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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2013



**ENROLLED**

**House Bill No. 2800**

(By Delegate(s) Pethel, Jones, Craig, Canterbury, Kump, Lynch and Stowers)  
[By Request of the Consolidated Public Retirement Board]



Passed April 2, 2013

In effect ninety days from passage.

HB 2800

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**E N R O L L E D**

**H. B. 2800**

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(BY DELEGATE(S) PETHTEL, JONES, CRAIG, CANTERBURY,  
KUMP, LYNCH AND STOWERS)

[BY REQUEST OF THE CONSOLIDATED  
PUBLIC RETIREMENT BOARD]

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[Passed April 2, 2013: in effect ninety days from passage.]

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AN ACT to amend and reenact §18-7A-3, §18-7A-14, §18-7A-17, §18-7A-23, §18-7A-25 and §18-7A-26 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §18-7A-14c, all relating to the Teachers' Retirement System; specifying the time period in which a participating public employer allocates and reports gross salary to the retirement board; including nonteachers within the definition of present member; adding a definition for the terms retire and

retirement; modifying the definition of teacher member; adding a new section relating to correction of errors; requiring nonteachers to file a statement with the retirement board detailing the length of service being claimed for retirement credit; clarifying that members granted prior service credit for qualified military service shall have been honorably discharged from active duty; clarifying provisions for purchasing out of state service credit for members who transferred from the Teachers' Defined Contribution Retirement System; providing that a nonteaching member shall not be considered absent from service while serving as an officer with a statewide professional teaching association; requiring that members make written request to the retirement board to receive credit for service previously credited by the Public Employees Retirement System; providing that all interest paid or transferred on service credit from the Public Employees Retirement System be deposited in the reserve fund; providing that an inactive member may elect to receive an annuity at age sixty; providing that the sole primary beneficiary of a member is eligible for an annuity if the contributor was fifty years old with twenty-five years service; providing that a refund beneficiary shall receive the contributor's

accumulated contributions up to the plan year of contributor's death; providing that a refund beneficiary shall be paid the Teachers' Defined Contribution Retirement System member contributions transferred plus the vested portion of employer contributions and any earnings; providing that an actively contributing member who is at least sixty years of age is eligible for an annuity; providing that any member who has thirty years of total service in the state as a nonteaching member is eligible for an annuity; specifying that anyone who becomes a new member on or after July 1, 2013, shall have five or more years of contributory service to qualify for retirement; providing that a nonteaching member who is fifty-five years of age and has served thirty years in the state is eligible for an annuity; clarifying that a nonteaching member is eligible for disability benefits; clarifying the computation of a member's annuity; providing for the commencement date of disability annuity benefits; and making technical corrections throughout this article.

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

That §18-7A-3, §18-7A-14, §18-7A-17, §18-7A-23, §18-7A-25 and §18-7A-26 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 §18-7A-14c, all to read as follows:

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

**§18-7A-3. Definitions.**

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

3       (1) “Accumulated contributions” means all deposits and all  
4 deductions from the gross salary of a contributor plus regular  
5 interest.

6       (2) “Accumulated net benefit” means the aggregate amount  
7 of all benefits paid to or on behalf of a retired member.

8       (3) “Actuarially equivalent” or “of equal actuarial value”  
9 means a benefit of equal value computed upon the basis of the  
10 mortality table and interest rates as set and adopted by the  
11 retirement board in accordance with the provisions of this  
12 article: *Provided*, That when used in the context of compliance  
13 with the federal maximum benefit requirements of Section 415  
14 of the Internal Revenue Code, “actuarially equivalent” shall be  
15 computed using the mortality tables and interest rates required  
16 to comply with those requirements.

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

19 (5) "Average final salary" means the average of the five  
20 highest fiscal year salaries earned as a member within the last  
21 fifteen fiscal years of total service credit, including military  
22 service as provided in this article, or if total service is less than  
23 fifteen years, the average annual salary for the period on which  
24 contributions were made: *Provided*, That salaries for  
25 determining benefits during any determination period may not  
26 exceed the maximum compensation allowed as adjusted for cost  
27 of living in accordance with section seven, article ten-d, chapter  
28 five of this code and Section 401(a)(17) of the Internal Revenue  
29 Code.

