

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 451**

By Senators Nelson and Hunt

[Originating in the Committee on Pensions; reported  
on February 2, 2023]

1 A BILL to amend and reenact §18-7A-3, §18-7A-13a, §18-7A-15, and §18-7A-17 of the Code of  
2 West Virginia, 1931, as amended; and to amend and reenact §18-7B-2 and §18-7B-17 of  
3 said code, all relating to the Teachers Retirement System and the Teachers' Defined  
4 Contribution Retirement System; defining and amending terms related to electing charter  
5 schools; defining medical examination; clarifying notification by employer of a retirant re-  
6 employed in a permanent position; adding electing charter schools to provisions of  
7 delinquent contributions; providing for transfer of assets from the Public Employees  
8 Retirement System to the Teachers Retirement System; and adding electing charter  
9 schools to retirement contribution section.

*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 of  
3 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 the  
9 context of compliance with the federal maximum benefit requirements of ~~section~~ Section 415 of  
10 the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables  
11 and 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 "Electing charter school" means a public charter school established pursuant to §18-5G-1  
26 et seq. of this code which has elected to participate in this retirement system as permitted in the  
27 definitions of "Nonteaching member" and "Teacher member" in this section.

28 "Employer" means the agency of and within the state which has employed or employs a  
29 member, a county board of education which has employed or employs a member, or an electing  
30 charter school which has employed or employs a member. "Participating public employer" or  
31 "participating employer" means "employer" unless the context clearly requires otherwise.

32 "Employer error" means an omission, misrepresentation, or deliberate act in violation of  
33 relevant provisions of the West Virginia Code, or of the West Virginia Code of State Regulations, or  
34 the relevant provisions of both the West Virginia Code and of the West Virginia Code of State  
35 Regulations by the participating public employer that has resulted in an underpayment or  
36 overpayment of contributions required.

37 "Employment term" means employment for at least 10 months, a month being defined as  
38 20 employment days.

39 "Gross salary" means the fixed annual or periodic cash wages paid by a participating  
40 public employer to a member for performing duties for the participating public employer for which

41 the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the  
42 work was done. Gross salary also includes retroactive payments made to a member to correct a  
43 clerical error, or made pursuant to a court order or final order of an administrative agency charged  
44 with enforcing federal or state law pertaining to the member's rights to employment or wages, with  
45 all retroactive salary payments to be allocated to and considered paid in the periods in which the  
46 work was or would have been done. Gross salary does not include lump sum payments for  
47 bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind  
48 including, but not limited to, transportation allowances, automobiles or automobile allowances, or  
49 lump sum payments for unused, accrued leave of any type or character.

50 "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been  
51 amended.

52 "Medical examination" means an in-person or virtual examination of a member's physical  
53 or mental health, or both, by a physician or physicians selected or approved by the board; or, at the  
54 discretion of the board, a medical record review of the member's physical or mental health, or  
55 both, by a physician selected or approved by the board.

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

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

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

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

66 "Nonteaching member" means any person, except a teacher member, who is regularly

67 employed for full-time service by: (A) Any county board of education or educational services  
68 cooperative; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D)  
69 the West Virginia Council for Community and Technical College Education; (E) a governing board,  
70 as defined in §18B-1-2 of this code; or (F) a public charter school established pursuant to §18-5G-  
71 1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to  
72 §18-5G-7 of this code a determination to participate in the retirement systems under this article  
73 and §18-7B-1 *et seq.* of this code, subject to §18-7B-7a of this code: ~~Provided~~ Provided, That any  
74 person whose employment with the Higher Education Policy Commission, the West Virginia  
75 Council for Community and Technical College Education, or a governing board commences on or  
76 after July 1, 1991, is not considered a nonteaching member.

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

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

81 "Present teacher" means any person who was a teacher within the 35 years beginning July  
82 1, 1934, and whose membership in the retirement system is currently active.

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

86 "Public schools" means all publicly supported schools, including colleges and universities  
87 in this state. Unless the context clearly requires otherwise, "public school" may not include a public  
88 charter school which is not an "electing charter school" as defined herein.

