WEST VIRGINIA LEGISLATURE
47th Extraordinary Session, 2005

ENROLLED

SENATE BILL NO. 4010

(By Senator[Signature], Mr. President, and [Signature]
By Request of the Executive)

PASSED September 13, 2005

In Effect from Passage
AN ACT to amend and reenact §18-7C-2, §18-7C-3, §18-7C-4, §18-7C-5, §18-7C-6, §18-7C-7, §18-7C-8, §18-7C-9, §18-7C-10, §18-7C-11, §18-7C-12 and §18-7C-13 of the Code of West Virginia, 1931, as amended, all relating to the proposed merger of the Teachers' Defined Contribution Retirement System with the State Teachers Retirement System; amending certain definitions; removing the requirement that the state deposit money to cover any additional unfunded liability before the merger; clarifying credit receipt and asset calculations for transfer; clarifying when certain contributions shall be paid; clarifying loan eligibility; establishing date on which money must be in a member's account to be eligible to vote in the merger election; requiring payment of contribution for full service credit; adding the Board's ability to do all things necessary to maintain the current retirement system during any transition period; clarifying provisions regarding validity of election result; clarifying that the member may select either periodic payments or lump sum distribution of the member's total vested account at the date of merger if certain conditions are met; and technical corrections.
Be it enacted by the Legislature of West Virginia:

That §18-7C-2, §18-7C-3, §18-7C-4, §18-7C-5, §18-7C-6, §18-7C-7, §18-7C-8, §18-7C-9, §18-7C-10, §18-7C-11, §18-7C-12 and §18-7C-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7C. MERGER OF TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM WITH STATE TEACHERS RETIREMENT SYSTEM.

§18-7C-2. Legislative findings and purpose.

(a) The Legislature declares that the State of West Virginia and its citizens have always believed in a strong public education system. The Constitution of this state mandates a thorough and efficient public education system. The Legislature notes that the quality of our state's education system is dependent, inter alia, upon the motivation and quality of its teachers and educational service personnel.

(b) The Legislature finds and declares that the State of West Virginia is privileged to be the home of some of the best teachers and education service personnel in this nation and that our teachers and education service personnel are dedicated and hard-working individuals. The Legislature further finds and declares that our teachers and education service personnel deserve a retirement program whereby they know in advance what their retirement benefit will be, a defined benefit retirement program where our teachers and service personnel will not have to bear the risk of investment performance to receive their full retirement benefit. The Legislature notes that uncertainty exists in the investment markets, especially in the post-September eleventh era, and that placing this risk and uncertainty upon the state in the form of a defined benefit plan will protect and ensure a meaningful retirement benefit for our teachers and educational service personnel.
(c) The Legislature declares that it is in the best interests of the teachers and public education in this state, and conducive to the fiscal solvency of the State Teachers Retirement System, that the Teachers' Defined Contribution Retirement System be merged with the State Teachers Retirement System.

(d) The Legislature also finds that a fiscally sound retirement program with an ascertainable benefit aids in the retention and recruitment of teachers and school service personnel and that the provisions of this article are designed to accomplish the goals set forth in this section.

(e) The Legislature has studied this matter diligently and in making the determination to merge the two plans has availed itself of an actuarial study of the proposed merger by the actuary of the Consolidated Public Retirement Board and has engaged the service of two independent actuaries.

(f) The Legislature further finds and declares that members of a defined contribution system who must bear the attendant market risk and performance of their investments are truly being provided a significant and greater benefit where the defined contribution system is replaced with a defined benefit system in which the employer bears the risk of market fluctuations and investment performance, especially where those members decide through an election process whether to trade the defined contribution system for a defined benefit system.

§18-7C-3. Definitions.

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

(1) "Assets" means all member contributions and employer contributions made on the member's behalf to the Defined Contribution Retirement System and earnings thereon, less any applicable fees as approved by the board:
Provided, That if a member has withdrawn or cashed out any amounts, the amounts must have been repaid.

(2) "Board" means the Consolidated Public Retirement Board established in article ten-d, chapter five of this code, and its employees.

(3) "Date of merger" means, in the event of a positive vote on the merger, the first day of July, two thousand six.

(4) "Defined Contribution Retirement System" means the Teachers' Defined Contribution Retirement System established in article seven-b of this chapter.

(5) "Salary" means:

(A) For a member contributing to the Defined Contribution Retirement System during the two thousand five fiscal year, the actual salary earned for the two thousand five fiscal year divided by the employment service earned in the two thousand five fiscal year.

(B) For a member not contributing to the Defined Contribution Retirement System during the two thousand five fiscal year, the contract salary on the date of rehire.

(6) "State Teachers Retirement System" means the State Teachers Retirement System established in article seven-a of this chapter.

§18-7C-4. Merger.

