WEST VIRGINIA CODE: §18-7D-7

§18-7D-7. Period for affirmative election to transfer; board may contract for professional services.

(a) The board shall provide the members of the Teachers' Defined Contribution Retirement System an opportunity to voluntarily execute and deliver to the Consolidated Public Retirement Board, or its designee, a written document in a form prescribed by the board that irrevocably authorizes the board to transfer the member and all the member's assets in the Teachers' Defined Contribution Retirement System to the state Teachers Retirement System in accordance with the provisions of this article.

(b) If at least sixty-five percent of actively contributing members of the Teachers' Defined Contribution Retirement System affirmatively elect to transfer to the state Teachers Retirement System:

(1) The Consolidated Public Retirement Board shall, for each member who affirmatively elected to transfer as provided in this section, transfer the assets held in the Teachers' Defined Contribution Retirement System's Trust Fund in trust for that member to the state Teachers Retirement System on July 1, 2008: Provided, That the board shall, for each member whose election to transfer was received by the board after May 12, 2008, but on or before May 20, 2008, and has not been certified as accepted by the board on or before the effective date of the amendments to this section enacted during the second extraordinary session of the Legislature, 2008, transfer the assets of such member as provided in this subdivision on August 1, 2008;

(2) On July 1, 2008, or August 1, 2008, as the case may be, each member who so elected becomes a member of the state Teachers Retirement System and after working one or more hours and contributing to the state Teachers Retirement System is entitled to the benefits of the state Teachers Retirement System; and

(3) Each such member is governed by the provisions of the state Teachers Retirement System subject to the provisions of this article.

(c) If fewer than sixty-five percent of actively contributing members of the Teachers' Defined Contribution Retirement System affirmatively elect to transfer to the state Teachers Retirement System, the transfers described in this section shall not occur.

(d) Any person who has $1 or more in assets in the Teachers' Defined Contribution Retirement System on December 31, 2007, may and is eligible to affirmatively elect to transfer to the state Teachers Retirement System as provided in this section. For purposes of this article:

(1) The tabulation of the percentage required for transfer as required in this article shall

WV Legislature

only include documents affirmatively electing to transfer submitted under the provisions of this subsection by those who are actively contributing members of the Teachers' Defined Contribution Retirement System as that term is defined in section two of this article; and

(2) Notwithstanding the opportunity to submit documents affirmatively electing to transfer extended by this article to members other than those who are actively contributing members of the Teachers' Defined Contribution Retirement System, there shall be no duty or other obligation on the part of the board to provide any education, information or notice regarding matters contained in this article to members who are not actively contributing members of the Teachers' Defined Contribution Retirement System regarding any matter described in this article, nor any right on the part of those other members to receive the same.

(e) Notwithstanding any other provision of this code to the contrary, the board may do all things necessary and convenient to maintain the Teachers' Defined Contribution Retirement System and the state Teachers Retirement System during the transitional period and may retain the services of the professionals it considers necessary to do so. The board may also retain the services of professionals necessary to:

(1) Assist in the preparation of educational materials;

(2) Assist in the educational process;

(3) Assist in the process for submission of the documents whereby members may affirmatively elect to transfer; and

(4) Ensure compliance with all relevant state and federal laws.

(f) Due to the time constraints inherent in the initial processes established for the submission of documents affirmatively electing to transfer set forth in this article in specific, and due to the nature of the professional services required by the Consolidated Public Retirement Board in general, the provisions of article three, chapter five-a of this code, do not apply to any materials, contracts for any actuarial services, investment services, legal services or other professional services authorized under the provisions of this article and the provisions of article six, chapter twenty-nine do not apply to any employment of or contracting for personnel by the board for the purposes of implementing the provisions of this article.

(g) The submission of the documents whereby members may affirmatively elect to transfer may be held through any method the board determines is in the best interest of the members: Provided, That for members of the Teachers' Defined Contribution Retirement System, the submission of the documents whereby those members elect to transfer shall be pursuant to the procedure established by the Consolidated Public Retirement Board set forth in subsection (j) of this section.

(h) The period for submission of the documents whereby members may affirmatively elect to

WV Legislature

transfer shall begin not later than April 1, 2008. The board shall ascertain the results of the submissions not later than May 31, 2008. The board shall certify the results of the submissions to the Governor, the Legislature and the members not later than June 5, 2008.