89 "Refund beneficiary" means the estate of a deceased contributor or a person he or she has  
90 nominated as beneficiary of his or her contributions by written designation duly executed and filed  
91 with the retirement board.

92 "Regular interest" means interest at four percent compounded annually, or a higher

93 earnable rate if set forth in the formula established in legislative rules, series seven of the  
94 Consolidated Public Retirement Board, 162 CSR 7.

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

97 "Required beginning date" means April 1 of the calendar year following the later of: (A) The  
98 calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born  
99 after June 30, 1949); or (B) the calendar year in which the member retires, or ceases covered  
100 employment under the retirement system.

101 "Retirant" means any member who commences an annuity payable by the retirement  
102 system.

103 "Retirement board" means the Consolidated Public Retirement Board created pursuant to  
104 §5-10D-1 *et seq.* of this code.

105 "Retirement system" means the State Teachers Retirement System established by this  
106 article.

107 "Teacher member" means the following persons, if regularly employed for full-time service:  
108 (A) Any person employed by a public school for instructional service in the public schools of West  
109 Virginia; (B) principals employed by a public school; (C) ~~public school~~ librarians employed by a  
110 public school; (D) superintendents of schools and assistant county superintendents of schools; (E)  
111 any county school attendance director holding a West Virginia teacher's certificate; (F) members  
112 of the research, extension, administrative, or library staffs of the public schools; (G) the State  
113 Superintendent of Schools, heads and assistant heads of the divisions under his or her  
114 supervision, or any other employee under the state superintendent performing services of an  
115 educational nature; (H) employees of the State Board of Education who are performing services of  
116 an educational nature; (I) any person employed in a nonteaching capacity by the State Board of  
117 Education, any county board of education, the State Department of Education, or the State  
118 Teachers Retirement Board, if that person was formerly employed as a teacher in the public

119 schools; (J) all classroom teachers, principals, and educational administrators in schools under  
120 the supervision of the Division of Corrections and Rehabilitation, the Division of Health, or the  
121 Division of Human Services; (K) an employee of the State Board of School Finance, if that person  
122 was formerly employed as a teacher in the public schools; (L) employees of an educational  
123 services cooperative who are performing services of an educational nature; (M) any person  
124 designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to  
125 remain a member of the State Teachers Retirement System provided in this article; and (N) any  
126 person employed for instructional service or as a principal or librarian by a public charter school  
127 established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter  
128 contract entered into pursuant to §18-5G-7 of this code a determination to participate in the  
129 retirement systems under this article and §18-7B-1 *et seq.* of this code.

130 "Total service" means all service as a teacher or nonteacher while a member of the  
131 retirement system since last becoming a member and, in addition thereto, credit for prior service, if  
132 any.

133 Age ~~in excess of~~ more than 70 years shall be considered to be 70 years.

**§18-7A-13a. Resumption of service by retired teachers.**

1 (a) For the purpose of this section, reemployment of a former or retired teacher as a  
2 teacher shall may in no way impair the teacher's eligibility for a prior service pension or any other  
3 benefit provided by this article.

4 (b) Retired teachers who qualified for an annuity because of age or service may not receive  
5 prior service allowance from the retirement board when employed as a teacher and when regularly  
6 employed by the State of West Virginia. The payment of the allowance shall be discontinued on  
7 the first day of the month within which ~~such~~ the employment begins and shall be resumed on the  
8 first day of the month succeeding the month within which ~~such~~ the employment ceases. The  
9 annuity paid the teacher on first retirement resulting from the Teachers' Accumulation Fund and  
10 the Employers' Accumulation Fund shall continue throughout the governmental service and

11 thereafter according to the option selected by the teacher upon first retirement.