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

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

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

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

38       (10) “Employer error” means an omission, misrepresentation  
39 or violation of relevant provisions of the West Virginia Code or  
40 of the West Virginia Code of State Regulations or the relevant  
41 provisions of both the West Virginia Code and of the West  
42 Virginia Code of State Regulations by the participating public  
43 employer that has resulted in an underpayment or overpayment  
44 of contributions required. A deliberate act contrary to the  
45 provisions of this section by a participating public employer does  
46 not constitute employer error.

47       (11) “Employment term” means employment for at least ten  
48 months, a month being defined as twenty employment days.

49       (12) “Gross salary” means the fixed annual or periodic cash  
50 wages paid by a participating public employer to a member for  
51 performing duties for the participating public employer for  
52 which the member was hired. Gross salary shall be allocated and  
53 reported in the fiscal year in which the work was done. Gross  
54 salary also includes retroactive payments made to a member to  
55 correct a clerical error, or made pursuant to a court order or final  
56 order of an administrative agency charged with enforcing federal  
57 or state law pertaining to the member’s rights to employment or

58 wages, with all retroactive salary payments to be allocated to and  
59 considered paid in the periods in which the work was or would  
60 have been done. Gross salary does not include lump sum  
61 payments for bonuses, early retirement incentives, severance pay  
62 or any other fringe benefit of any kind including, but not limited  
63 to, transportation allowances, automobiles or automobile  
64 allowances, or lump sum payments for unused, accrued leave of  
65 any type or character.

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

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

74 (15) "Members of the administrative staff of the public  
75 schools" means deans of instruction, deans of men, deans of  
76 women, and financial and administrative secretaries.

77 (16) "Members of the extension staff of the public schools"  
78 means every agricultural agent, boys' and girls' club agent and



79 every member of the agricultural extension staff whose work is  
80 not primarily stenographic, clerical or secretarial.

81 (17) "New entrant" means a teacher who is not a present  
82 teacher.

83 (18) "Nonteaching member" means any person, except a  
84 teacher member, who is regularly employed for full-time service  
85 by: (A) Any county board of education; (B) the State Board of  
86 Education; (C) the Higher Education Policy Commission; (D)  
87 the West Virginia Council for Community and Technical  
88 College Education; or (E) a governing board, as defined in  
89 section two, article one, chapter eighteen-b of this code:  
90 *Provided.* That any person whose employment with the Higher  
91 Education Policy Commission, the West Virginia Council for  
92 Community and Technical College Education or a governing  
93 board commences on or after July 1, 1991, is not considered a  
94 nonteaching member.

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

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

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

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

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

110 (24) "Refund beneficiary" means the estate of a deceased  
111 contributor or a person he or she has nominated as beneficiary of  
112 his or her contributions by written designation duly executed and  
113 filed with the retirement board.

114 (25) "Regular interest" means interest at four percent  
115 compounded annually, or a higher earnable rate if set forth in the  
116 formula established in legislative rules, series seven of the  
117 Consolidated Public Retirement Board, 162 CSR 7.

118 (26) "Regularly employed for full-time service" means  
119 employment in a regular position or job throughout the  
120 employment term regardless of the number of hours worked or  
121 the method of pay.

122       (27) "Required beginning date" means April 1 of the  
123 calendar year following the later of: (A) The calendar year in  
124 which the member attains age seventy and one-half years; or (B)  
125 the calendar year in which the member retires or ceases covered  
126 employment under the system after having attained the age of  
127 seventy and one-half years.

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

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

133       (30) "Retirement system" means the state Teachers  
134 Retirement System established by this article.