(a) Subject to the provisions of subsection (b) of this section, on the first day of July, two thousand six, the Defined Contribution Retirement System shall be merged and consolidated with the State Teachers Retirement System pursuant to the provisions of this article.

(b) If a majority of the eligible voting members of the Teachers' Defined Contribution Retirement System do not elect in favor of the merger, then all of the provisions of this article are void and of no force and effect and the
Defined Contribution Retirement System continues as the retirement system for all members in that system as of the thirtieth day of June, two thousand six.

§18-7C-5. Notice, education, record-keeping requirements.

(a) Commencing not later than the first day of August, two thousand five, the Consolidated Public Retirement Board shall begin an educational program with respect to the merger of the Defined Contribution Retirement System with the State Teachers Retirement System.

(1) This educational program shall address, at a minimum:

(A) The law providing for the merger;
(B) The mechanics of the merger;
(C) The election process;
(D) Relevant dates and time periods;
(E) The benefits, potential advantages and potential disadvantages if members fail or refuse to approve the merger and thereby elect to remain in the Defined Contribution Retirement System;
(F) The benefits, potential advantages and potential disadvantages of becoming a member of the State Teachers Retirement System;
(G) Potential state and federal tax implications in general attendant to the various options available to the members; and
(H) Any other pertinent information considered relevant by the board.

(2) The board shall disseminate the information through:

(A) Its website;
(B) Computer programs;
(C) Written or electronic materials, or both, delivered to each member;

(D) Classes or seminars, if in the best judgment of the board classes or seminars are required to provide the necessary education for a member to make an informed decision with respect to the election;

(E) At the discretion of the board, through a program of individual counseling which is optional on the part of the member; and

(F) Through any other educational program considered necessary by the board.

(b) The board shall provide each member with a copy of the written or electronic educational materials and with a copy of the notice of the election.

(1) The notice shall provide full and appropriate disclosure regarding the merger and the election process, including the date of the election.

(2) The board also shall cause notice of the election to be published in at least ten newspapers of general circulation in this state. This notice shall be:

(A) By Class III legal advertisement published in accordance with the provisions of article three, chapter fifty-nine of this code; and

(B) Published not later than thirty days prior to the beginning of the election period and not sooner than sixty days prior to the beginning of the election period pursuant to section eight of this article.

(c) It is the responsibility of each member of the Defined Contribution Retirement System to keep the board informed of his or her current address. A member who does not is considered to have waived his or her right to receive any information from the board with respect to the purposes of this article.
(d) Once the board has complied with the provisions of this section, each member of the Defined Contribution Retirement System is considered to have actual notice of the election and all matters pertinent to the election.

§18-7C-6. Conversion of assets from Defined Contribution Retirement System to State Teachers Retirement System; contributions; loans.

(a) If a majority of members voting elect to merge the Defined Contribution Retirement System into the State Teachers Retirement System:

1. The consolidation and merger is governed by the provisions of this article;

2. The Defined Contribution Retirement System does not exist after the thirtieth day of June, two thousand six; and

3. All members of that system become members of the State Teachers Retirement System as provided in this article.

(b) Following the election, if the vote is in favor of the merger, the board shall transfer all properties held in the Defined Contribution Retirement System’s Trust Fund to the State Teachers Retirement System.

(c) To receive full credit in the State Teachers Retirement System for service in the Defined Contribution Retirement System for which assets are transferred, members shall pay into the State Teachers Retirement System a one and one-half percent contribution. This contribution shall be calculated as one and one-half percent of the member’s estimated total earnings for which assets are transferred. Except as otherwise provided in this section, each member shall pay the contribution required no later than the thirtieth day of June, two thousand seven.
27 (1) For a member contributing to the Defined Contribution Retirement System at any time during the two thousand five fiscal year and commencing membership in the State Teachers Retirement System on the first day of July, two thousand six:

28 (A) The estimated total earnings shall be calculated based on the member’s salary and the member’s age nearest birthday on the thirtieth day of June, two thousand five;

29 (B) This calculation shall apply both an annual backward salary scale from that date for prior years’ salaries and a forward salary scale for the salary for the two thousand six fiscal year.

30 (2) For a member not contributing to the Defined Contribution Retirement System during the two thousand five fiscal year:

31 (A) The estimated total earnings shall be calculated based on the member’s salary and the member’s age nearest birthday on the member’s date of rehire.

32 (B) This calculation shall apply a backward salary scale from the member’s date of rehire for prior years’ salaries.

33 (3) The calculations in subdivisions (1) and (2) of this subsection are based upon the salary scale assumption applied in the West Virginia Teachers Retirement System Actuarial Valuation as of the first day of July, two thousand four, prepared for the Consolidated Public Retirement Board. This salary scale shall be applied regardless of breaks in service.