12 (c) Retired teachers who qualified for an annuity because of disability shall may receive no  
13 further retirement payments if the retirement board finds that the disability of the teacher no longer  
14 exists; payment shall be discontinued on the first day of the month within which the finding is  
15 made. If the retired teacher returns to service as a teacher, he or she shall contribute to the  
16 Teachers' Accumulation Fund as a member of the system. His or her prior service eligibility, if any,  
17 shall not be impaired because of his or her disability retirement. His or her accumulated  
18 contributions which were transferred to the benefit fund upon his or her retirement shall be  
19 returned to his or her individual account in the Teachers' Accumulation Fund, minus retirement  
20 payments received which were not supported by such contributions and interest. Upon  
21 subsequent retirement, he or she shall receive credit for all ~~of his or her~~ contributory experience,  
22 anything to the contrary in this article notwithstanding.

23 (d) Notwithstanding any provision of this code to the contrary, a person who retires under  
24 the system provided by this article may subsequently become employed on either a full-time basis,  
25 part-time basis, or contract basis by any institution of higher education without any loss of  
26 retirement annuity or retirement benefits if the person's retirement commences between the  
27 effective date of the enactment of this section in 2002 and December 31, 2002: *Provided*, That the  
28 person shall may not be eligible to participate in any other state retirement system provided by this  
29 code.

30 (e) The retirement board ~~is herewith authorized to~~ may require of the retired teachers and  
31 their employers such reports as it deems necessary to effectuate the provisions of this section.

32 (f) Prior to any retirant subsequently becoming employed with an employer on a permanent  
33 (regularly employed for full-time service), substitute, or temporary basis ~~which if full-time would~~  
34 ~~qualify the retirant as a teacher member or a nonteaching member~~, the employer shall notify the  
35 retirement board and the retirant, in writing, ~~if and~~ when the retirant's potential permanent,  
36 substitute, or temporary employment will negatively impact the retirant's retired status or benefits.



37 Upon the retirant's acceptance of either permanent, substitute, or temporary employment, the  
38 employer shall notify the retirement board, in writing, of the retirant's subsequent employment.

**§18-7A-15. Collection of membership contributions.**

1 Each employer shall each month deduct six percent from the salary of each employee who  
2 is a member of the retirement system, in an amount not to exceed the amount named in §18-7A-14  
3 of this code, and shall at the end of each month remit to the retirement board the amounts so  
4 deducted, and shall transmit therewith a list of all new members employed and the name and  
5 number of members transferring from another county. At such times as the retirement board may  
6 deem advisable each employer shall report to the retirement board the total amount so deducted  
7 from the salary of each employee. The monthly payments which members would receive from  
8 employers as compensation for service in the absence of this article shall be decreased by the  
9 amount of the contribution due hereunder.

10 Each employer shall be held accountable for the sum composing the contributions made  
11 by its member employees. Whenever any county board of education or electing charter school  
12 ~~shall fail~~ fails to make timely remittance of the member contributions deducted as provided in this  
13 section, the retirement board of school finance shall, upon request of the retirement board, deduct  
14 ~~from the next allotment of state aid for schools made to such county board, and shall transfer to the~~  
15 ~~retirement board, the amount so in default~~ may take such steps as are necessary and authorized  
16 pursuant to § 5-10D-13 of this code.

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

1 (a) Under rules adopted by the retirement board, each teacher and nonteaching member  
2 shall file a detailed statement of his or her length of service as a teacher or nonteacher for which he  
3 or she claims credit. The retirement board shall determine what part of a year is the equivalent of a  
4 year of service. In computing the service, however, it shall credit no period of more than a month's  
5 duration during which a member was absent without pay, nor shall it credit for more than one year  
6 of service performed in any calendar year.

7 (b) For service as a teacher in the employment of the federal government, or a state or  
8 territory of the United States, or a governmental subdivision of that state or territory, the retirement  
9 board shall grant credit to the member: *Provided*, That the member shall pay to the system twelve  
10 percent of that member's gross salary earned during the first full year of current employment  
11 whether a member of the Teachers Retirement System or the Teachers' Defined Contribution  
12 Retirement System, times the number of years for which credit is granted, plus interest at a rate to  
13 be determined by the retirement board. The interest shall be deposited in the reserve fund and  
14 service credit granted at the time of retirement ~~shall~~ may not exceed the lesser of 10 years or 50  
15 percent of the member's total service as a teacher in West Virginia. Any purchase of out-of-state  
16 service, as provided in this article, ~~shall~~ may not be used to establish eligibility for a retirement  
17 allowance and the retirement board shall grant credit for the purchased service as additional  
18 service only: *Provided, however*, That a purchase of out-of-state service is prohibited if the service  
19 is used to obtain a retirement benefit from another retirement system: *Provided further*, That  
20 salaries paid to members for service prior to entrance into the retirement system ~~shall~~ may not be  
21 used to compute the average final salary of the member under the retirement system.

