

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

**Enrolled
Committee Substitute
for
Senate Bill 26**

SENATOR BLAIR, *original sponsor*

[Passed February 25, 2019; in effect 90 days from passage]

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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FILED

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1 AN ACT to amend and reenact §18-7A-3 of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §18-7B-2 of said code, all relating to permitting full-time employees
3 of educational services cooperatives to participate in the State Teachers Retirement
4 System; and permitting full-time employees of educational services cooperatives to
5 participate in the State Teachers' Defined Contribution Retirement System.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

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

2 "Accumulated contributions" means all deposits and all deductions from the gross salary
3 of a contributor plus regular interest.

4 "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf
5 of a retired member.

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

12 "Annuities" means the annual retirement payments for life granted beneficiaries in
13 accordance with this article.

14 "Average final salary" means the average of the five highest fiscal year salaries earned as
15 a member within the last 15 fiscal years of total service credit, including military service as
16 provided in this article, or if total service is less than 15 years, the average annual salary for the
17 period on which contributions were made: *Provided*, That salaries for determining benefits during
18 any determination period may not exceed the maximum compensation allowed as adjusted for

19 cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal
20 Revenue Code.

21 “Beneficiary” means the recipient of annuity payments made under the retirement system.

22 “Contributor” means a member of the retirement system who has an account in the
23 Teachers Accumulation Fund.

24 “Deposit” means a voluntary payment to his or her account by a member.

25 “Employer” means the agency of and within the state which has employed or employs a
26 member.

27 “Employer error” means an omission, misrepresentation, or violation of relevant provisions
28 of the West Virginia Code, or of the West Virginia Code of State Regulations, or the relevant
29 provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by
30 the participating public employer that has resulted in an underpayment or overpayment of
31 contributions required. A deliberate act contrary to the provisions of this section by a participating
32 public employer does not constitute employer error.

33 “Employment term” means employment for at least 10 months, a month being defined as
34 20 employment days.

35 “Gross salary” means the fixed annual or periodic cash wages paid by a participating
36 public employer to a member for performing duties for the participating public employer for which
37 the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the
38 work was done. Gross salary also includes retroactive payments made to a member to correct a
39 clerical error, or made pursuant to a court order or final order of an administrative agency charged
40 with enforcing federal or state law pertaining to the member’s rights to employment or wages, with
41 all retroactive salary payments to be allocated to and considered paid in the periods in which the
42 work was or would have been done. Gross salary does not include lump sum payments for
43 bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind

44 including, but not limited to, transportation allowances, automobiles or automobile allowances, or
45 lump sum payments for unused, accrued leave of any type or character.

46 "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been
47 amended.

48 "Member" means any person who has accumulated contributions standing to his or her
49 credit in the State Teachers Retirement System. A member shall remain a member until the
50 benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of
51 membership pursuant to §18-7A-13 of this code.

52 "Members of the administrative staff of the public schools" means deans of instruction,
53 deans of men, deans of women, and financial and administrative secretaries.

54 "Members of the extension staff of the public schools" means every agricultural agent,
55 boys and girls club agent, and every member of the agricultural extension staff whose work is not
56 primarily stenographic, clerical, or secretarial.

57 "New entrant" means a teacher who is not a present teacher.

58 "Nonteaching member" means any person, except a teacher member, who is regularly
59 employed for full-time service by: (A) Any county board of education or educational services
60 cooperative; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D)
61 the West Virginia Council for Community and Technical College Education; or (E) a governing
62 board, as defined in §18B-1-2 of this code: *Provided*, That any person whose employment with
63 the Higher Education Policy Commission, the West Virginia Council for Community and Technical
64 College Education, or a governing board commences on or after July 1, 1991, is not considered
65 a nonteaching member.

66 "Plan year" means the 12-month period commencing on July 1 and ending the following
67 June 30 of any designated year.

68 "Present member" means a present teacher or nonteacher who is a member of the
69 retirement system.

