

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 419**

4 (By Senators Jenkins and McCabe)

5 _____
6 [Originating in the Committee on Finance;
7 reported March 22, 2013.]
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12 A BILL to amend and reenact §18-7A-3, §18-7A-14, §18-7A-17, §18-7A-
13 23, §18-7A-25 and §18-7A-26 of the Code of West Virginia,
14 1931, as amended; and to amend said code by adding thereto a
15 new section, designated §18-7A-14c, all relating to the
16 Teachers Retirement System; specifying the time period in
17 which a participating public employer allocates and reports
18 gross salary to the Consolidated Public Retirement Board;
19 defining terms; correction of errors; requiring nonteachers to
20 file a statement with the Retirement Board detailing the
21 length of service being claimed for retirement credit;
22 clarifying that members granted prior service credit for
23 qualified military service must be honorably discharged from
24 active duty; clarifying provisions for purchasing out-of-state
25 service credit for members who transferred from the Teachers'
26 Defined Contribution Retirement System; providing that a

1 nonteaching member shall not be considered absent from service
2 while serving as an officer with a statewide professional
3 teaching association; requiring that members make written
4 requests to the Retirement Board to receive credit for service
5 previously credited by the Public Employees Retirement System;
6 providing that all interest paid or transferred on service
7 credit from the Public Employees Retirement System be
8 deposited in the reserve fund; providing that an inactive
9 member may elect to receive an annuity at age sixty; providing
10 that the sole primary beneficiary of a member is eligible for
11 an annuity if the contributor was fifty years old with twenty-
12 five years' service; providing that a refund beneficiary shall
13 receive the contributor's accumulated contributions up to the
14 plan year of contributor's death; providing that a refund
15 beneficiary shall be paid the Teachers' Defined Contribution
16 Retirement System member contributions transferred plus the
17 vested portion of employer contributions and any earnings;
18 providing that an actively contributing member who is at least
19 sixty years of age is eligible for an annuity; providing that
20 any member who has thirty years of total service in the state
21 as a nonteaching member is eligible for an annuity; specifying
22 that anyone who becomes a new member on or after July 1, 2013,
23 must have five or more years of contributory service to
24 qualify for retirement; providing that a nonteaching member
25 who is fifty-five years of age and has served thirty years in
26 the state is eligible for an annuity; clarifying that a

1 nonteaching member is eligible for disability benefits;
2 clarifying the computation of a member's annuity; providing
3 for the commencement date of disability annuity benefits; and
4 making technical corrections.

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

6 That §18-7A-3, §18-7A-14, §18-7A-17, §18-7A-23, §18-7A-25 and
7 §18-7A-26 of the Code of West Virginia, 1931, as amended, be
8 amended and reenacted; and that said code be amended by adding
9 thereto a new section, designated §18-7A-14c, all to read as
10 follows:

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

12 **§18-7A-3. Definitions.**

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

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

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

20 (3) "Actuarially equivalent" or "of equal actuarial value"
21 means a benefit of equal value computed upon the basis of the
22 mortality table and interest rates as set and adopted by the
23 Retirement Board in accordance with the provisions of this article:

24 *Provided*, That when used in the context of compliance with the
25 federal maximum benefit requirements of Section 415 of the Internal

1 Revenue Code, "actuarially equivalent" shall be computed using the
2 mortality tables and interest rates required to comply with those
3 requirements.

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

6 (5) "Average final salary" means the average of the five
7 highest fiscal year salaries earned as a member within the last
8 fifteen fiscal years of total service credit, including military
9 service as provided in this article, or if total service is less
10 than fifteen years, the average annual salary for the period on
11 which contributions were made: *Provided*, That salaries for
12 determining benefits during any determination period may not exceed
13 the maximum compensation allowed as adjusted for cost of living in
14 accordance with section seven, article ten-d, chapter five of this
15 code and Section 401(a)(17) of the Internal Revenue Code.

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

18 (7) "Contributor" means a member of the retirement system who
19 has an account in the teachers accumulation fund.

