

H. B. 2818

(BY DELEGATE(S) PETHTEL, JONES, CRAIG,
CANTERBURY, KUMP, LYNCH AND STOWERS)
[BY REQUEST OF THE CONSOLIDATED
PUBLIC RETIREMENT BOARD]

[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 a
2 different meaning:

3 (1) "Annual addition" means, for purposes of the limitations
4 under Section 415(c) of the Internal Revenue Code, the sum
5 credited to a member's account for any limitation year of: (A)
6 Employer contributions; (B) employee contributions; and (C)
7 forfeitures. Repayment of cashouts or contributions as described
8 in Section 415(k)(3) of the Internal Revenue Code, rollover
9 contributions and picked-up employee contributions to a defined
10 benefit plan shall not be treated as annual additions, consistent
11 with the 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
15 or 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
21 any determination period may not exceed the maximum compen-
22 sation allowed as adjusted for cost-of-living in accordance with
23 section seven, article ten-d, chapter five of this code and Section
24 401(a)(17) of the Internal Revenue Code: *Provided, however,*
25 That solely for purposes of applying the limitations of Section
26 415 of the Internal Revenue Code to any annual addition,
27 “compensation” shall have the meaning given it in subsection
28 (d), section thirteen of this article.

29 (4) “Consolidated board” or “board” means the Consolidated
30 Public Retirement Board created and established pursuant to
31 article ten-d, chapter five of this code;

32 (5) “Defined contribution system” or “system” means the
33 Teachers’ Defined Contribution Retirement System created and
34 established by this article;

35 (6) “Employer” means the agency of and within the State of
36 West Virginia which has employed or employs a member;

37 (7) “Employer contribution” means an amount deposited into
38 the member’s individual annuity account on a periodic basis

39 coinciding with the employee's regular pay period by an
40 employer from its own funds;

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

43 ~~(8)~~(9) "Existing employer" means any employer who
44 employed or employs a member of the ~~existing retirement~~
45 system;

46 ~~(9)~~ (10) "Existing retirement system" means the State
47 Teachers Retirement System established in article seven-a of this
48 chapter;

49 ~~(10)~~ (11) "Internal Revenue Code" means the Internal
50 Revenue Code of 1986, as it has been amended;

51 ~~(11)~~ (12) "Member" or "employee" means the following
52 persons, if regularly employed for full-time service: (A) Any
53 person employed for instructional service in the public schools
54 of West Virginia; (B) principals; (C) public school librarians;
55 (D) superintendents of schools and assistant county superinten-
56 dents of schools; (E) any county school attendance director
57 holding a West Virginia teacher's certificate; (F) members of the
58 research, extension, administrative or library staffs of the public

59 schools; (G) the state superintendent of Schools, heads and
60 assistant heads of the divisions under his or her supervision, or
61 any other employee under the state superintendent performing
62 services of an educational nature; (H) employees of the State
63 Board of Education who are performing services of an educa-
64 tional nature; (I) any person employed in a nonteaching capacity
65 by the State Board of Education, any county board of education
66 or the State Department of Education if that person was formerly
67 employed as a teacher in the public schools; (J) all classroom
68 teachers, principals and educational administrators in schools
69 under the supervision of the Division of Corrections and the
70 Department of Health and Human Resources; (K) any person
71 who is regularly employed for full-time service by any county
72 board of education or the State Board of Education; (L) the
73 administrative staff of the public schools including deans of
74 instruction, deans of men and deans of women, and financial and
75 administrative secretaries; and (M) any person designated as a
76 21st Century Learner Fellow pursuant to section eleven, article
77 three, chapter eighteen-a of this code who elects to remain a
78 member of the Teachers' Defined Contribution Retirement
79 System established by this article;

80 ~~(12)~~ (13) “Member contribution” means an amount reduced
81 from the employee’s regular pay periods, and deposited into the
82 member’s individual annuity account within the Teachers’
83 Defined Contribution Retirement System;