70 “Present teacher” means any person who was a teacher within the 35 years beginning
71 July 1, 1934, and whose membership in the retirement system is currently active.

72 “Prior service” means all service as a teacher completed prior to July 1, 1941, and all
73 service of a present member who was employed as a teacher and did not contribute to a
74 retirement account because he or she was legally ineligible for membership during the service.

75 “Public schools” means all publicly supported schools, including colleges and universities
76 in this state.

77 “Refund beneficiary” means the estate of a deceased contributor or a person he or she
78 has nominated as beneficiary of his or her contributions by written designation duly executed and
79 filed with the retirement board.

80 “Regular interest” means interest at four percent compounded annually, or a higher
81 earnable rate if set forth in the formula established in legislative rules, series seven of the
82 Consolidated Public Retirement Board, 162 CSR 7.

83 “Regularly employed for full-time service” means employment in a regular position or job
84 throughout the employment term regardless of the number of hours worked or the method of pay.

85 “Required beginning date” means April 1 of the calendar year following the later of: (A)
86 The calendar year in which the member attains age 70 and one-half years; or (B) the calendar
87 year in which the member retires or ceases covered employment under the system after having
88 attained the age of 70 and one-half years.

89 “Retirant” means any member who commences an annuity payable by the retirement
90 system.

91 “Retirement board” means the Consolidated Public Retirement Board created pursuant to
92 §5-10D-1 *et seq.* of this code.

93 “Retirement system” means the State Teachers Retirement System established by this
94 article.

95 “Teacher member” means the following persons, if regularly employed for full-time service:
96 (A) Any person employed for instructional service in the public schools of West Virginia; (B)
97 principals; (C) public school librarians; (D) superintendents of schools and assistant county
98 superintendents of schools; (E) any county school attendance director holding a West Virginia
99 teacher’s certificate; (F) members of the research, extension, administrative, or library staffs of
100 the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the
101 divisions under his or her supervision, or any other employee under the state superintendent
102 performing services of an educational nature; (H) employees of the State Board of Education who
103 are performing services of an educational nature; (I) any person employed in a nonteaching
104 capacity by the State Board of Education, any county board of education, the State Department
105 of Education, or the State Teachers Retirement Board, if that person was formerly employed as
106 a teacher in the public schools; (J) all classroom teachers, principals, and educational
107 administrators in schools under the supervision of the Division of Corrections, the Division of
108 Health, or the Division of Human Services; (K) an employee of the State Board of School Finance,
109 if that person was formerly employed as a teacher in the public schools; (L) employees of an
110 educational services cooperative who are performing services of an educational nature; and (M)
111 any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who
112 elects to remain a member of the State Teachers Retirement System provided in this article.

113 “Total service” means all service as a teacher or nonteacher while a member of the
114 retirement system since last becoming a member and, in addition thereto, credit for prior service,
115 if any.

116 Age in excess of 70 years shall be considered to be 70 years.

ARTICLE 7B. TEACHERS’ DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

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

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

8 “Annuity account” or “annuity” means an account established for each member to record
9 the deposit of member contributions and employer contributions and interest, dividends, or other
10 accumulations credited on behalf of the member.

11 “Compensation” means the full compensation actually received by members for service
12 whether or not a part of the compensation is received from other funds, federal or otherwise, than
13 those provided by the state or its subdivisions: *Provided*, That annual compensation for
14 determining contributions during any determination period may not exceed the maximum
15 compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and
16 Section 401(a)(17) of the Internal Revenue Code: *Provided, however*, That solely for purposes of
17 applying the limitations of Section 415 of the Internal Revenue Code to any annual addition,
18 “compensation” has the meaning given it in §18-7B-13d of this code.

19 “Consolidated board” or “board” means the Consolidated Public Retirement Board created
20 and established pursuant to §5-10D-1 *et seq.* of this code.

21 “Defined contribution system” or “system” means the Teachers’ Defined Contribution
22 Retirement System created and established by this article.

23 “Employer” means the agency of and within the State of West Virginia which has employed
24 or employs a member.