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

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

24 (10) "Employer error" means an omission, misrepresentation or
25 violation of relevant provisions of ~~the West Virginia Code~~ this
26 code or of the West Virginia Code of State ~~Regulations~~ Rules or the

1 relevant provisions of both ~~the West Virginia Code and of the West~~
2 ~~Virginia Code of State Regulations~~ by the participating public
3 employer that has resulted in an underpayment or overpayment of
4 required contributions ~~required~~. A deliberate act contrary to the
5 provisions of this section by a participating public employer does
6 not constitute employer error.

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

9 (12) "Gross salary" means the fixed annual or periodic cash
10 wages paid by a participating public employer to a member for
11 performing duties for the participating public employer for which
12 the member was hired. Gross salary shall be allocated and reported
13 in the fiscal year in which the work was done. Gross salary also
14 includes retroactive payments made to a member to correct a
15 clerical error, or made pursuant to a court order or final order of
16 an administrative agency charged with enforcing federal or state
17 law pertaining to the member's rights to employment or wages, with
18 all retroactive salary payments to be allocated to and considered
19 paid in the periods in which the work was or would have been done.
20 Gross salary does not include lump sum payments for bonuses, early
21 retirement incentives, severance pay or any other fringe benefit of
22 any kind including, but not limited to, transportation allowances,
23 automobiles or automobile allowances, or lump sum payments for
24 unused, accrued leave of any type or character.

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

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

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

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

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

16 (18) "Nonteaching member" means any person, except a teacher
17 member, who is regularly employed for full-time service by: (A) Any
18 county board of education; (B) the State Board of Education; (C)
19 the Higher Education Policy Commission; (D) the West Virginia
20 Council for Community and Technical College Education; or (E) a
21 governing board, as defined in section two, article one, chapter
22 eighteen-b of this code: *Provided*, That any person whose employment
23 with the Higher Education Policy Commission, the West Virginia
24 Council for Community and Technical College Education or a
25 governing board commences on or after July 1, 1991, is not
26 considered a nonteaching member.

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

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

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

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

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

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

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

22 ~~(26)~~ (25) "Regular interest" means interest at four percent
23 compounded annually, or a higher earnable rate if set forth in the
24 ~~formula established in legislative rules, series seven of the~~
25 ~~Consolidated Public Retirement Board~~ board's Rule, Refund,
26 Reinstatement, Retroactive Service, Loan and Employer Error

1 Interest Factors, 162 CSR 7.

2 ~~(27)~~ (26) "Regularly employed for full-time service" means
3 employment in a regular position or job throughout the employment
4 term regardless of the number of hours worked or the method of pay.

5 ~~(28)~~ (27) "Required beginning date" means April 1 of the
6 calendar year following the later of: (A) The calendar year in
7 which the member attains age seventy and one-half years; or (B) the
8 calendar year in which the member retires or ceases covered
9 employment under the system after having attained the age of
10 seventy and one-half years.

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

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

16 ~~(29)~~ (30) "Retirement system" means the State Teachers
17 Retirement System established by this article.

18 ~~(30)~~ (31) "Teacher member" means the following persons, if
19 regularly employed for full-time service: (A) Any person employed
20 for instructional service in the public schools of West Virginia;
21 (B) principals; (C) public school librarians; (D) superintendents
22 of schools and assistant county superintendents of schools; (E) any
23 county school attendance director holding a West Virginia teacher's
24 certificate; (F) ~~the executive director of the retirement board;~~
25 ~~(G)~~ members of the research, extension, administrative or library
26 staffs of the public schools; ~~(H)~~ (G) the State Superintendent of

1 Schools, heads and assistant heads of the divisions under his or
2 her supervision or any other employee under the state
3 superintendent performing services of an educational nature; ~~(I)~~
4 (H) employees of the State Board of Education who are performing
5 services of an educational nature; ~~(J)~~ (I) any person employed in
6 a nonteaching capacity by the State Board of Education, any county
7 board of education, the State Department of Education or the State
8 Teachers Retirement Board, if that person was formerly employed as
9 a teacher in the public schools; ~~(K)~~ (J) all classroom teachers,
10 principals and educational administrators in schools under the
11 supervision of the Division of Corrections, the Division of Health
12 or the Division of Human Services; ~~(L)~~ (K) an employee of the State
13 Board of School Finance, if that person was formerly employed as a
14 teacher in the public schools; and ~~(M)~~ (L) any person designated as
15 a 21st Century Learner Fellow pursuant to section eleven, article
16 three, chapter eighteen-a of this code who elects to remain a
17 member of the State Teachers Retirement System provided in this
18 article.

