

FILED

2005 SEP 28 P 4: 20

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*47th Extraordinary Session, 2005*



**ENROLLED**

SENATE BILL NO. 4010

(By Senators Tomblin, Mr. President, and Sprouse)  
*By Request of the Executive*



PASSED September 13, 2005

In Effect from Passage

FILED

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## Senate Bill No. 4010

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,  
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.**

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

9 (b) The Legislature finds and declares that the State of  
10 West Virginia is privileged to be the home of some of the  
11 best teachers and education service personnel in this  
12 nation and that our teachers and education service person-  
13 nel are dedicated and hard-working individuals. The  
14 Legislature further finds and declares that our teachers  
15 and education service personnel deserve a retirement  
16 program whereby they know in advance what their  
17 retirement benefit will be, a defined benefit retirement  
18 program where our teachers and service personnel will not  
19 have to bear the risk of investment performance to receive  
20 their full retirement benefit. The Legislature notes that  
21 uncertainty exists in the investment markets, especially in  
22 the post-September eleventh era, and that placing this risk  
23 and uncertainty upon the state in the form of a defined  
24 benefit plan will protect and ensure a meaningful retire-  
25 ment benefit for our teachers and educational service  
26 personnel.

27 (c) The Legislature declares that it is in the best interests  
28 of the teachers and public education in this state, and  
29 conducive to the fiscal solvency of the State Teachers  
30 Retirement System, that the Teachers' Defined Contribu-  
31 tion Retirement System be merged with the State Teachers  
32 Retirement System.

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

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

44 (f) The Legislature further finds and declares that  
45 members of a defined contribution system who must bear  
46 the attendant market risk and performance of their  
47 investments are truly being provided a significant and  
48 greater benefit where the defined contribution system is  
49 replaced with a defined benefit system in which the  
50 employer bears the risk of market fluctuations and invest-  
51 ment performance, especially where those members decide  
52 through an election process whether to trade the defined  
53 contribution system for a defined benefit system.

### §18-7C-3. Definitions.

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

3 (1) "Assets" means all member contributions and  
4 employer contributions made on the member's behalf to  
5 the Defined Contribution Retirement System and earnings  
6 thereon, less any applicable fees as approved by the board:

7 *Provided*, That if a member has withdrawn or cashed out  
8 any amounts, the amounts must have been repaid.

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

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

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

17 (5) "Salary" means:

18 (A) For a member contributing to the Defined Contribu-  
19 tion Retirement System during the two thousand five  
20 fiscal year, the actual salary earned for the two thousand  
21 five fiscal year divided by the employment service earned  
22 in the two thousand five fiscal year.

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

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

#### **§18-7C-4. Merger.**

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

6 (b) If a majority of the eligible voting members of the  
7 Teachers' Defined Contribution Retirement System do not  
8 elect in favor of the merger, then all of the provisions of  
9 this article are void and of no force and effect and the

10 Defined Contribution Retirement System continues as the  
11 retirement system for all members in that system as of the  
12 thirtieth day of June, two thousand six.

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

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

6 (1) This educational program shall address, at a mini-  
7 mum:

8 (A) The law providing for the merger;

9 (B) The mechanics of the merger;

10 (C) The election process;

11 (D) Relevant dates and time periods;

12 (E) The benefits, potential advantages and potential  
13 disadvantages if members fail or refuse to approve the  
14 merger and thereby elect to remain in the Defined Contri-  
15 bution Retirement System;

16 (F) The benefits, potential advantages and potential  
17 disadvantages of becoming a member of the State Teach-  
18 ers Retirement System;

19 (G) Potential state and federal tax implications in  
20 general attendant to the various options available to the  
21 members; and

22 (H) Any other pertinent information considered relevant  
23 by the board.

24 (2) The board shall disseminate the information through:

25 (A) Its website;

26 (B) Computer programs;

27 (C) Written or electronic materials, or both, delivered to  
28 each member;

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

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

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

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

41 (1) The notice shall provide full and appropriate disclo-  
42 sure regarding the merger and the election process,  
43 including the date of the election.

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

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

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

54 (c) It is the responsibility of each member of the Defined  
55 Contribution Retirement System to keep the board in-  
56 formed of his or her current address. A member who does  
57 not is considered to have waived his or her right to receive  
58 any information from the board with respect to the  
59 purposes of this article.

60 (d) Once the board has complied with the provisions of  
61 this section, each member of the Defined Contribution  
62 Retirement System is considered to have actual notice of  
63 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.**

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

4 (1) The consolidation and merger is governed by the  
5 provisions of this article;

6 (2) The Defined Contribution Retirement System does  
7 not exist after the thirtieth day of June, two thousand six;  
8 and

9 (3) All members of that system become members of the  
10 State Teachers Retirement System as provided in this  
11 article.

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

16 (c) To receive full credit in the State Teachers Retirement  
17 System for service in the Defined Contribution  
18 Retirement System for which assets are transferred,  
19 members shall pay into the State Teachers Retirement  
20 System a one and one-half percent contribution. This  
21 contribution shall be calculated as one and one-half  
22 percent of the member's estimated total earnings for which  
23 assets are transferred. Except as otherwise provided in  
24 this section, each member shall pay the contribution  
25 required no later than the thirtieth day of June, two  
26 thousand seven.



27 (1) For a member contributing to the Defined Contribu-  
28 tion Retirement System at any time during the two  
29 thousand five fiscal year and commencing membership in  
30 the State Teachers Retirement System on the first day of  
31 July, two thousand six:

32 (A) The estimated total earnings shall be calculated  
33 based on the member's salary and the member's age  
34 nearest birthday on the thirtieth day of June, two thou-  
35 sand five;

36 (B) This calculation shall apply both an annual back-  
37 ward salary scale from that date for prior years' salaries  
38 and a forward salary scale for the salary for the two  
39 thousand six fiscal year.