25 “Employer contribution” means an amount deposited into the member’s individual annuity
26 account on a periodic basis coinciding with the employee’s regular pay period by an employer
27 from its own funds.

28 “Employment term” means employment for at least 10 months in any plan year with a
29 month being defined as 20 employment days.

30 “Existing employer” means any employer who employed or employs a member of the
31 system.

32 “Existing retirement system” means the State Teachers Retirement System established in
33 §18-7A-1 *et seq.* of this code.

34 “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been
35 amended.

36 “Member” or “employee” means the following persons, if regularly employed for full-time
37 service: (A) Any person employed for instructional service in the public schools of West Virginia;
38 (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county
39 superintendents of schools; (E) any county school attendance director holding a West Virginia
40 teacher’s certificate; (F) members of the research, extension, administrative, or library staffs of
41 the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the
42 divisions under his or her supervision, or any other employee under the state superintendent
43 performing services of an educational nature; (H) employees of the State Board of Education who
44 are performing services of an educational nature; (I) any person employed in a nonteaching
45 capacity by the State Board of Education, any county board of education, or the State Department
46 of Education, if that person was formerly employed as a teacher in the public schools; (J) all
47 classroom teachers, principals, and educational administrators in schools under the supervision
48 of the Division of Corrections and the Department of Health and Human Resources; (K) any
49 person who is regularly employed for full-time service by any county board of education,
50 educational services cooperative, or the State Board of Education; (L) the administrative staff of
51 the public schools including deans of instruction, deans of men and deans of women, and financial
52 and administrative secretaries; and (M) any person designated as a 21st Century Learner Fellow

53 pursuant to §18A-3-11 of this code who elects to remain a member of the Teachers' Defined
54 Contribution Retirement System established by this article.

55 "Member contribution" means an amount reduced from the employee's regular pay
56 periods, and deposited into the member's individual annuity account within the Teachers' Defined
57 Contribution Retirement System.

58 "Permanent, total disability" means a mental or physical incapacity requiring absence from
59 employment service for at least six months: *Provided*, That the incapacity is shown by an
60 examination by a physician or physicians selected by the board: *Provided, however*, That for
61 employees hired on or after July 1, 2005, "permanent, total disability" means an inability to engage
62 in substantial gainful activity by reason of any medically determinable physical or mental
63 impairment that can be expected to result in death, or has lasted or can be expected to last for a
64 continuous period of not less than 12 months and the incapacity is so severe that the member is
65 likely to be permanently unable to perform the duties of the position the member occupied
66 immediately prior to his or her disabling injury or illness.

67 "Plan year" means the 12-month period commencing on July 1 of any designated year
68 and ending on the following June 30.

69 "Public schools" means all publicly supported schools, including normal schools, colleges,
70 and universities in this state.

71 "Regularly employed for full-time service" means employment in a regular position or job
72 throughout the employment term regardless of the number of hours worked or the method of pay.

73 "Required beginning date" means April 1 of the calendar year following the later of: (A)
74 The calendar year in which the member attains age 70 and one-half years; or (B) the calendar
75 year in which the member retires or otherwise ceases employment with a participating employer
76 after having attained the age of 70 and one-half years.

77 "Retirement" means a member's withdrawal from the active employment of a participating
78 employer and completion of all conditions precedent to retirement.

79 “Year of employment service” means employment for at least ten months, with a month
80 being defined as 20 employment days: *Provided*, That no more than one year of service may be
81 accumulated in any 12-month period.

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

Mark Maynard
.....
Chairman, Senate Committee

Steve Caputo
.....
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

Joe Lamm
.....
Clerk of the Senate

Stephan J. Harris
.....
Clerk of the House of Delegates

Walter B. Combs
.....
President of the Senate

Robert F. Hinkle
.....
Speaker of the House of Delegates

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2019 MAR - 1 P 4:44

FILED

The within *is approved* this the *14th*
Day of *March* 2019.

James O. Eastman
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 01 2019

Time 10:00 am