19 ~~(31)~~ (32) "Total service" means all service as a teacher or
20 nonteacher while a member of the retirement system since last
21 becoming a member and, in addition thereto, credit for prior
22 service, if any.

23 Age in excess of seventy years shall be considered to be
24 seventy years.

25 **§18-7A-14. Contributions by members; contributions by employers;**
26 **correction of errors; forfeitures.**

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

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

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

1 beginning on July 1, 1996, the rate shall be ten and one-half
2 percent; beginning on July 1, 1997, the rate shall be twelve
3 percent; beginning on July 1, 1998, the rate shall be thirteen and
4 one-half percent; and beginning on July 1, 1999, and thereafter,
5 the rate shall be fifteen percent: *Provided*, That the rate shall be
6 seven and one-half percent for any individual who becomes a member
7 of the State Teachers Retirement System for the first time on or
8 after July 1, 2005, or any individual who becomes a member of the
9 State Teachers Retirement System as a result of the voluntary
10 transfer contemplated in article seven-d of this chapter.

11 (d) Payment by an employer to a member of the sum specified in
12 the employment contract minus the amount of the employee's
13 deductions shall be considered to be a full discharge of the
14 employer's contractual obligation as to earnable compensation.

15 (e) Each contributor shall file with the retirement board or
16 with the employer to be forwarded to the retirement board an
17 enrollment form showing the contributor's date of birth and other
18 data needed by the retirement board.

19 ~~(f) If any change or employer error in the records of any~~
20 ~~participating public employer or the retirement system results in~~
21 ~~any member receiving from the system more or less than he or she~~
22 ~~would have been entitled to receive had the records been correct,~~
23 ~~the board shall correct the error, and as far as is practicable~~
24 ~~shall adjust the payment of the benefit in a manner that the~~
25 ~~actuarial equivalent of the benefit to which the member was~~
26 ~~correctly entitled shall be paid. Any employer error resulting in~~

~~1 an underpayment to the retirement system may be corrected by the
2 member remitting the required employee contribution and the
3 participating public employer remitting the required employer
4 contribution. Interest shall accumulate in accordance with the
5 legislative rule, Retirement Board Reinstatement Interest, 162 CSR
6 7, and any accumulating interest owed on the employee and employer
7 contributions resulting from the employer error shall be the
8 responsibility of the participating public employer. The
9 participating public employer may remit total payment and the
10 employee reimburse the participating public employer through
11 payroll deduction over a period equivalent to the time period
12 during which the employer error occurred.~~

13 ~~(g)~~ (f) Notwithstanding any other provisions of this article,
14 forfeitures under the retirement system shall not be applied to
15 increase the benefits any member would otherwise receive under the
16 retirement system.

17 **§18-7A-14c. Correction of errors; underpayments; overpayments.**

18 (a) General rule: If any change or employer error in the
19 records of any employer or the retirement system results in any
20 member, retirant or beneficiary receiving from the plan more or
21 less than he or she would have been entitled to receive had the
22 records been correct, the retirement board shall correct the error.
23 If correction of the error occurs after the effective retirement
24 date of a retirant, and as far as is practicable, the retirement
25 board shall adjust the payment of the benefit in a manner that the
26 actuarial equivalent of the benefit to which the retirant was

1 correctly entitled shall be paid.