135       (31) "Teacher member" means the following persons, if  
136 regularly employed for full-time service: (A) Any person  
137 employed for instructional service in the public schools of West  
138 Virginia; (B) principals; (C) public school librarians; (D)  
139 superintendents of schools and assistant county superintendents  
140 of schools; (E) any county school attendance director holding a  
141 West Virginia teacher's certificate; (F) members of the research,

142 extension, administrative or library staffs of the public schools;  
143 (G) the State Superintendent of Schools, heads and assistant  
144 heads of the divisions under his or her supervision, or any other  
145 employee under the state superintendent performing services of  
146 an educational nature; (H) employees of the State Board of  
147 Education who are performing services of an educational nature;  
148 (I) any person employed in a nonteaching capacity by the State  
149 Board of Education, any county board of education, the State  
150 Department of Education or the State Teachers Retirement  
151 Board, if that person was formerly employed as a teacher in the  
152 public schools; (J) all classroom teachers, principals and  
153 educational administrators in schools under the supervision of  
154 the Division of Corrections, the Division of Health or the  
155 Division of Human Services; (K) an employee of the State Board  
156 of School Finance, if that person was formerly employed as a  
157 teacher in the public schools; and (L) any person designated as  
158 a 21st Century Learner Fellow pursuant to section eleven, article  
159 three, chapter eighteen-a of this code who elects to remain a  
160 member of the State Teachers Retirement System provided in  
161 this article.

162 (32) "Total service" means all service as a teacher or  
163 nonteacher while a member of the retirement system since last  
164 becoming a member and, in addition thereto, credit for prior  
165 service, if any.

166 Age in excess of seventy years shall be considered to be  
167 seventy years.

**§18-7A-14. Contributions by members; contributions by employ-  
ers; 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  
3 gross salary to the retirement board: *Provided*, That any member  
4 employed by a state institution of higher education shall  
5 contribute on the member's full earnable compensation, unless  
6 otherwise provided in section fourteen-a of this article. The sums  
7 are due the state Teachers Retirement System at the end of each  
8 calendar month in arrears and shall be paid not later than fifteen  
9 days following the end of the calendar month. Each remittance  
10 shall be accompanied by a detailed summary of the sums  
11 withheld from the compensation of each member for that month  
12 on forms, either paper or electronic, provided by the State  
13 Teachers Retirement System for that purpose.

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

23 (c) The aggregate of employer contributions, due and  
24 payable under this article, shall equal annually the total  
25 deductions from the gross salary of members required by this  
26 section. Beginning July 1, 1994, the rate shall be seven and one-  
27 half percent; beginning on July 1, 1995, the rate shall be nine  
28 percent; beginning on July 1, 1996, the rate shall be ten and one-  
29 half percent; beginning on July 1, 1997, the rate shall be twelve  
30 percent; beginning on July 1, 1998, the rate shall be thirteen and  
31 one-half percent; and beginning on July 1, 1999, and thereafter,  
32 the rate shall be fifteen percent: *Provided*, That the rate shall be  
33 seven and one-half percent for any individual who becomes a

34 member of the State Teachers Retirement System for the first  
35 time on or after July 1, 2005, or any individual who becomes a  
36 member of the State Teachers Retirement System as a result of  
37 the voluntary transfer contemplated in article seven-d of this  
38 chapter.

39 (d) Payment by an employer to a member of the sum  
40 specified in the employment contract minus the amount of the  
41 employee's deductions shall be considered to be a full discharge  
42 of the employer's contractual obligation as to earnable  
43 compensation.

44 (e) Each contributor shall file with the retirement board or  
45 with the employer to be forwarded to the retirement board an  
46 enrollment form showing the contributor's date of birth and  
47 other data needed by the retirement board.

48 (f) Notwithstanding any other provisions of this article,  
49 forfeitures under the retirement system shall not be applied to  
50 increase the benefits any member would otherwise receive under  
51 the retirement system.

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

1 (a) General rule: If any change or employer error in the  
2 records of any employer or the retirement system results in any

3 member, retirant or beneficiary receiving from the plan more or  
4 less than he or she would have been entitled to receive had the  
5 records been correct, the retirement board shall correct the error.  
6 If correction of the error occurs after the effective retirement  
7 date of a retirant, and as far as is practicable, the retirement  
8 board shall adjust the payment of the benefit in a manner that the  
9 actuarial equivalent of the benefit to which the retirant was  
10 correctly entitled shall be paid.