34 (d) The board shall make available to each member a loan for the purpose of paying all or part of the one and one-half percent contribution required in this section. The loan shall be offered in accordance with the provisions of section thirty-four, article seven-a of this chapter.
(1) Notwithstanding any provision of this code, rule or policy of the board to the contrary, the interest rate on any such loan may not exceed seven and one-half percent per annum. The amount total borrowed may not exceed twelve thousand dollars.

(2) In the event a loan made pursuant to this section is used to pay the one and one-half percent, the board shall make any necessary adjustments at the time the loan is made.

(3) Subject to the provisions of subdivision (4) of this section, the board shall make this loan available for members until the thirtieth day of June, two thousand seven.

(4) Upon returning to employment, a member who has left employment but not withdrawn his or her funds shall pay the one and one-half percent contribution within one year of being rehired. The member is eligible for one year following the date of rehire to obtain a loan for paying the contribution.

(e) The board shall develop and institute a payroll deduction program for repayment of the loan established in this section.

(f) If the merger and consolidation is duly elected:

(1) As of the first day of July, two thousand six, the members' contribution rate becomes six percent of his or her salary or wages; and

(2) All members who make a contribution into the State Teachers Retirement System on or after the first day of July, two thousand six, are governed by the provisions of article seven-a of this chapter, subject to the provisions of this article.

(g) Subject to the provisions of subdivision (1) of this subsection, if a member has withdrawn or cashed out part of his or her assets, that member will not receive credit for
those moneys cashed out or withdrawn. The board shall make a determination as to the amount of credit a member loses based on the periods of time and the amounts he or she has withdrawn or cashed out, which shall be expressed as a loss of service credit.

(1) A member may repay those amounts he or she previously cashed out or withdrew, along with interest as determined by the board, and receive the same credit as if the withdrawal or cash-out never occurred. Such a member also shall pay the one and one-half percent contribution to receive full credit for the cashed-out or withdrawn amounts being repaid to the State Teachers Retirement System.

(2) The loan provided in this section is not available to members to repay previously cashed out or withdrawn moneys.

(3) If the repayment occurs five or more years following the cash-out or withdrawal, the member also shall repay any forfeited employer contribution account balance along with interest determined by the board.

(h) Notwithstanding any provision of subsection (g) to the contrary, if a member has cashed out or withdrawn any of his or her assets after the last day of June, two thousand one, and that member chooses to repurchase that service after the thirtieth day of June, two thousand six, the member shall repay the previously distributed amounts and any applicable interest to the State Teachers Retirement System.

(i) Any service in the State Teachers Retirement System a member has before the date of the merger is not affected by the provisions of this article.

§18-7C-7. Service credit in State Teachers Retirement System following merger; adjustments.

(a) Any member transferring all of his or her assets from the Defined Contribution Retirement System to the State
Teachers Retirement System pursuant to the provisions of this article and who has not made any withdrawals or cash-outs from his or her assets is entitled to service credit in the State Teachers Retirement System for each year or part of a year, as governed by the provisions of article seven-a of this chapter, the member worked and contributed to the Defined Contribution Retirement System.

(b) Any member who has made withdrawals or cash outs will receive service credit based upon the amounts transferred. The board shall make the appropriate adjustment to the service credit the member will receive.

(c) Any member's Defined Contribution Retirement System service credit will be reduced by twenty-five percent if the member does not pay the one and one-half percent contribution required by this article upon transfer to the State Teachers Retirement System.

§18-7C-8. Election; board may contract for professional services.

(a) The board shall arrange for and hold an election for the members of the Defined Contribution Retirement System who are eligible to vote, pursuant to the provisions of subsection (d) of this section, on the issue of merging and consolidating the Defined Contribution Retirement System into the State Teachers Retirement System.

(b) If a majority of the eligible voters casting ballots in the election votes in the affirmative on the issue:

(1) All members of the Defined Contribution Retirement System will transfer, or have transferred, all assets held by them or on their behalf in the Defined Contribution Retirement System to the State Teachers Retirement System;

(2) On the date of the merger each member becomes a member and is entitled to the benefits of the State Teachers Retirement System; and
(3) Each member is governed by the provisions of the State Teachers Retirement System subject to the provisions of this article.

(c) If fewer than one half of the members eligible to vote of the Defined Contribution Plan cast ballots in the election, the election is not valid and binding.

(d) Any person who has one dollar or more in assets in the Defined Contribution Retirement System on the last day of December, two thousand five, may and is eligible to vote in the election.