(i) The submission period terminates and elections to transfer may not be accepted from a member after May 12, 2008, subject to the following:

(1) If elections to transfer are permitted through the mail, any submission postmarked later than May 12, 2008, is void and may not be counted: Provided, That notwithstanding the provisions of this subdivision, any submission received by the board on or before May 20, 2008 shall be counted;

(2) If elections to transfer are delivered to a supervisor on selection day or on or before May 9, 2008, any submission postmarked or deposited with a commercial carrier later than May 13, 2008, is void and may not be counted: Provided, That notwithstanding the provisions of this subdivision, any submission received by the board on or before May 20, 2008 shall be counted: Provided, however, That delivery by mail must be by certified mail, return receipt requested or delivery by commercial courier that requires written confirmation by the board of delivery;

(3) May 5, 2008, is selection day upon which each county board and superintendent shall provide an opportunity in each school within the county for members of the Teachers' Defined Contribution System to affirmatively elect to transfer.

(j) The Consolidated Public Retirement Board shall collaborate with the state superintendent, the Chancellor for Higher Education and the Chancellor for Community and Technical College Education to establish a procedure whereby all actively contributing members of the Teachers' Defined Contribution Retirement System may deliver to the Consolidated Public Retirement Board or its designee the written document authorizing transfer through a supervisor at each work site where any contributing member of the Defined Contribution Retirement System is employed. The procedure shall include at least the following:

(1) The supervisor at each work site is responsible for collecting the written documents authorizing the transfer from all actively contributing members of the Teachers' Defined Contribution Retirement System employed at the work site who choose to submit the written document. The supervisor shall record the receipt of all written documents authorizing transfer, shall direct the member submitting the written document to initial a receipt log and shall issue a receipt to the member submitting the written document.

(2) On and after May 6, 2008, but on or before May 9, 2008, the supervisor at the work site shall make reasonable efforts to contact verbally and in writing all actively contributing members of the Teachers' Defined Contribution Retirement System employed at the work site that have not submitted their written documents as of that date to remind those members of the upcoming deadline for submitting their written document authorizing

WV Legislature

transfer: Provided, That failure of the supervisor to make contact with any of those members shall not be a basis for a cause of action to allow a member to transfer after the period provided in this section or for any other cause of action.

(3) The supervisor at each work site shall forward all of the written documents to the Consolidated Public Retirement Board, or its designee, through certified mail, or delivery by commercial courier that requires written confirmation by the board of delivery, no later than May 13, 2008: Provided, That notwithstanding the provisions of this subdivision, any submission received by the board on or before May 20, 2008, shall be counted. The work site supervisor shall inform the Consolidated Public Retirement Board of all of the written documents received each day so that the board, or its designee, can record which members of the Teachers' Defined Contribution Retirement System have submitted their written documents authorizing transfer pursuant to subsection (k) of this section.

(4) For the purposes of this subdivision, the principal of a school with any of grades prekindergarten through twelve is the work site supervisor. For the purposes of this subdivision, for any work site under the jurisdiction of the Higher Education Policy Commission or the West Virginia Council for Community and Technical College Education, the human resource administrator or other designee may be considered the work site supervisor. In any case where the person who is the work site supervisor is in question, the state board, the Chancellor for Higher Education or the Chancellor for Community and Technical College Education, whichever entity has jurisdiction over the work site, shall designate the supervisor.

(5) The state board, the Chancellor for Higher Education and the Chancellor for Community and Technical College Education shall ascertain the names of all work site supervisors under their jurisdiction and transmit a list of the names of the work site supervisors to the Consolidated Public Retirement Board on or before March 31, 2008.

(k) The Consolidated Public Retirement Board, or its designee, shall record the receipt of all written documents authorizing the transfer so that it knows the percentage of contributing members of the Teachers' Defined Contribution Retirement System that have submitted the written documents by work site and by county.

(l) Notwithstanding any other provision of this article to the contrary, any member of the Teachers Defined Contribution Retirement System who was erroneously identified by the employer as being a member of the Teachers Retirement System and who did not have at least $1 in the Teachers Defined Contribution Retirement System on December 31, 2007, and therefore was denied an opportunity to select transfer as determined by the Consolidated Public Retirement Board, shall be provided promptly with an opportunity to select membership in the Teachers Retirement System. The Consolidated Public Retirement Board is authorized to establish procedures and time periods to provide notice, education, selection opportunity and transfer for these members to correct the erroneous assignment to the Teachers Retirement System.

WV Legislature