2 (b) Underpayments: Any error resulting in an underpayment to
3 the retirement system of required contributions may be corrected by
4 the member or retirant remitting the required member contribution
5 and the employer remitting the required employer contribution.
6 Interest shall accumulate in accordance with the board's Rule,
7 Refund, Reinstatement, Retroactive Service, Loan and Employer Error
8 Interest Factors, 162 CSR 7, concerning retirement board refund,
9 reinstatement, retroactive service, loan and employer error
10 interest factors and any accumulating interest owed on the member
11 and employer contributions resulting from an employer error is the
12 responsibility of the employer. The employer may remit total
13 payment and the member reimburse the employer through payroll
14 deduction over a period equivalent to the time period during which
15 the employer error occurred. If the correction of an error
16 involving an underpayment of required contributions to the
17 retirement system will result in increased payments to a retirant,
18 including increases to payments already made, any adjustments shall
19 be made only after the retirement board receives full payment of
20 all required member and employer contributions, including interest.

21 (c) Overpayments: (1) When mistaken or excess employer
22 contributions, including any overpayments, have been made to the
23 retirement system by an employer, due to error or other reason, the
24 retirement board shall credit the employer with an amount equal to
25 the erroneous contributions, to be offset against the employer's
26 future liability for employer contributions to the retirement

1 system. Earnings or interest shall not be credited to the employer.

2 (2) When mistaken or excess member contributions, including
3 any overpayments, have been made to the retirement system, due to
4 error or other reason, the retirement board has sole authority for
5 determining the means of return, offset or credit to or for the
6 benefit of the member of the amounts, and may use any means
7 authorized or permitted under the provisions of Section 401(a), et
8 seq., of the Internal Revenue Code and guidance issued thereunder
9 applicable to governmental plans. Alternatively, in its full and
10 complete discretion, the retirement board may require the employer
11 to pay the member the amounts as wages, with the retirement board
12 crediting the employer with a corresponding amount to offset
13 against its future contributions to the retirement system:
14 *Provided*, That the wages paid to the member shall not be considered
15 compensation for any purposes under this article. Earnings or
16 interest shall not be returned, offset, or credited under any of
17 the means used by the retirement board for returning mistaken or
18 excess member contributions, including any overpayments, to a
19 member.

20 **§18-7A-17. Statement and computation of teachers' service;**
21 **qualified military service.**

22 (a) Under rules adopted by the retirement board, each teacher
23 and nonteaching member shall file a detailed statement of his or
24 her length of service as a teacher or nonteacher for which he or
25 she claims credit. The retirement board shall determine what part
26 of a year is the equivalent of a year of service. In computing the

1 service, however, it shall credit no period of more than a month's
2 duration during which a member was absent without pay, nor shall it
3 credit for more than one year of service performed in any calendar
4 year.

5 (b) For the purpose of this article, the retirement board
6 shall grant prior service credit to ~~new entrants and other~~ members
7 of the retirement system for who were honorably discharged from
8 active duty service in any of the armed forces of the United States
9 in any period of national emergency within which a federal
10 Selective Service Act was in effect. For purposes of this section,
11 "armed forces" includes Women's Army Corps, women's appointed
12 volunteers for emergency service, Army Nurse Corps, SPARS, Women's
13 Reserve and other similar units officially parts of the military
14 service of the United States. The military service is considered
15 equivalent to public school teaching, and the salary equivalent for
16 each year of that service is the actual salary of the member as a
17 teacher for his or her first year of teaching after discharge from
18 military service. Prior service credit for military service shall
19 not exceed ten years for any one member, nor shall it exceed
20 twenty-five percent of total service at the time of retirement.
21 Notwithstanding the preceding provisions of this subsection,
22 contributions, benefits and service credit with respect to
23 qualified military service shall be provided in accordance with
24 Section 414(u) of the Internal Revenue Code. For purposes of this
25 section, "qualified military service" has the same meaning as in
26 Section 414(u) of the Internal Revenue Code. The retirement board

1 ~~is authorized to~~ shall determine all questions and make all
2 decisions relating to this section and, pursuant to the authority
3 granted to the retirement board in section one, article ten-d,
4 chapter five of this code, may promulgate rules relating to
5 contributions, benefits and service credit to comply with Section
6 414(u) of the Internal Revenue Code. ~~No~~ Military service credit may
7 not be used in more than one retirement system administered by the
8 Consolidated Public Retirement Board.

