

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 430**

5 (By Senators Jenkins and McCabe)

6 _____
7 [Originating in the Committee on Finance;
8 reported March 22, 2013.]
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11
12 A BILL to amend and reenact §18-7B-2 of the Code of West Virginia,
13 1931, as amended; and to amend said code by adding thereto a
14 new section, designated §18-7B-21, all relating to the
15 Teachers' Defined Contribution Retirement System; adding a
16 definition of "employment term"; making a technical
17 correction; and adding a provision relating to correction of
18 errors by participating public employers and the Consolidated
19 Public Retirement Board.

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

21 That §18-7B-2 of the Code of West Virginia, 1931, as amended,
22 be amended and reenacted; and that said code be amended by adding
23 thereto a new section, designated §18-7B-21, all to read as
24 follows:

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

1 **§18-7B-2. Definitions.**

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

4 (1) "Annual addition" means, for purposes of the limitations
5 under Section 415(c) of the Internal Revenue Code, the sum credited
6 to a member's account for any limitation year of: (A) Employer
7 contributions; (B) employee contributions; and (C) forfeitures.
8 Repayment of cashouts or contributions as described in Section
9 415(k) (3) of the Internal Revenue Code, rollover contributions and
10 picked-up employee contributions to a defined benefit plan shall
11 not be treated as annual additions, consistent with the
12 requirements of Treasury Regulation §1.415(c)-1;

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

17 (3) "Compensation" means the full compensation actually
18 received by members for service whether or not a part of the
19 compensation is received from other funds, federal or otherwise,
20 than those provided by the state or its subdivisions: *Provided,*
21 That annual compensation for determining contributions during any
22 determination period may not exceed the maximum compensation
23 allowed as adjusted for cost of living in accordance with section
24 seven, article ten-d, chapter five of this code and Section
25 401(a) (17) of the Internal Revenue Code: *Provided, however,* That
26 solely for purposes of applying the limitations of Section 415 of

1 the Internal Revenue Code to any annual addition, "compensation"
2 ~~shall have~~ has the meaning given it in subsection (d), section
3 thirteen of this article;

4 (4) "Consolidated board" or "board" means the Consolidated
5 Public Retirement Board created and established pursuant to article
6 ten-d, chapter five of this code;

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

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

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

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

19 ~~(8)~~ (9) "Existing employer" means any employer who employed or
20 employs a member of the ~~existing retirement~~ system;

21 ~~(9)~~ (10) "Existing retirement system" means the State Teachers
22 Retirement System established in article seven-a of this chapter;

23 ~~(10)~~ (11) "Internal Revenue Code" means the Internal Revenue
24 Code of 1986, as it has been amended;

25 ~~(11)~~ (12) "Member" or "employee" means the following persons,
26 if regularly employed for full-time service: (A) Any person

1 employed for instructional service in the public schools of West
2 Virginia; (B) principals; (C) public school librarians; (D)
3 superintendents of schools and assistant county superintendents of
4 schools; (E) any county school attendance director holding a West
5 Virginia teacher's certificate; (F) members of the research,
6 extension, administrative or library staffs of the public schools;
7 (G) the State Superintendent of Schools, heads and assistant heads
8 of the divisions under his or her supervision or any other employee
9 under the state superintendent performing services of an
10 educational nature; (H) employees of the State Board of Education
11 who are performing services of an educational nature; (I) any
12 person employed in a nonteaching capacity by the State Board of
13 Education, any county board of education or the State Department of
14 Education, if that person was formerly employed as a teacher in the
15 public schools; (J) all classroom teachers, principals and
16 educational administrators in schools under the supervision of the
17 Division of Corrections and the Department of Health and Human
18 Resources; (K) any person who is regularly employed for full-time
19 service by any county board of education or the State Board of
20 Education; (L) the administrative staff of the public schools
21 including deans of instruction, deans of men and deans of women,
22 and financial and administrative secretaries; and (M) any person
23 designated as a 21st Century Learner Fellow pursuant to section
24 eleven, article three, chapter eighteen-a of this code who elects
25 to remain a member of the Teachers' Defined Contribution Retirement
26 System established by this article;

1 ~~(12)~~ (13) "Member contribution" means an amount reduced from
2 the employee's regular pay periods, and deposited into the member's
3 individual annuity account within the Teachers' Defined
4 Contribution Retirement System;