(e) Notwithstanding any other provision of this code to the contrary, the board may do all things necessary and convenient to maintain the 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 the professionals it deems necessary to:

(1) Assist in the preparation of educational materials for members of the Defined Contribution Retirement System who are eligible to vote on the merger to inform these members of their options in the election;

(2) Assist in the educational process of the members who are eligible to vote on the merger;

(3) Assist in the election process and the election; and

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

(f) Due to the time constraints inherent in the merger process 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, relating to the Division of Purchasing of the Department of Administration do not apply to any contracts for any actuarial
services, investment services, legal services or other professional services authorized under the provisions of this article.

(g) The election may be held through certified mail or in any other method the board determines is in the best interest of the members. Each ballot shall contain the following language, in bold fifteen-point type: “By casting this ballot I am making an educated, informed and voluntary choice as to my retirement and the retirement system of which I wish to be a member. I am also certifying that I understand the consequences of my vote in this election.” Each ballot shall be signed by the member voting. The board shall retain the ballots in a permanent file. Any unsigned ballot is void.

(h) The election period shall begin not later than the first day of March, two thousand six. The board shall ascertain the results of the election not later than the last day of March, two thousand six. The board shall certify the results of the election to the Governor, the Legislature and the members not later than the fifth day of April, two thousand six.

(i) The election period terminates and votes may not be cast or counted after the twelfth day of March, two thousand six, unless the election is conducted through the United States mail. If conducted through the mail, any ballot postmarked later than the twelfth day of March, two thousand six, is void and may not be counted.

(j) The board shall take all necessary steps to see that the merger does not affect the qualified status with the Internal Revenue Service of either retirement plan.

§18-7C-9. Election considered final.

(a) The election is considered final and each member, whether he or she voted or failed to vote, is bound by the results of the election. Every member is considered to have made an informed, educated, knowing and voluntary
decision and choice with respect to the election. Those members who failed or refused to vote are also considered to have made an informed, educated, knowing and voluntary decision and choice with respect to the election and voting and are bound by the results of the election as if he or she had voted in the election.

(b) Only one election may be held pursuant to the provisions of this article.

§18-7C-10. Qualified domestic relations orders.

Any member having a qualified domestic relations order against his or her defined contribution account is allowed to repurchase service in the State Teachers Retirement System. The member shall repay any moneys previously distributed to the alternate payee along with the interest as set by the board. The member shall repay by the last day of June, two thousand twelve. The provisions of this section are void and of no effect if the members fail to elect to merge and consolidate the Defined Contribution Retirement System with the State Teachers Retirement System.

§18-7C-11. Vesting.

Any member who works one hour or more after the date of merger occurs is subject to the vesting schedule set forth in article seven-a of this chapter: Provided, That if a member is vested under the Defined Contribution Retirement System and his or her last contribution was not made to the State Teachers Retirement System, that member is subject to the vesting schedule set forth in article seven-b of this chapter.

§18-7C-12. Minimum guarantees.

(a) Any member of the Defined Contribution Retirement System who has made a contribution to the State Teachers Retirement System after the date of merger is guaranteed a minimum benefit equal to his or her member contribu-
tions plus the vested portion of employer contributions made on his or her behalf to the Defined Contribution Retirement System as of the thirtieth day of June, two thousand six, plus any earnings thereon, as stated by the board or the board’s professional contractor.

(b) A member of the Defined Contribution Retirement System who has made contributions to the State Teachers Retirement System after the thirtieth day of June, two thousand six, where the Defined Contribution Retirement System has been merged into the State Teachers Retirement System, upon eligibility to receive a distribution under article seven-a of this chapter, shall have at a minimum the following three options:

(1) The right to receive an annuity from the State Teachers Retirement System based upon the provisions of article seven-a of this chapter;

(2) The right to withdraw from the State Teachers Retirement System and receive his or her member accumulated contributions in the State Teachers Retirement System, plus regular interest thereon, as set forth in article seven-a of this chapter; or

(3) The right to withdraw and receive his or her member contributions plus the vested portion of employer contributions made on his or her behalf to the Defined Contribution Retirement System, plus any earnings thereon as of the date of the merger, as determined by the board or its professional third-party benefits administrator pursuant to the vesting provisions of section twelve of this article. This amount may be distributed in a lump sum or in periodic payments as elected by the member.

(c) Any member of the Defined Contribution Retirement System who makes no contribution to the State Teachers Retirement System following approval of the merger and following the date of merger is guaranteed the receipt of the amount in his or her total vested account in the
Defined Contribution Retirement System on the date of merger, plus interest thereon, at four percent accruing from the date of merger. This amount may be distributed in a lump sum or in periodic payments as elected by the member.

§18-7C-13. Due process and right to appeal.

Any person aggrieved by any determination made by the board following the election, if the result of the election is in favor of merger and consolidation, may petition the board and receive an administrative hearing on the matter in dispute. The administrative decision may be appealed to a circuit court.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 28th Day of September, 2005.

Governor
PRESENTED TO THE GOVERNOR

Date 9/1/2005

Time 4:25 P.M.