9 (c) For service as a teacher in the employment of the federal
10 government, or a state or territory of the United States, or a
11 governmental subdivision of that state or territory, the retirement
12 board shall grant credit to the member: *Provided*, That the member
13 shall pay to the system ~~double the amount he or she contributed~~
14 twelve percent of that member's gross salary earned during the
15 first full year of current employment whether a member of the
16 Teachers' Retirement System or the Teachers' Defined Contribution
17 Retirement System, times the number of years for which credit is
18 granted, plus interest at a rate to be determined by the retirement
19 board. The interest shall be deposited in the reserve fund and
20 service credit granted at the time of retirement shall not exceed
21 the lesser of ten years or fifty percent of the member's total
22 service as a teacher in West Virginia. Any ~~transfer~~ purchase of
23 out-of-state service, as provided in this article, shall not be
24 used to establish eligibility for a retirement allowance and the
25 retirement board shall grant credit for the ~~transferred~~ purchased
26 service as additional service only: *Provided, however*, That a

1 ~~transfer~~ purchase of out-of-state service is prohibited if the
2 service is used to obtain a retirement benefit from another
3 retirement system: *Provided further,* That salaries paid to members
4 for service prior to entrance into the retirement system shall not
5 be used to compute the average final salary of the member under the
6 retirement system.

7 ~~(d) Service credit for members or retired members shall not be~~
8 ~~denied on the basis of minimum income rules promulgated by the~~
9 ~~Teachers' Retirement Board: *Provided,* That the member or retired~~
10 ~~member shall pay to the system the amount he or she would have~~
11 ~~contributed during the year or years of public school service for~~
12 ~~which credit was denied as a result of the minimum income rules of~~
13 ~~the Teachers Retirement Board.~~

14 ~~(e)~~ (d) ~~No members shall~~ A member shall not be considered
15 absent from service while serving as a member or employee of the
16 Legislature of the State of West Virginia during any duly
17 constituted session of that body or while serving as an elected
18 member of a county commission during any duly constituted session
19 of that body.

20 ~~(f)~~ (e) ~~No members shall~~ A member shall not be considered
21 absent from service as a teacher or nonteacher while serving as an
22 officer with a statewide professional teaching association, or who
23 has served in that capacity, and no ~~retired teacher~~ retirant, who
24 served in that capacity while a member, shall be considered to have
25 been absent from service as a teacher by reason of that service:
26 *Provided,* That the period of service credit granted for that

1 service shall not exceed ten years: *Provided, however,* That a
2 member or ~~retired teacher~~ retirant who is serving or has served as
3 an officer of a statewide professional teaching association shall
4 make deposits to the Teachers Retirement ~~Board~~ System, for the time
5 of any absence, in an amount double the amount which he or she
6 would have contributed in his or her regular assignment for a like
7 period of time.

8 ~~(g)~~ (f) The Teachers Retirement ~~Board~~ System shall grant
9 service credit to any former or present member of the West Virginia
10 Public Employees Retirement System who has been a contributing
11 member of the Teachers' Retirement System for more than three
12 years, for service previously credited by the Public Employees
13 Retirement System upon his or her written request and: (1) Shall
14 require the transfer of the member's Public Employees Retirement
15 System accumulated contributions to the Teachers Retirement System;
16 or (2) shall require a repayment of the amount withdrawn from the
17 Public Employees Retirement System, plus interest at a rate to be
18 determined by the retirement board, compounded annually from the
19 date of withdrawal to the date of payment, any time prior to the
20 member's effective retirement date: *Provided,* That there shall be
21 added by the member to the amounts transferred or repaid under this
22 subsection an amount which shall be sufficient to equal the
23 contributions he or she would have made had the member been under
24 the Teachers Retirement System during the period of his or her
25 membership in the Public Employees Retirement System. ~~plus interest~~
26 ~~at a rate to be determined by the board compounded annually from~~

1 ~~the date of withdrawal to the date of payment~~ The All interest paid
2 or transferred shall be deposited in the reserve fund.