11 (b) Underpayments: Any error resulting in an underpayment  
12 to the retirement system of required contributions may be  
13 corrected by the member or retirant remitting the required  
14 member contribution and the employer remitting the required  
15 employer contribution. Interest shall accumulate in accordance  
16 with the Legislative Rule 162 CSR 7 concerning retirement  
17 board refund, reinstatement, retroactive service, loan and  
18 employer error interest factors and any accumulating interest  
19 owed on the member and employer contributions resulting from  
20 an employer error shall be the responsibility of the employer.  
21 The employer may remit total payment and the member  
22 reimburse the employer through payroll deduction over a period



23 equivalent to the time period during which the employer error  
24 occurred. If the correction of an error involving an  
25 underpayment of required contributions to the retirement system  
26 will result in increased payments to a retirant, including  
27 increases to payments already made, any adjustments shall be  
28 made only after the retirement board receives full payment of all  
29 required member and employer contributions, including interest.

30 (c) Overpayments: (1) When mistaken or excess employer  
31 contributions, including any overpayments, have been made to  
32 the retirement system by an employer, due to error or other  
33 reason, the retirement board shall credit the employer with an  
34 amount equal to the erroneous contributions, to be offset against  
35 the employer's future liability for employer contributions to the  
36 retirement system. Earnings or interest shall not be credited to  
37 the employer.

38 (2) When mistaken or excess member contributions,  
39 including any overpayments, have been made to the retirement  
40 system, due to error or other reason, the retirement board shall  
41 have sole authority for determining the means of return, offset or  
42 credit to or for the benefit of the member of the amounts, and  
43 may use any means authorized or permitted under the provisions

44 of Section 401(a), et seq. of the Internal Revenue Code and  
45 guidance issued thereunder applicable to governmental plans.  
46 Alternatively, in its full and complete discretion, the retirement  
47 board may require the employer to pay the member the amounts  
48 as wages, with the retirement board crediting the employer with  
49 a corresponding amount to offset against its future contributions  
50 to the retirement system: *Provided*, That the wages paid to the  
51 member shall not be considered compensation for any purposes  
52 under this article. Earnings or interest shall not be returned,  
53 offset, or credited under any of the means used by the retirement  
54 board for returning mistaken or excess member contributions,  
55 including any overpayments, to a member.

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

1 (a) Under rules adopted by the retirement board, each  
2 teacher and nonteaching member shall file a detailed statement  
3 of his or her length of service as a teacher or nonteacher for  
4 which he or she claims credit. The Retirement Board shall  
5 determine what part of a year is the equivalent of a year of  
6 service. In computing the service, however, it shall credit no  
7 period of more than a month's duration during which a member

8 was absent without pay, nor shall it credit for more than one year  
9 of service performed in any calendar year.

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

28 qualified military service shall be provided in accordance with  
29 Section 414(u) of the Internal Revenue Code. For purposes of  
30 this section, "qualified military service" has the same meaning  
31 as in Section 414(u) of the Internal Revenue Code. The  
32 Retirement Board is authorized to determine all questions and  
33 make all decisions relating to this section and, pursuant to the  
34 authority granted to the retirement board in section one, article  
35 ten-d, chapter five of this code, may promulgate rules relating to  
36 contributions, benefits and service credit to comply with Section  
37 414(u) of the Internal Revenue Code. No military service credit  
38 may be used in more than one retirement system administered by  
39 the Consolidated Public Retirement Board.

40 (c) For service as a teacher in the employment of the federal  
41 government, or a state or territory of the United States, or a  
42 governmental subdivision of that state or territory, the retirement  
43 board shall grant credit to the member: *Provided*, That the  
44 member shall pay to the system twelve percent of that member's  
45 gross salary earned during the first full year of current  
46 employment whether a member of the Teachers' Retirement  
47 System or the Teachers' Defined Contribution Retirement

48 System, times the number of years for which credit is granted,  
49 plus interest at a rate to be determined by the retirement board.  
50 The interest shall be deposited in the reserve fund and service  
51 credit granted at the time of retirement shall not exceed the  
52 lesser of ten years or fifty percent of the member's total service  
53 as a teacher in West Virginia. Any purchase of out-of-state  
54 service, as provided in this article, shall not be used to establish  
55 eligibility for a retirement allowance and the retirement board  
56 shall grant credit for the purchased service as additional service  
57 only: *Provided, however,* That a purchase of out-of-state service  
58 is prohibited if the service is used to obtain a retirement benefit  
59 from another retirement system: *Provided further,* That salaries  
60 paid to members for service prior to entrance into the retirement  
61 system shall not be used to compute the average final salary of  
62 the member under the retirement system.