5 ~~(13)~~ (14) "Permanent, total disability" means a mental or
6 physical incapacity requiring absence from employment service for
7 at least six months: *Provided*, That the incapacity is shown by an
8 examination by a physician or physicians selected by the board:
9 *Provided, however*, That for employees hired on or after July 1,
10 2005, "permanent, total disability" means an inability to engage in
11 substantial gainful activity by reason of any medically
12 determinable physical or mental impairment that can be expected to
13 result in death, or has lasted or can be expected to last for a
14 continuous period of not less than twelve months and the incapacity
15 is so severe that the member is likely to be permanently unable to
16 perform the duties of the position the member occupied immediately
17 prior to his or her disabling injury or illness;

18 ~~(14)~~ (15) "Plan year" means the twelve-month period commencing
19 on July 1 of any designated year and ending on the following June
20 30;

21 ~~(15)~~ (16) "Public schools" means all publicly supported
22 schools, including normal schools, colleges and universities in
23 this state;

24 ~~(16)~~ (17) "Regularly employed for full-time service" means
25 employment in a regular position or job throughout the employment
26 term regardless of the number of hours worked or the method of pay;

1 ~~(17)~~ (18) "Required beginning date" means April 1 of the
2 calendar year following the later of: (A) The calendar year in
3 which the member attains age seventy and one-half years; or (B) the
4 calendar year in which the member retires or otherwise ceases
5 employment with a participating employer after having attained the
6 age of seventy and one-half years;

7 ~~(18)~~ (19) "Retirement" means a member's withdrawal from the
8 active employment of a participating employer and completion of all
9 conditions precedent to retirement;

10 ~~(19)~~ (20) "Year of employment service" means employment for at
11 least ten months, with a month being defined as twenty employment
12 days: *Provided*, That no more than one year of service may be
13 accumulated in any twelve-month period.

14 **§18-7B-21. Correction of errors; underpayments; overpayments.**

15 (a) *General rule.* - If any change or employer error in the
16 records of any existing employer or the retirement system results
17 in a member, retirant or beneficiary receiving from the system more
18 or less than he or she would have been entitled to receive had the
19 records been correct, the board shall correct the error. If
20 correction of the error occurs after retirement, the board shall
21 adjust the payment of the benefit in an amount computed by the
22 board to which the retirant was correctly entitled.

23 (b) *Underpayments.* - Any error resulting in an underpayment to
24 the retirement system of required contributions may be corrected by
25 the member or retirant remitting the required employee contribution
26 and the existing employer remitting the required employer

1 contribution. Interest accumulates in accordance with the board's
2 Rule, Refund, Reinstatement, Retroactive Service, Loan and Employer
3 Error Interest Factors, 162 CSR 7, and any accumulating interest
4 owed on the employee and employer contributions resulting from an
5 employer error is the responsibility of the participating public
6 employer. The existing employer may remit total payment and the
7 employee may reimburse the existing employer through payroll
8 deduction over a period equivalent to the time period during which
9 the employer error occurred. If the correction of an error
10 involving an underpayment of required contributions to the
11 retirement system will result in increased payments to a retirant,
12 including increases to payments already made, any adjustments may
13 be made only after the board receives full payment of all required
14 employee and employer contributions, including interest.

15 (c) *Overpayments.* - (1) When mistaken or excess employer
16 contributions, including any overpayments, have been made to the
17 retirement system by an existing employer, due to error or other
18 reason, the board shall credit the existing employer with an amount
19 computed by the board, to be offset against the existing employer's
20 future liability for employer contributions to the system.

21 (2) When mistaken or excess employee contributions, including
22 any overpayments, have been made to the retirement system, due to
23 error or other reason, the board has sole authority for determining
24 the means of return, offset or credit to or for the benefit of the
25 employee of the amounts, and may use any means authorized or
26 permitted under the provisions of Section 401(a), et seq., of the

1 Internal Revenue Code and guidance issued thereunder applicable to
2 governmental plans. Alternatively, in its full and complete
3 discretion, the board may require the existing employer to pay the
4 employee the amounts as wages, with the board crediting the
5 existing employer with an amount to offset against its future
6 contributions to the plan: *Provided*, That the wages paid to the
7 employee are not considered compensation for any purposes under
8 this article.