3 ~~(h)~~ (g) For service as a teacher in an elementary or secondary
4 parochial school, located within this state and fully accredited by
5 the West Virginia Department of Education, the retirement board
6 shall grant credit to the member: *Provided*, That the member shall
7 pay to the system ~~double the amount contributed~~ twelve percent of
8 that member's gross salary earned during the first full year of
9 current employment whether a member of the Teachers' Retirement
10 System or the Teachers' Defined Contribution Retirement System,
11 times the number of years for which credit is granted, plus
12 interest at a rate to be determined by the retirement board. The
13 interest shall be deposited in the reserve fund and service granted
14 at the time of retirement shall not exceed the lesser of ten years
15 or fifty percent of the member's total service as a teacher in the
16 West Virginia public school system. Any transfer of parochial
17 school service, as provided in this section, may not be used to
18 establish eligibility for a retirement allowance and the retirement
19 board shall grant credit for the transfer as additional service
20 only: *Provided, however*, That a transfer of parochial school
21 service is prohibited if the service is used to obtain a retirement
22 benefit from another retirement system.

23 ~~(i)~~ (h) Active members who previously worked in CETA
24 (Comprehensive Employment and Training Act) may receive service
25 credit for time served in that capacity: *Provided*, That in order to
26 receive service credit under the provisions of this subsection the

1 following conditions must be met: (1) The member must have moved
2 from temporary employment with the participating employer to
3 permanent full-time employment with the participating employer
4 within one hundred twenty days following the termination of the
5 member's CETA employment; (2) the retirement board must receive
6 evidence that establishes to a reasonable degree of certainty as
7 determined by the retirement board that the member previously
8 worked in CETA; and (3) the member shall pay to the retirement
9 board an amount equal to the employer and employee contribution
10 plus interest at the amount set by the retirement board for the
11 amount of service credit sought pursuant to this subsection:
12 *Provided, however,* That the maximum service credit that may be
13 obtained under the provisions of this subsection is two years:
14 *Provided further,* That a member must apply and pay for the service
15 credit allowed under this subsection and provide all necessary
16 documentation by March 31, 2003: *And provided further,* That the
17 retirement board shall exercise due diligence to notify affected
18 employees of the provisions of this subsection.

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

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

26 ~~(l)~~ (k) Subject to the provisions of subsections (a) through

1 (l), inclusive, of this section, the retirement board shall verify
2 as soon as practicable the statements of service submitted. The
3 retirement board shall issue prior service certificates to all
4 persons eligible for the certificates under the provisions of this
5 article. The certificates shall state the length of the prior
6 service credit, but in no case shall the prior service credit
7 exceed forty years.

8 ~~(m)~~ (l) Notwithstanding any provision of this article to the
9 contrary, when a member is or has been elected to serve as a member
10 of the Legislature, and the proper discharge of his or her duties
11 of public office require that member to be absent from his or her
12 teaching or administrative duties, the time served in discharge of
13 his or her duties of the legislative office ~~are~~ shall be credited
14 as time served for purposes of computing service credit: *Provided,*
15 That the retirement board may not require any additional
16 contributions from that member in order for the retirement board to
17 credit him or her with the contributing service credit earned while
18 discharging official legislative duties: *Provided, however,* That
19 nothing in this section may be construed to relieve the employer
20 from making the employer contribution at the member's regular
21 salary rate or rate of pay from that employer on the contributing
22 service credit earned while the member is discharging his or her
23 official legislative duties. These employer payments shall commence
24 as of June 1, 2000: *Provided further,* That any member to which the
25 provisions of this subsection apply may elect to pay to the
26 retirement board an amount equal to what his or her contribution

1 would have been for those periods of time he or she was serving in
2 the Legislature. The periods of time upon which the member paid his
3 or her contribution shall then be included for purposes of
4 determining his or her final average salary as well as for
5 determining years of service: *And provided further,* That a member
6 using the provisions of this subsection is not required to pay
7 interest on any contributions he or she may decide to make.