22 (c) No members ~~shall~~ may be considered absent from service while serving as a member  
23 or employee of the Legislature of the State of West Virginia during any duly constituted session of  
24 that body or while serving as an elected member of a county commission during any duly  
25 constituted session of that body.

26 (d) No member ~~shall~~ may be considered absent from service as a teacher or nonteacher  
27 while serving as an officer with a statewide professional teaching association, or who has served  
28 in that capacity, and no retirant, who served in that capacity while a member, ~~shall~~ may be  
29 considered to have been absent from service as a teacher by reason of that service: *Provided*,  
30 That the period of service credit granted for that service ~~shall~~ may not exceed 10 years: *Provided*,  
31 *however*, That a member or retirant who is serving or has served as an officer of a statewide  
32 professional teaching association shall make deposits to the Teachers Retirement System, for the

33 time of any absence, in an amount double the amount which he or she would have contributed in  
34 his or her regular assignment for a like period of time.

35 (e) The Teachers Retirement System shall grant service credit to any former or present  
36 member of the West Virginia Public Employees Retirement System who has been a contributing  
37 member of the Teachers Retirement System for more than three years, for service previously  
38 credited by the Public Employees Retirement System upon his or her written request and: (1) Shall  
39 require the transfer of the member's Public Employees Retirement System accumulated  
40 contributions to the Teachers Retirement System; or (2) shall require a repayment of the amount  
41 withdrawn from the Public Employees Retirement System, plus interest at a rate to be determined  
42 by the retirement board, compounded annually from the date of withdrawal to the date of payment,  
43 any time prior to the member's effective retirement date: *Provided*, That there shall be added by  
44 the member to the amounts transferred or repaid under this subsection an amount which shall be  
45 sufficient to equal the contributions he or she would have made had the member been under the  
46 Teachers Retirement System during the period of his or her membership in the Public Employees  
47 Retirement System, plus interest at a rate determined by the retirement board, compounded  
48 annually from the date the additional contribution would have been made had the member been  
49 under the Teachers Retirement System to the date of payment: *Provided, however, That members*  
50 *of the Public Employees Retirement System who first became a member of the Public Employees*  
51 *Retirement System on or after July 1, 2023, may only transfer service credit to the Teachers*  
52 *Retirement System if they first became a member of the Teachers Retirement System on or after*  
53 *July 1, 2015.* All interest paid or transferred shall be deposited in the reserve fund.

54 (f) For service as a teacher in an elementary or secondary parochial school, located within  
55 this state and fully accredited by the West Virginia Department of Education, the retirement board  
56 shall grant credit to the member: *Provided*, That the member shall pay to the system 12 percent of  
57 that member's gross salary earned during the first full year of current employment whether a  
58 member of the Teachers Retirement System or the Teachers' Defined Contribution Retirement

59 System, times the number of years for which credit is granted, plus interest at a rate to be  
60 determined by the retirement board. The interest shall be deposited in the reserve fund and  
61 service granted at the time of retirement ~~shall~~ may not exceed the lesser of 10 years or 50 percent  
62 of the member's total service as a teacher in the West Virginia public school system. Any purchase  
63 of parochial school service, as provided in this section, may not be used to establish eligibility for a  
64 retirement allowance and retirement board shall grant credit for the purchase as additional service  
65 only: *Provided, however,* That a purchase of parochial school service is prohibited if the service is  
66 used to obtain a retirement benefit from another retirement system.

