life granted beneficiaries in  
 13 accordance with this article.

14 "Average final salary" means the average of the five highest fiscal year salaries earned as  
 15 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 "Beneficiary" means the recipient of annuity payments made under the retirement system.

22 "Contributor" means a member of the retirement system who has an account in the  
23 Teachers Accumulation Fund.

24 "Deposit" means a voluntary payment to his or her account by a member.

25 "Employer" means the agency of and within the state which has employed or employs a  
26 member.

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

33 "Employment term" means employment for at least 10 months, a month being defined as  
34 20 employment days.

35 "Gross salary" means the fixed annual or periodic cash wages paid by a participating  
36 public employer to a member for performing duties for the participating public employer for which  
37 the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the  
38 work was done. Gross salary also includes retroactive payments made to a member to correct a  
39 clerical error, or made pursuant to a court order or final order of an administrative agency charged  
40 with enforcing federal or state law pertaining to the member's rights to employment or wages, with  
41 all retroactive salary payments to be allocated to and considered paid in the periods in which the  
42 work was or would have been done. Gross salary does not include lump sum payments for  
43 bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind  
44 including, but not limited to, transportation allowances, automobiles or automobile allowances, or

45 lump sum payments for unused, accrued leave of any type or character.

46 "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been  
47 amended.

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

52 "Members of the administrative staff of the public schools" means deans of instruction,  
53 deans of men, deans of women, and financial and administrative secretaries.

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

57 "New entrant" means a teacher who is not a present teacher.

58 "Nonteaching member" means any person, except a teacher member, who is regularly  
59 employed for full-time service by: (A) Any county board of education or educational services  
60 cooperative; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D)  
61 the West Virginia Council for Community and Technical College Education; (E) a governing board,  
62 as defined in §18B-1-2 of this code; ~~or~~ (F) a public charter school established pursuant to §18-5G-  
63 1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to  
64 §18-5G-7 of this code a determination to participate in the retirement systems under this article  
65 and §18-7B-1 *et seq.* of this code, subject to §18-7B-7a; or (G) the West Virginia Professional  
66 Charter School Board created by §18-5G-15 of this code if the board by vote of three-fifths or  
67 greater elects to participate in the teachers retirement system, all subject to the following:

68 (1) ~~Provided, That any~~ Any person whose employment with the Higher Education Policy  
69 Commission, the West Virginia Council for Community and Technical College Education, or a  
70 governing board commences on or after July 1, 1991, is not considered a nonteaching member;

71 and

72 (2) If the West Virginia Professional Charter School Board by vote of three-fifths or greater  
73 elects to participate in the teachers retirement system on or before September 1, 2023, the board's  
74 participation shall be retroactive to the effective date of the employment of its first employee.

75 "Plan year" means the 12-month period commencing on July 1 and ending the following  
76 June 30 of any designated year.

77 "Present member" means a present teacher or nonteacher who is a member of the  
78 retirement system.

79 "Present teacher" means any person who was a teacher within the 35 years beginning July  
80 1, 1934, and whose membership in the retirement system is currently active.

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

84 "Public schools" means all publicly supported schools, including colleges and universities  
85 in this state.

86 "Refund beneficiary" means the estate of a deceased contributor or a person he or she has  
87 nominated as beneficiary of his or her contributions by written designation duly executed and filed  
88 with the retirement board.

89 "Regular interest" means interest at four percent compounded annually, or a higher  
90 earnable rate if set forth in the formula established in legislative rules, series seven of the  
91 Consolidated Public Retirement Board, 162 CSR 7.

92 "Regularly employed for full-time service" means employment in a regular position or job  
93 throughout the employment term regardless of the number of hours worked or the method of pay.

94 "Required beginning date" means April 1 of the calendar year following the later of: (A) The  
95 calendar year in which the member attains age 70 and one-half years; or (B) the calendar year in  
96 which the member retires or ceases covered employment under the system after having attained

97 the age of 70 and one-half years.

98 "Retirant" means any member who commences an annuity payable by the retirement  
99 system.

100 "Retirement board" means the Consolidated Public Retirement Board created pursuant to  
101 §5-10D-1 *et seq.* of this code.

102 "Retirement system" means the State Teachers Retirement System established by this  
103 article.

104 "Teacher member" means the following persons, if regularly employed for full-time service:

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

123 §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into  
124 pursuant to §18-5G-7 of this code a determination to participate in the retirement systems under  
125 this article and §18-7B-1 *et seq.* of this code; and (N) the Executive Director and any other  
126 employees of the West Virginia Professional Charter School Board created by §18-5G-15 of this  
127 code if the West Virginia Professional Charter School Board by vote of three-fifths or greater elects  
128 to participate in the teachers retirement system: *Provided*, That if the West Virginia Professional  
129 Charter School Board by vote of three-fifths or greater elects to participate in the teachers  
130 retirement system on or before September 1, 2023, the board's participation shall be retroactive to  
131 the effective date of the employment of its first employee.

132 "Total service" means all service as a teacher or nonteacher while a member of the  
133 retirement system since last becoming a member and, in addition thereto, credit for prior service, if  
134 any.

135 Age in excess of 70 years shall be considered to be 70 years.