8 ~~(n)~~ (m) The Teachers Retirement ~~Board~~ System shall grant
9 service credit to any former member of the State Police Death,
10 Disability and Retirement System who has been a contributing member
11 for more than three years, for service previously credited by the
12 State Police Death, Disability and Retirement System; and: (1)
13 Shall require the transfer of the member's contributions to the
14 Teachers Retirement System; or (2) shall require a repayment of the
15 amount withdrawn any time prior to the member's retirement:
16 *Provided,* That the member shall add to the amounts transferred or
17 repaid under this paragraph an amount which is sufficient to equal
18 the contributions he or she would have made had the member been
19 under the Teachers Retirement System during the period of his or
20 her membership in the State Police Death, Disability and Retirement
21 System plus interest at a rate to be determined by the retirement
22 board compounded annually from the date of withdrawal to the date
23 of payment. The interest paid shall be deposited in the reserve
24 fund.

25 **§18-7A-23. Withdrawal and death benefits.**

26 (a) Benefits upon withdrawal from service prior to retirement

1 under the provisions of this article shall be as follows:

2 (1) A contributor who withdraws from service for any cause
3 other than death, disability or retirement shall, upon application,
4 be paid his or her accumulated contributions up to the end of the
5 fiscal year preceding the year in which application is made, after
6 offset of any outstanding loan balance, plus accrued loan interest,
7 pursuant to section thirty-four of this article. ~~but~~ In no event
8 shall interest be paid beyond the end of five years following the
9 year in which the last contribution was made: *Provided*, That the
10 contributor, at the time of application, is then no longer under
11 contract, verbal or otherwise, to serve as a teacher; or

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

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

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

10 (2) If the facts do not permit payment under subdivision (1)
11 of this subsection, then the following sum shall be paid to the
12 refund beneficiary of the contributor: (A) The contributor's
13 accumulated contributions up to the plan year of his or her death
14 plus an amount equal to his or her ~~employee~~ member contributions.
15 Provided, That the latter sum shall emanate from the Employer's
16 Accumulation Fund; and (B) the refund beneficiary of any individual
17 who became a member of the retirement system as a result of the
18 voluntary transfer contemplated in article seven-d of this chapter
19 shall also be paid the member contributions plus the vested portion
20 of employer contributions made on his or her behalf to the
21 Teachers' Defined Contribution Retirement System, plus any earnings
22 thereon, as of June 30, 2008, as stated by the retirement board.

23 **§18-7A-25. Eligibility for retirement allowance.**

24 (a) Any actively contributing member who has attained the age
25 of sixty years or any member who has ~~had~~ thirty-five years of total
26 service as a teacher or nonteaching member in West Virginia,

1 regardless of age, is eligible for an annuity. ~~No~~ A new entrant nor
2 or a present member is not eligible for an annuity, however, if
3 ~~either~~ he or she has less than five years of service to his or her
4 credit: Provided, That on and after July 1, 2013, any person who
5 becomes a new member of this retirement system shall, in qualifying
6 for retirement under this section, have five or more years of
7 contributory service, all of which shall be actual, contributory
8 ones.

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

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

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

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

1 (1) His or her service as a teacher or nonteaching member in
2 West Virginia must total at least ten years and service as a
3 teacher or nonteaching member must have been terminated because of
4 disability, which ~~disability~~ must have caused absence from service
5 for at least six months before his or her application for a
6 disability annuity is approved.

7 (2) His or her service as a teacher or nonteaching member in
8 West Virginia must total at least five years and service as a
9 teacher or nonteaching member must have been terminated because of
10 disability, which ~~disability~~ must have caused absence from service
11 for at least six months before his or her application for
12 disability annuity is approved. ~~and~~ The disability ~~is~~ must be a
13 direct and total result of an act of student violence directed
14 toward the member.