67 (g) Active members who previously worked in Comprehensive Employment and Training  
68 Act (CETA) may receive service credit for time served in that capacity: *Provided,* That in order to  
69 receive service credit under the provisions of this subsection the following conditions ~~must~~ shall be  
70 met: (1) The member ~~must~~ shall have moved from temporary employment with the participating  
71 employer to permanent full-time employment with the participating employer within 120 days  
72 following the termination of the member's CETA employment; (2) the retirement board ~~must~~ shall  
73 receive evidence that establishes to a reasonable degree of certainty as determined by the  
74 retirement board that the member previously worked in CETA; and (3) the member shall pay to the  
75 retirement board an amount equal to the employer and employee contribution plus interest at the  
76 amount set by the retirement board for the amount of service credit sought pursuant to this  
77 subsection: *Provided, however,* That the maximum service credit that may be obtained under the  
78 provisions of this subsection is two years: *Provided further,* That a member ~~must~~ shall apply and  
79 pay for the service credit allowed under this subsection and provide all necessary documentation  
80 by March 31, 2003: *And provided further,* That the retirement board shall exercise due diligence to  
81 notify affected employees of the provisions of this subsection.

82 (h) If a member is not eligible for prior service credit or pension as provided in this article,  
83 then his or her prior service ~~shall~~ may not be considered a part of his or her total service.

84 (i) A member who withdrew from membership may regain his or her former membership

85 rights as specified in §18-7A-13 of this code only in case he or she has served two years since his  
86 or her last withdrawal.

87 (j) Subject to the provisions of subsections (a) through (k), inclusive, of this section, the  
88 retirement board shall verify as soon as practicable the statements of service submitted. The  
89 retirement board shall issue prior service certificates to all persons eligible for the certificates  
90 under the provisions of this article. The certificates shall state the length of the prior service credit,  
91 but in no case shall the prior service credit exceed 40 years.

92 (k) Notwithstanding any provision of this article to the contrary, when a member is or has  
93 been elected to serve as a member of the Legislature, and the proper discharge of his or her duties  
94 of public office require that member to be absent from his or her teaching or administrative duties,  
95 the time served in discharge of his or her duties of the legislative office are credited as time served  
96 for purposes of computing service credit: *Provided*, That the retirement board may not require any  
97 additional contributions from that member in order for the retirement board to credit him or her with  
98 the contributing service credit earned while discharging official legislative duties: *Provided*,  
99 *however*, That nothing in this section may be construed to relieve the employer from making the  
100 employer contribution at the member's regular salary rate or rate of pay from that employer on the  
101 contributing service credit earned while the member is discharging his or her official legislative  
102 duties. These employer payments shall commence as of June 1, 2000: *Provided further*, That any  
103 member to which the provisions of this subsection apply may elect to pay to the retirement board  
104 an amount equal to what his or her contribution would have been for those periods of time he or  
105 she was serving in the Legislature. The periods of time upon which the member paid his or her  
106 contribution shall then be included for purposes of determining his or her final average salary as  
107 well as for determining years of service: *And provided further*, That a member using the provisions  
108 of this subsection is not required to pay interest on any contributions he or she may decide to  
109 make.

110 (l) The Teachers Retirement System shall grant service credit to any former member of the

111 State Police Death, Disability and Retirement System who has been a contributing member for  
112 more than three years for service previously credited by the State Police Death, Disability and  
113 Retirement System; and: (1) Shall require the transfer of the member's contributions to the  
114 Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn any time  
115 prior to the member's retirement: ~~Provided~~ Provided, That the member shall add to the amounts  
116 transferred or repaid under this paragraph an amount which is sufficient to equal the contributions  
117 he or she would have made had the member been under the Teachers Retirement System during  
118 the period of his or her membership in the State Police Death, Disability and Retirement System  
119 plus interest at a rate to be determined by the retirement board compounded annually from the  
120 date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.

## **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-13(d) 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 "Electing charter school" means a public charter school established pursuant to § 18-5G-1  
24 *et seq.* of this code which has elected to participate in this retirement system as permitted in the  
25 definition of "Member" or "employee" in this section.