63 (d) No members shall be considered absent from service  
64 while serving as a member or employee of the Legislature of the  
65 State of West Virginia during any duly constituted session of  
66 that body or while serving as an elected member of a county  
67 commission during any duly constituted session of that body.

68           (e) No member shall be considered absent from service as a  
69 teacher or nonteacher while serving as an officer with a  
70 statewide professional teaching association, or who has served  
71 in that capacity, and no retirant, who served in that capacity  
72 while a member, shall be considered to have been absent from  
73 service as a teacher by reason of that service: *Provided*, That the  
74 period of service credit granted for that service shall not exceed  
75 ten years: *Provided, however*, That a member who is serving or  
76 has served as an officer of a statewide professional teaching  
77 association shall make deposits to the Teachers Retirement  
78 System, for the time of any absence, in an amount double the  
79 amount which he or she would have contributed in his or her  
80 regular assignment for a like period of time.

81           ~~(g)~~ (f) The Teachers Retirement System shall grant service  
82 credit to any former or present member of the West Virginia  
83 Public Employees Retirement System who has been a  
84 contributing member of the Teachers' Retirement System for  
85 more than three years, for service previously credited by the  
86 Public Employees Retirement System upon his or her written  
87 request and: (1) Shall require the transfer of the member's Public

88 Employees Retirement System accumulated contributions to the  
89 Teachers Retirement System; or (2) shall require a repayment of  
90 the amount withdrawn from the Public Employees Retirement  
91 System, plus interest at a rate to be determined by the retirement  
92 board, compounded annually from the date of withdrawal to the  
93 date of payment, any time prior to the member's effective  
94 retirement date: *Provided*, That there shall be added by the  
95 member to the amounts transferred or repaid under this  
96 subsection an amount which shall be sufficient to equal the  
97 contributions he or she would have made had the member been  
98 under the Teachers Retirement System during the period of his  
99 or her membership in the Public Employees Retirement System.  
100 All interest paid or transferred shall be deposited in the reserve  
101 fund.

102 (g) For service as a teacher in an elementary or secondary  
103 parochial school, located within this state and fully accredited by  
104 the West Virginia Department of Education, the retirement board  
105 shall grant credit to the member: *Provided*, That the member  
106 shall pay to the system twelve percent of that member's gross  
107 salary earned during the first full year of current employment

108 whether a member of the Teachers' Retirement System or the  
109 Teachers' Defined Contribution Retirement System, times the  
110 number of years for which credit is granted, plus interest at a rate  
111 to be determined by the retirement board. The interest shall be  
112 deposited in the reserve fund and service granted at the time of  
113 retirement shall not exceed the lesser of ten years or fifty percent  
114 of the member's total service as a teacher in the West Virginia  
115 public school system. Any transfer of parochial school service,  
116 as provided in this section, may not be used to establish  
117 eligibility for a retirement allowance and retirement board shall  
118 grant credit for the transfer as additional service only: *Provided,*  
119 *however,* That a transfer of parochial school service is prohibited  
120 if the service is used to obtain a retirement benefit from another  
121 retirement system.