15 (3) An examination by a physician or physicians selected by
16 the retirement board must show that the member is at the time
17 mentally or physically incapacitated for service as a teacher or
18 nonteaching member, that for that service the disability is total
19 and likely to be permanent and that he or she should be retired in
20 consequence of the disability.

21 (f) Continuance of the disability of the ~~retired member~~
22 retirant shall be established by medical examination, as prescribed
23 in subdivision (3), subsection (e) of this section, annually for
24 five years after retirement, and thereafter at ~~such~~ times required
25 by the retirement board. Effective July 1, 1998, a member who has
26 retired because of a disability may select an option of payment

1 under the provisions of section twenty-eight of this article:
2 *Provided*, That any option selected under the provisions of section
3 twenty-eight of this article shall be in all respects the actuarial
4 equivalent of the straight life annuity benefit the disability
5 ~~retiree~~ retirant receives or would receive if the options under
6 said section were not available and that no beneficiary or
7 beneficiaries of the disability ~~annuitant~~ retirant may receive a
8 greater benefit, nor receive any benefit for a greater length of
9 time, than the beneficiary or beneficiaries would have received had
10 the disability ~~retiree~~ retirant not made any election of the
11 options available under said section. In determining the actuarial
12 equivalence, the retirement board shall take into account the life
13 expectancies of the member and the beneficiary: *Provided, however,*
14 That the life expectancies may at the discretion of the retirement
15 board be established by an underwriting medical director of a
16 competent insurance company offering annuities. Payment of the
17 disability annuity provided in this article shall cease immediately
18 if the retirement board finds that the disability of the ~~retired~~
19 ~~teacher~~ retirant no longer exists, or if the ~~retired teacher~~
20 retirant refuses to submit to medical examination as required by
21 this section.

22 **§18-7A-26. Computation of annuities.**

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

26 (b) Annuities approved by the retirement board effective after

1 June 30, 1980, shall be computed as provided in this section.

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

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

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

21 (d) The disability annuities of all ~~teachers retired for~~
22 ~~disability~~ disabled retirants shall be based upon a disability
23 table prepared by a competent actuary approved by the retirement
24 board. Disability annuity benefits will begin the first day of the
25 month following the latter of: (1) Six months of absence caused by
26 the disability; (2) the date of a written report by a physician

1 selected by the retirement board stating the member is mentally or
2 physically incapacitated for service and that the disability is
3 total and likely to be permanent; or (3) termination of employment.

4 (e) Upon the death of ~~an annuitant~~ a retirant who qualified
5 for an annuity as the surviving spouse of an active member or
6 because of permanent disability, the estate of the deceased or
7 beneficiary designated for such purpose shall be paid the
8 difference, if any, between the member's contributions with regular
9 interest thereon, and the sum of the annuity payments. Upon the
10 death of a spouse who was named as the member's survivor, a
11 retirant may elect an annuity option approved by the retirement
12 board in an amount adjusted on a fair basis to be of equal
13 actuarial value as the annuity prospectively in effect relative to
14 the surviving member at the time the new option is elected.

15 (f) All annuities shall be paid in twelve monthly payments. In
16 computing the monthly payments, fractions of a cent shall be
17 considered a cent. The monthly payments shall cease with the
18 payment for the month within which the beneficiary dies, and shall
19 begin with the payment for the month succeeding the month within
20 which the ~~annuitant~~ retirant became eligible under this article for
21 the annuity granted. In no case, however, shall ~~an annuitant~~ a
22 retirant receive more than four monthly payments which are
23 retroactive after the retirement board receives his or her
24 application for annuity. The monthly payments shall be made on the
25 twenty-fifth day of each month, except the month of December, when
26 the payment shall be made on December 18. If the date of payment

1 falls on a holiday, Saturday or Sunday, then the payment shall be
2 made on the preceding workday.

3 (g) In case the retirement board receives data affecting the
4 approved annuity of a ~~retired teacher~~ retirant, the annuity shall
5 be changed in accordance with the data, the change being effective
6 with the payment for the month within which the retirement board
7 received the new data.

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