26 "Employer" means the agency of and within the State of West Virginia which has employed  
27 or employs a member, a county board of education which has employed or employs a member, or  
28 an electing charter school which has employed or employs a member. "Participating public  
29 employer" or "participating employer" means "employer" unless the context clearly requires  
30 otherwise.

31 "Employer contribution" means an amount deposited into the member's individual annuity  
32 account on a periodic basis coinciding with the employee's regular pay period by an employer from  
33 its own funds.

34 "Employer error" means an omission, misrepresentation, or deliberate act in violation of  
35 relevant provisions of the West Virginia Code, ~~or of the West Virginia Code of State Regulations,~~ or  
36 the relevant provisions of both the West Virginia Code and of the West Virginia Code of State  
37 Regulations by the participating public employer that has resulted in an underpayment or  
38 overpayment of contributions required.

39 "Employment term" means employment for at least 10 months in any plan year with a  
40 month being defined as 20 employment days.

41 "Existing employer" means any employer who employed or employs a member of the  
42 system.

43 "Existing retirement system" means the State Teachers Retirement System established in  
44 §18-7A-1 et seq. of this code.

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

47 "Member" or "employee" means the following persons, if regularly employed for full-time  
48 service: (A) Any person employed by a public school for instructional service in the public schools  
49 of West Virginia; (B) principals employed by a public school; (C) ~~public school~~ librarians employed  
50 by a public school; (D) superintendents of schools and assistant county superintendents of  
51 schools; (E) any county school attendance director holding a West Virginia teacher's certificate;  
52 (F) members of the research, extension, administrative, or library staffs of the public schools; (G)  
53 the State Superintendent of Schools, heads and assistant heads of the divisions under his or her  
54 supervision, or any other employee under the state superintendent performing services of an  
55 educational nature; (H) employees of the State Board of Education who are performing services of  
56 an educational nature; (I) any person employed in a nonteaching capacity by the State Board of  
57 Education, any county board of education, an electing charter school, or the State Department of  
58 Education, if that person was formerly employed as a teacher in the public schools; (J) all  
59 classroom teachers, principals, and educational administrators in schools under the supervision of  
60 the Division of Corrections and the Department of Health and Human Resources; (K) any person  
61 who is regularly employed for full-time service by any county board of education, electing charter  
62 school, educational services cooperative, or the State Board of Education; (L) the administrative  
63 staff of the public schools including deans of instruction, deans of men and deans of women, and  
64 financial and administrative secretaries; (M) any person designated as a 21st Century Learner  
65 Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the Teachers'  
66 Defined Contribution Retirement System established by this article; and (N) any person employed



67 by a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter  
68 school includes in its charter contract entered into pursuant to §18-5G-7 of this code a  
69 determination to participate in the retirement systems under this article, subject to §18-7B-7a and  
70 §18-7A-1 *et seq.* of this code.

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

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

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

85 "Public schools" means all publicly supported schools, including normal schools, colleges,  
86 and universities in this state. Unless the context clearly requires otherwise, "public school" shall  
87 not include a public charter school which is not an "electing charter school" as defined herein.

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

90 "Required beginning date" means April 1 of the calendar year following the later of: (A) The  
91 calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born  
92 after June 30, 1949); or (B) the calendar year in which the member retires or otherwise ceases

93 employment with a participating employer.

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

96 "Year of employment service" means employment for at least 10 months, with a month  
97 being defined as 20 employment days: ~~Provided~~ Provided, That no more than one year of service  
98 may be accumulated in any 12-month period.

**§18-7B-17. Deposits to the members' annuity accounts.**

1 Beginning on July 1, 1991 and thereafter, each county board of education or electing  
2 charter school shall deposit in the member's annuity account created pursuant to §18-7B-9 of this  
3 code an amount equal to seven and one-half percent of all compensation paid to members of the  
4 defined contribution system in excess of that authorized for minimum salaries in §18A-4-2 and  
5 §§18A-4-8a of this code to the extent that the excess exceeds the amount distributed for salary  
6 equity to the county.