

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 430**

4 (By Senators Jenkins and McCabe)

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

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

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

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

25 **§18-7B-2. Definitions.**

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

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

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

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

1 ~~shall have~~ has the meaning given it in subsection (d), section  
2 thirteen of this article.

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

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

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

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

15 (8) "Employment term" means employment for at least ten  
16 months, a month being defined as twenty employment days;

17 ~~(8)~~ (9) "Existing employer" means any employer who employed or  
18 employs a member of the ~~existing retirement~~ system;

19 ~~(9)~~ (10) "Existing retirement system" means the State Teachers  
20 Retirement System established in article seven-a of this chapter;

21 ~~(10)~~ (11) "Internal Revenue Code" means the Internal Revenue  
22 Code of 1986, as it has been amended;

23 ~~(11)~~ (12) "Member" or "employee" means the following persons,  
24 if regularly employed for full-time service: (A) Any person  
25 employed for instructional service in the public schools of West  
26 Virginia; (B) principals; (C) public school librarians; (D)

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

25       ~~(12)~~ (13) "Member contribution" means an amount reduced from  
26 the employee's regular pay periods, and deposited into the member's

1 individual annuity account within the Teachers' Defined  
2 Contribution Retirement System;

3 ~~(13)~~ (14) "Permanent, total disability" means a mental or  
4 physical incapacity requiring absence from employment service for  
5 at least six months: *Provided*, That the incapacity is shown by an  
6 examination by a physician or physicians selected by the board:  
7 *Provided, however*, That for employees hired on or after July 1,  
8 2005, permanent, total disability means an inability to engage in  
9 substantial gainful activity by reason of any medically  
10 determinable physical or mental impairment that can be expected to  
11 result in death, or has lasted or can be expected to last for a  
12 continuous period of not less than twelve months and the incapacity  
13 is so severe that the member is likely to be permanently unable to  
14 perform the duties of the position the member occupied immediately  
15 prior to his or her disabling injury or illness;

16 ~~(14)~~ (15) "Plan year" means the twelve-month period commencing  
17 on July 1 of any designated year and ending on the following June  
18 30;

19 ~~(15)~~ (16) "Public schools" means all publicly supported  
20 schools, including normal schools, colleges and universities in  
21 this state;

22 ~~(16)~~ (17) "Regularly employed for full-time service" means  
23 employment in a regular position or job throughout the employment  
24 term regardless of the number of hours worked or the method of pay;

25 ~~(17)~~ (18) "Required beginning date" means April 1 of the  
26 calendar year following the later of: (A) The calendar year in

1 which the member attains age seventy and one-half years; or (B) the  
2 calendar year in which the member retires or otherwise ceases  
3 employment with a participating employer after having attained the  
4 age of seventy and one-half years;

5 ~~(18)~~ (19) "Retirement" means a member's withdrawal from the  
6 active employment of a participating employer and completion of all  
7 conditions precedent to retirement;

8 ~~(19)~~ (20) "Year of employment service" means employment for at  
9 least ten months, a month being defined as twenty employment days:  
10 *Provided*, That no more than one year of service may be accumulated  
11 in any twelve-month period.

12 **§18-7B-21. Correction of errors; underpayments; overpayments.**

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

21 (b) *Underpayments.* - Any error resulting in an underpayment to  
22 the retirement system of required contributions may be corrected by  
23 the member or retirant remitting the required employee contribution  
24 and the existing employer remitting the required employer  
25 contribution. Interest accumulates in accordance with the board's  
26 Rule, Refund, Reinstatement, Retroactive Service, Loan and Employer

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

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

19       (2) When mistaken or excess employee contributions, including  
20 any overpayments, have been made to the retirement system, due to  
21 error or other reason, the board has sole authority for determining  
22 the means of return, offset or credit to or for the benefit of the  
23 employee of the amounts, and may use any means authorized or  
24 permitted under the provisions of Section 401(a), et seq., of the  
25 Internal Revenue Code and guidance issued thereunder applicable to  
26 governmental plans. Alternatively, in its full and complete

1 discretion, the board may require the existing employer to pay the  
2 employee the amounts as wages, with the board crediting the  
3 existing employer with an amount to offset against its future  
4 contributions to the plan: *Provided*, That the wages paid to the  
5 employee are not considered compensation for any purposes under  
6 this article.