122 (h) Active members who previously worked in CETA  
123 (Comprehensive Employment and Training Act) may receive  
124 service credit for time served in that capacity: *Provided,* That in  
125 order to receive service credit under the provisions of this  
126 subsection the following conditions must be met: (1) The  
127 member must have moved from temporary employment with the



128 participating employer to permanent full-time employment with  
129 the participating employer within one hundred twenty days  
130 following the termination of the member's CETA employment;  
131 (2)the retirement board must receive evidence that establishes to  
132 a reasonable degree of certainty as determined by the retirement  
133 board that the member previously worked in CETA; and (3) the  
134 member shall pay to the retirement board an amount equal to the  
135 employer and employee contribution plus interest at the amount  
136 set by the retirement board for the amount of service credit  
137 sought pursuant to this subsection: *Provided, however,* That the  
138 maximum service credit that may be obtained under the  
139 provisions of this subsection is two years: *Provided further,* That  
140 a member must apply and pay for the service credit allowed  
141 under this subsection and provide all necessary documentation  
142 by March 31,2003: *And provided further,* That the retirement  
143 board shall exercise due diligence to notify affected employees  
144 of the provisions of this subsection.

145 (i) If a member is not eligible for prior service credit or  
146 pension as provided in this article, then his or her prior service  
147 shall not be considered a part of his or her total service.

148 (j) A member who withdrew from membership may regain  
149 his or her former membership rights as specified in section  
150 thirteen of this article only in case he or she has served two years  
151 since his or her last withdrawal.

152 (k) Subject to the provisions of subsections (a) through (l),  
153 inclusive, of this section, the retirement board shall verify as  
154 soon as practicable the statements of service submitted. The  
155 retirement board shall issue prior service certificates to all  
156 persons eligible for the certificates under the provisions of this  
157 article. The certificates shall state the length of the prior service  
158 credit, but in no case shall the prior service credit exceed forty  
159 years.

160 (l) Notwithstanding any provision of this article to the  
161 contrary, when a member is or has been elected to serve as a  
162 member of the Legislature, and the proper discharge of his or her  
163 duties of public office require that member to be absent from his  
164 or her teaching or administrative duties, the time served in  
165 discharge of his or her duties of the legislative office are credited  
166 as time served for purposes of computing service credit:  
167 *Provided*, That the retirement board may not require any  
168 additional contributions from that member in order for the board

169 retirement board to credit him or her with the contributing  
170 service credit earned while discharging official legislative duties:  
171 *Provided, however,* That nothing in this section may be  
172 construed to relieve the employer from making the employer  
173 contribution at the member's regular salary rate or rate of pay  
174 from that employer on the contributing service credit earned  
175 while the member is discharging his or her official legislative  
176 duties. These employer payments shall commence as of June  
177 1,2000: *Provided further,* That any member to which the  
178 provisions of this subsection apply may elect to pay to the ~~board~~  
179 retirement board an amount equal to what his or her contribution  
180 would have been for those periods of time he or she was serving  
181 in the Legislature. The periods of time upon which the member  
182 paid his or her contribution shall then be included for purposes  
183 of determining his or her final average salary as well as for  
184 determining years of service: *And provided further,* That a  
185 member using the provisions of this subsection is not required to  
186 pay interest on any contributions he or she may decide to make.  
187 (m) The Teachers Retirement System shall grant service  
188 credit to any former member of the State Police Death, Disability  
189 and Retirement System who has been a contributing member for

190 more than three years, for service previously credited by the  
191 State Police Death, Disability and Retirement System; and: (1)  
192 Shall require the transfer of the member's contributions to the  
193 Teachers Retirement System; or (2) shall require a repayment of  
194 the amount withdrawn any time prior to the member's  
195 retirement: *Provided*, That the member shall add to the amounts  
196 transferred or repaid under this paragraph an amount which is  
197 sufficient to equal the contributions he or she would have made  
198 had the member been under the Teachers Retirement System  
199 during the period of his or her membership in the State Police  
200 Death, Disability and Retirement System plus interest at a rate  
201 to be determined by the board compounded annually from the  
202 date of withdrawal to the date of payment. The interest paid shall  
203 be deposited in the reserve fund.