84 ~~(13)~~ (14) “Permanent, total disability” means a mental or
85 physical incapacity requiring absence from employment service
86 for at least six months: *Provided*, That the incapacity is shown
87 by an examination by a physician or physicians selected by the
88 board: *Provided, however*, That for employees hired on or after
89 July 1, 2005, permanent, total disability means an inability to
90 engage in substantial gainful activity by reason of any medically
91 determinable physical or mental impairment that can be expected
92 to result in death, or has lasted or can be expected to last for a
93 continuous period of not less than twelve months and the
94 incapacity is so severe that the member is likely to be perma-
95 nently unable to perform the duties of the position the member
96 occupied immediately prior to his or her disabling injury or
97 illness;

98 ~~(14)~~ (15) “Plan year” means the twelve-month period
99 commencing on July 1 of any designated year and ending on the
100 following June 30;

101 ~~(15)~~ (16) “Public schools” means all publicly supported
102 schools, including normal schools, colleges and universities in
103 this state;

104 ~~(16)~~ (17) “Regularly employed for full-time service” means
105 employment in a regular position or job throughout the employ-
106 ment term regardless of the number of hours worked or the
107 method of pay;

108 ~~(17)~~ (18) “Required beginning date” means April 1 of the
109 calendar year following the later of: (A) The calendar year in
110 which the member attains age seventy and one-half years; or (B)
111 the calendar year in which the member retires or otherwise
112 ceases employment with a participating employer after having
113 attained the age of seventy and one-half years;

114 ~~(18)~~ (19) “Retirement” means a member’s withdrawal from
115 the active employment of a participating employer and comple-
116 tion of all conditions precedent to retirement;

117 ~~(19)~~ (20) “Year of employment service” means employment
118 for at least ten months, a month being defined as twenty employ-
119 ment days: *Provided*, That no more than one year of service may
120 be accumulated in any twelve-month period.

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

1 (a) General rule. — If any change or employer error in the
2 records of any existing employer or the retirement system results
3 in a member, retirant or beneficiary receiving from the system
4 more or less than he or she would have been entitled to receive
5 had the records been correct, the board shall correct the error. If
6 correction of the error occurs after retirement the board shall
7 adjust the payment of the benefit in an amount computed by the
8 board to which the retirant was correctly entitled.

9 (b) Underpayments. — Any error resulting in an underpay-
10 ment to the retirement system of required contributions may be
11 corrected by the member or retirant remitting the required
12 employee contribution and the existing employer remitting the
13 required employer contribution. Interest accumulates in accor-
14 dance with the Legislative Rule 162 CSR 7 concerning retire-
15 ment board refund, reinstatement, retroactive service, loan and
16 employer error interest factors and any accumulating interest
17 owed on the employee and employer contributions resulting
18 from an employer error is the responsibility of the participating
19 public employer. The existing employer may remit total payment

20 and the employee may reimburse the existing employer through
21 payroll deduction over a period equivalent to the time period
22 during which the employer error occurred. If the correction of an
23 error involving an underpayment of required contributions to the
24 retirement system will result in increased payments to a retirant,
25 including increases to payments already made, any adjustments
26 may be made only after the board receives full payment of all
27 required employee and employer contributions, including
28 interest.

29 (c) *Overpayments.* — (1) When mistaken or excess employer
30 contributions, including any overpayments, have been made to
31 the retirement system by an existing employer, due to error or
32 other reason, the board shall credit the existing employer with an
33 amount computed by the board, to be offset against the existing
34 employer's future liability for employer contributions to the
35 system.

36 (2) When mistaken or excess employee contributions,
37 including any overpayments, have been made to the retirement
38 system, due to error or other reason, the board has sole authority
39 for determining the means of return, offset or credit to or for the

40 benefit of the employee of the amounts, and may use any means
41 authorized or permitted under the provisions of Section 401(a),
42 et seq. of the Internal Revenue Code and guidance issued
43 thereunder applicable to governmental plans. Alternatively, in its
44 full and complete discretion, the board may require the existing
45 employer to pay the employee the amounts as wages, with the
46 board crediting the existing employer with an amount to offset
47 against its future contributions to the plan: *Provided, That the*
48 wages paid to the employee are not considered compensation for
49 any purposes under 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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