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

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

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

48 (3) The calculations in subdivisions (1) and (2) of this  
49 subsection are based upon the salary scale assumption  
50 applied in the West Virginia Teachers Retirement System  
51 Actuarial Valuation as of the first day of July, two thou-  
52 sand four, prepared for the Consolidated Public Retire-  
53 ment Board. This salary scale shall be applied regardless  
54 of breaks in service.

55 (d) The board shall make available to each member a  
56 loan for the purpose of paying all or part of the one and  
57 one-half percent contribution required in this section. The  
58 loan shall be offered in accordance with the provisions of  
59 section thirty-four, article seven-a of this chapter.

60 (1) Notwithstanding any provision of this code, rule or  
61 policy of the board to the contrary, the interest rate on any  
62 such loan may not exceed seven and one-half percent per  
63 annum. The amount total borrowed may not exceed  
64 twelve thousand dollars.

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

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

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

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

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

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

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

91 (g) Subject to the provisions of subdivision (1) of this  
92 subsection, if a member has withdrawn or cashed out part  
93 of his or her assets, that member will not receive credit for

94 those moneys cashed out or withdrawn. The board shall  
95 make a determination as to the amount of credit a member  
96 loses based on the periods of time and the amounts he or  
97 she has withdrawn or cashed out, which shall be expressed  
98 as a loss of service credit.

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

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

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

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

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

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

1 (a) Any member transferring all of his or her assets from  
2 the Defined Contribution Retirement System to the State

3 Teachers Retirement System pursuant to the provisions of  
4 this article and who has not made any withdrawals or  
5 cash-outs from his or her assets is entitled to service credit  
6 in the State Teachers Retirement System for each year or  
7 part of a year, as governed by the provisions of article  
8 seven-a of this chapter, the member worked and contrib-  
9 uted to the Defined Contribution Retirement System.

10 (b) Any member who has made withdrawals or cash outs  
11 will receive service credit based upon the amounts trans-  
12 ferred. The board shall make the appropriate adjustment  
13 to the service credit the member will receive.

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

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

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

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

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

14 (2) On the date of the merger each member becomes a  
15 member and is entitled to the benefits of the State Teach-  
16 ers Retirement System; and

17 (3) Each member is governed by the provisions of the  
18 State Teachers Retirement System subject to the provi-  
19 sions of this article.

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

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

27 (e) Notwithstanding any other provision of this code to  
28 the contrary, the board may do all things necessary and  
29 convenient to maintain the Defined Contribution Retire-  
30 ment System and the State Teachers Retirement System  
31 during the transitional period and may retain the services  
32 of the professionals it considers necessary to do so. The  
33 board may also retain the services of the professionals it  
34 deems necessary to:

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

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

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

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

44 (f) Due to the time constraints inherent in the merger  
45 process set forth in this article in specific, and due to the  
46 nature of the professional services required by the Consoli-  
47 dated Public Retirement Board in general, the provisions  
48 of article three, chapter five-a of this code, relating to the  
49 Division of Purchasing of the Department of Administra-  
50 tion do not apply to any contracts for any actuarial

51 services, investment services, legal services or other  
52 professional services authorized under the provisions of  
53 this article.

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

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

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

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

**§18-7C-9. Election considered final.**

1 (a) The election is considered final and each member,  
2 whether he or she voted or failed to vote, is bound by the  
3 results of the election. Every member is considered to  
4 have made an informed, educated, knowing and voluntary

5 decision and choice with respect to the election. Those  
6 members who failed or refused to vote are also considered  
7 to have made an informed, educated, knowing and volun-  
8 tary decision and choice with respect to the election and  
9 voting and are bound by the results of the election as if he  
10 or she had voted in the election.

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

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

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

**§18-7C-11. Vesting.**

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

**§18-7C-12. Minimum guarantees.**

1 (a) Any member of the Defined Contribution Retirement  
2 System who has made a contribution to the State Teachers  
3 Retirement System after the date of merger is guaranteed  
4 a minimum benefit equal to his or her member contribu-

5 tions plus the vested portion of employer contributions  
6 made on his or her behalf to the Defined Contribution  
7 Retirement System as of the thirtieth day of June, two  
8 thousand six, plus any earnings thereon, as stated by the  
9 board or the board's professional contractor.

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

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

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

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

35 (c) Any member of the Defined Contribution Retirement  
36 System who makes no contribution to the State Teachers  
37 Retirement System following approval of the merger and  
38 following the date of merger is guaranteed the receipt of  
39 the amount in his or her total vested account in the



40 Defined Contribution Retirement System on the date of  
41 merger, plus interest thereon, at four percent accruing  
42 from the date of merger. This amount may be distributed  
43 in a lump sum or in periodic payments as elected by the  
44 member.

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

1 Any person aggrieved by any determination made by the  
2 board following the election, if the result of the election is  
3 in favor of merger and consolidation, may petition the  
4 board and receive an administrative hearing on the matter  
5 in dispute. The administrative decision may be appealed  
6 to a circuit court.

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

*Nancy White*

.....  
Chairman Senate Committee

*R. Br...*

.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Russell Hobbs*

.....  
Clerk of the Senate

*Bugsy D. S...*

.....  
Clerk of the House of Delegates

*Earl Ray Tomblin*

.....  
President of the Senate

*[Signature]*

.....  
Speaker House of Delegates

The within *is appended* this the *28<sup>th</sup>*

Day of *September*, 2005.

*[Signature]*

.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 9/16/05

Time 4:25