

H. B. 2818

(By Delegates Pethtel, Jones, Craig, Canterbury,
Kump, Lynch and Stowers)

[Introduced March 5, 2013; referred to the
Committee on Pensions and Retirement then Finance.]

A BILL to amend and reenact §18-7B-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18-7B-21, all relating to the Teachers' Defined Contribution Retirement System; adding a definition of employment term; making a technical correction; and adding a provision relating to correction of errors by participating public employers and the Consolidated Public Retirement Board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§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

1 solely for purposes of applying the limitations of Section 415 of
 2 the Internal Revenue Code to any annual addition, "compensation"
 3 shall have the meaning given it in subsection (d), section thirteen
 4 of this article.

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

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

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

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

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

1 ~~(11)~~ (12) "Member" or "employee" means the following persons,
2 if regularly employed for full-time service: (A) Any person
3 employed for instructional service in the public schools of West
4 Virginia; (B) principals; (C) public school librarians; (D)
5 superintendents of schools and assistant county superintendents of
6 schools; (E) any county school attendance director holding a West
7 Virginia teacher's certificate; (F) members of the research,
8 extension, administrative or library staffs of the public schools;
9 (G) the state superintendent of Schools, heads and assistant heads
10 of the divisions under his or her supervision, or any other
11 employee under the state superintendent performing services of an
12 educational nature; (H) employees of the State Board of Education
13 who are performing services of an educational nature; (I) any
14 person employed in a nonteaching capacity by the State Board of
15 Education, any county board of education or the State Department of
16 Education if that person was formerly employed as a teacher in the
17 public schools; (J) all classroom teachers, principals and
18 educational administrators in schools under the supervision of the
19 Division of Corrections and the Department of Health and Human
20 Resources; (K) any person who is regularly employed for full-time
21 service by any county board of education or the State Board of
22 Education; (L) the administrative staff of the public schools
23 including deans of instruction, deans of men and deans of women,
24 and financial and administrative secretaries; and (M) any person

1 designated as a 21st Century Learner Fellow pursuant to section
2 eleven, article three, chapter eighteen-a of this code who elects
3 to remain a member of the Teachers' Defined Contribution Retirement
4 System established by this article;

5 ~~(12)~~ (13) "Member contribution" means an amount reduced from
6 the employee's regular pay periods, and deposited into the member's
7 individual annuity account within the Teachers' Defined
8 Contribution Retirement System;

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

22 ~~(14)~~ (15) "Plan year" means the twelve-month period commencing
23 on July 1 of any designated year and ending on the following June
24 30;

1 ~~(15)~~ (16) "Public schools" means all publicly supported
2 schools, including normal schools, colleges and universities in
3 this state;

4 ~~(16)~~ (17) "Regularly employed for full-time service" means
5 employment in a regular position or job throughout the employment
6 term regardless of the number of hours worked or the method of pay;

7 ~~(17)~~ (18) "Required beginning date" means April 1 of the
8 calendar year following the later of: (A) The calendar year in
9 which the member attains age seventy and one-half years; or (B) the
10 calendar year in which the member retires or otherwise ceases
11 employment with a participating employer after having attained the
12 age of seventy and one-half years;

13 ~~(18)~~ (19) "Retirement" means a member's withdrawal from the
14 active employment of a participating employer and completion of all
15 conditions precedent to retirement;

16 ~~(19)~~ (20) "Year of employment service" means employment for at
17 least ten months, a month being defined as twenty employment days:
18 *Provided*, That no more than one year of service may be accumulated
19 in any twelve-month period.

20 **§18-7B-21. Correction of errors; underpayments; overpayments.**

21 (a) General rule. -- If any change or employer error in the
22 records of any existing employer or the retirement system results
23 in a member, retirant or beneficiary receiving from the system more
24 or less than he or she would have been entitled to receive had the

1 records been correct, the board shall correct the error. If
2 correction of the error occurs after retirement the board shall
3 adjust the payment of the benefit in an amount computed by the
4 board to which the retirant was correctly entitled.

5 (b) Underpayments. -- Any error resulting in an underpayment
6 to the retirement system of required contributions may be corrected
7 by the member or retirant remitting the required employee
8 contribution and the existing employer remitting the required
9 employer contribution. Interest accumulates in accordance with the
10 Legislative Rule 162 CSR 7 concerning retirement board refund,
11 reinstatement, retroactive service, loan and employer error
12 interest factors and any accumulating interest owed on the employee
13 and employer contributions resulting from an employer error is the
14 responsibility of the participating public employer. The existing
15 employer may remit total payment and the employee may reimburse the
16 existing employer through payroll deduction over a period
17 equivalent to the time period during which the employer error
18 occurred. If the correction of an error involving an underpayment
19 of required contributions to the retirement system will result in
20 increased payments to a retirant, including increases to payments
21 already made, any adjustments may be made only after the board
22 receives full payment of all required employee and employer
23 contributions, including interest.

24 (c) Overpayments. -- (1) When mistaken or excess employer

1 contributions, including any overpayments, have been made to the
2 retirement system by an existing employer, due to error or other
3 reason, the board shall credit the existing employer with an amount
4 computed by the board, to be offset against the existing employer's
5 future liability for employer contributions to the system.

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

NOTE: The purpose of this bill is to add a definition of "employment term", add a new section relating to correction of errors and make a technical correction.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would

be added.

§18-7B-21 is new; therefore, it has been completely underscored.

The Committee on Finance moves to amend the title of the bill to read as follows:

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