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

- 1 (a) Benefits upon withdrawal from service prior to
- 2 retirement under the provisions of this article shall be as follows:
  - 3 (1) A contributor who withdraws from service for any cause
  - 4 other than death, disability or retirement shall, upon application,
  - 5 be paid his or her accumulated contributions up to the end of the
  - 6 fiscal year preceding the year in which application is made, after

7 offset of any outstanding loan balance, plus accrued loan  
8 interest, pursuant to section thirty-four of this article, but in no  
9 event shall interest be paid beyond the end of five years  
10 following the year in which the last contribution was made:

11 *Provided*, That the contributor, at the time of application, is then  
12 no longer under contract, verbal or otherwise, to serve as a  
13 teacher; or

14 (2) If the inactive member has completed twenty years of  
15 total service, he or she may elect to receive at age sixty an  
16 annuity which shall be computed as provided in this article:

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

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

28       (1) If the contributor was at least fifty years old and if his or  
29 her total service as a teacher or nonteaching member was at least  
30 twenty-five years at the time of his or her death, then the  
31 surviving spouse of the deceased, provided the spouse is  
32 designated as the sole primary refund beneficiary, is eligible for  
33 an annuity computed as though the deceased were actually a  
34 retirant at the time of death and had selected a survivorship  
35 option which pays the spouse the same monthly amount which  
36 would have been received by the deceased; or

37       (2) If the facts do not permit payment under subdivision (1)  
38 of this subsection, then the following sum shall be paid to the  
39 refund beneficiary of the contributor: (A) The contributor's  
40 accumulated contributions up to the plan year of his or her death  
41 plus an amount equal to his or her member contributions.  
42 *Provided*, That the latter sum shall emanate from the Employer's  
43 Accumulation Fund; and (B) the refund beneficiary of any  
44 individual who became a member of the retirement system as a  
45 result of the voluntary transfer contemplated in article seven-d  
46 of this chapter shall also be paid the member contributions plus  
47 the vested portion of employer contributions made on his or her

48 behalf to the Teachers' Defined Contribution Retirement  
49 System, plus any earnings thereon, as of June 30, 2008, as stated  
50 by the retirement board.

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

1 (a) Any actively contributing member who has attained the  
2 age of sixty years or any member who has had thirty-five years  
3 of total service as a teacher or nonteaching member in West  
4 Virginia, regardless of age, is eligible for an annuity. No new  
5 entrant nor present member is eligible for an annuity, however,  
6 if either has less than five years of service to his or her credit:  
7 *Provided*, That on and after July 1, 2013, any person who  
8 becomes a new member of this retirement system shall, in  
9 qualifying for retirement under this section, have five or more  
10 years of contributory service, all of which shall be actual,  
11 contributory ones.

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

15 (c) Any member who has served at least thirty but less than  
16 thirty-five years as a teacher or nonteaching member in West  
17 Virginia and is less than fifty-five years of age is eligible for an

18 annuity, but the annuity shall be the reduced actuarial equivalent  
19 of the annuity the member would have received if the member  
20 were age fifty-five at the time such annuity was applied for.

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

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

29 (1) His or her service as a teacher or nonteaching member in  
30 West Virginia must total at least ten years and service as a  
31 teacher or nonteaching member must have been terminated  
32 because of disability, which disability must have caused absence  
33 from service for at least six months before his or her application  
34 for disability annuity is approved.

35 (2) His or her service as a teacher or nonteaching member in  
36 West Virginia must total at least five years and service as a  
37 teacher or nonteaching member must have been terminated



38 because of disability, which disability must have caused absence  
39 from service for at least six months before his or her application  
40 for disability annuity is approved and the disability is a direct  
41 and total result of an act of student violence directed toward the  
42 member.

43 (3) An examination by a physician or physicians selected by  
44 the retirement board must show that the member is at the time  
45 mentally or physically incapacitated for service as a teacher or  
46 nonteaching member, that for that service the disability is total  
47 and likely to be permanent and that he or she should be retired  
48 in consequence of the disability.

49 (f) Continuance of the disability of the retirant shall be  
50 established by medical examination, as prescribed in subdivision  
51 (3), subsection (e) of this section, annually for five years after  
52 retirement, and thereafter at such times required by the  
53 retirement board. Effective July 1,1998, a member who has  
54 retired because of a disability may select an option of payment  
55 under the provisions of section twenty-eight of this article:  
56 *Provided*, That any option selected under the provisions of  
57 section twenty-eight of this article shall be in all respects the

58 actuarial equivalent of the straight life annuity benefit the  
59 disability retirant receives or would receive if the options under  
60 said section were not available and that no beneficiary or  
61 beneficiaries of the disability retirant may receive a greater  
62 benefit, nor receive any benefit for a greater length of time, than  
63 the beneficiary or beneficiaries would have received had the  
64 disability retirant not made any election of the options available  
65 under said section. In determining the actuarial equivalence, the  
66 retirement board shall take into account the life expectancies of  
67 the member and the beneficiary: *Provided, however,* That the life  
68 expectancies may at the discretion of the retirement board be  
69 established by an underwriting medical director of a competent  
70 insurance company offering annuities. Payment of the disability  
71 annuity provided in this article shall cease immediately if the  
72 retirement board finds that the disability of the retirant no longer  
73 exists, or if retirant refuses to submit to medical examination as  
74 required by this section.

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

1 (a) Retirants whose annuities were approved by the  
2 retirement board effective before July 1, 1980, shall be paid the  
3 annuities which were approved by the retirement board.

4 (b) Annuities approved by the retirement board effective  
5 after June 30, 1980, shall be computed as provided in this  
6 section.

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

14 In this subsection "average salary" means the average of the  
15 highest annual salaries received by the member during any five  
16 plan years contained within his or her last fifteen years of total  
17 service credit: *Provided*, That the highest annual salary used in  
18 this calculation for certain members employed by the West  
19 Virginia Higher Education Policy Commission under its control  
20 shall be \$4,800, as provided by section fourteen-a of this article.

21 (d) The disability annuities of disabled retirants shall be  
22 based upon a disability table prepared by a competent actuary  
23 approved by the retirement board. Disability annuity benefits

24 will begin the first day of the month following the latter of: (1)  
25 Six months of absence caused by said disability; (2) date of  
26 written report by physician selected by retirement board stating  
27 member is mentally or physically incapacitated for service and  
28 that disability is total and likely to be permanent; and (3)  
29 termination of employment.

30 (e) Upon the death of a retirant who qualified for an annuity  
31 as the surviving spouse of an active member or because of  
32 permanent disability, the estate of the deceased or beneficiary  
33 designated for such purpose shall be paid the difference, if any,  
34 between the member's contributions with regular interest  
35 thereon, and the sum of the annuity payments. Upon the death of  
36 a spouse who was named as the member's survivor, a retirant  
37 may elect an annuity option approved by the retirement board in  
38 an amount adjusted on a fair basis to be of equal actuarial value  
39 as the annuity prospectively in effect relative to the surviving  
40 member at the time the new option is elected.

41 (f) All annuities shall be paid in twelve monthly payments.  
42 In computing the monthly payments, fractions of a cent shall be  
43 considered a cent. The monthly payments shall cease with the

44 payment for the month within which the beneficiary dies, and  
45 shall begin with the payment for the month succeeding the  
46 month within which the retirant became eligible under this  
47 article for the annuity granted; in no case, however, a retirant  
48 receive more than four monthly payments which are retroactive  
49 after the retirement board receives his or her application for  
50 annuity. The monthly payments shall be made on the twenty-  
51 fifth day of each month, except the month of December, when  
52 the payment shall be made on December 18. If the date of  
53 payment falls on a holiday, Saturday or Sunday, then the  
54 payment shall be made on the preceding workday.

55 (g) In case the retirement board receives data affecting the  
56 approved annuity of a retirant, the annuity shall be changed in  
57 accordance with the data, the change being effective with the  
58 payment for the month within which the retirement board  
59 received the new data.

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

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Sammy Wells*

Chairman, House Committee

*[Signature]*

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

*[Signature]*

Clerk of the House of Delegates

*Joseph M. Minard*

Clerk of the Senate

*[Signature]*

Speaker of the House of Delegates

*[Signature]*

President of the Senate

The within is approved this the 19<sup>th</sup>  
day of April, 2013.

*Earl Ray Tomblin*  
Governor

**PRESENTED TO THE GOVERNOR**

APR 17 2013

Time 11:24 am