WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2585

(By Delegates M. Poling and Paxton (By Request))

Passed March 10, 2007

In Effect July 1, 2007
AN ACT to repeal §18A-3-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-16-2 of said code; to amend and reenact §18-7A-3 of said code; to amend and reenact §18-7B-2 of said code; to amend and reenact §18-23-4a of said code; to amend and reenact §18A-3-3 of said code; and to amend said code by adding thereto a new section, designated §18A-3-11, all relating to education generally; findings; definitions; allowing for the designation of up to twenty-five professional educators as 21st Century Learner Fellows; allowing Fellows to continue as a member of either the teachers retirement system or the defined contribution system, as applicable, while being employed by a state institution of higher education or a research corporation; allowing Fellows to continue to participate in public employee insurance programs during the employment; limiting the responsibility of a state institution of higher education or a research corporation for a fellow’s annual and sick leave earned from prior employment; the renewal of teaching certificates and permanent certification;
providing certification through National Board for Professional Teaching Standards as an additional option for attaining permanent certification; providing for state board member participation in the public employees insurance program; and making technical improvements.

Be it enacted by the Legislature of West Virginia:

That §18A-3-11 of the Code of West Virginia, 1931, as amended, be repealed; that §5-16-2 of said code be amended and reenacted; that §18-7A-3 of said code be amended and reenacted; that §18-7B-2 of said code be amended and reenacted; that §18-23-4a of said code be amended and reenacted; that §18A-3-3 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18A-3-11, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-2. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

(1) "Agency" means the public employees insurance agency created by this article.

(2) "Director" means the director of the public employees insurance agency created by this article.

(3) "Employee" means any person, including an elected officer, who works regularly full time in the service of the
State of West Virginia and, for the purpose of this article only, the term "employee" also means any person, including an elected officer, who works regularly full time in the service of a county board of education; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the secretary of health and human resources pursuant to section one, article two-a, chapter twenty-seven of this code and which is supported in part by state, county or municipal funds; any person who works regularly full time in the service of the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board, as defined in section two, article one, chapter eighteen-b of this code; any person who works regularly full time in the service of a combined city-county health department created pursuant to article two, chapter sixteen of this code; any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code; and any person who works as a long term substitute as defined in section one, article one, chapter eighteen-a of this code, in the service of a county board of education: Provided, That a long term substitute who is continuously employed for at least one hundred thirty-three instructional days during an instructional term and until the end of that instructional term, is eligible for the benefits provided in this article until the first day of September following that instructional term. Provided further, That a long term substitute employed fewer than one hundred thirty-three instructional days during an instructional term is eligible for the benefits provided in this article only during such time as he or she is actually employed as a long term substitute. On and after the first day of January, one thousand nine hundred ninety-four, and upon election by a
county board of education to allow elected board members to participate in the public employees insurance program pursuant to this article, any person elected to a county board of education shall be considered to be an "employee" during the term of office of the elected member. Upon election by the State Board of Education to allow appointed board members to participate in the public employees insurance program pursuant to this article, any person appointed to the State Board of Education is considered an "employee" during the term of office of the appointed member: Provided, That the elected member of a county board of education and the appointed member of the State Board of Education shall pay the entire cost of the premium if he or she elects to be covered under this article. Any matters of doubt as to who is an employee within the meaning of this article shall be decided by the director.

On or after the first day of July, one thousand nine hundred ninety-seven, a person shall be considered an "employee" if that person meets the following criteria:

(i) Participates in a job-sharing arrangement as defined in section one, article one, chapter eighteen-a of this code;

(ii) Has been designated, in writing, by all other participants in that job-sharing arrangement as the "employee" for purposes of this section; and

(iii) Works at least one third of the time required for a full-time employee.

(4) "Employer" means the state of West Virginia, its boards, agencies, commissions, departments, institutions or spending units; a county board of education; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any
comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the secretary of health and human resources pursuant to section one, article two-a, chapter twenty-seven of this code and which is supported in part by state, county or municipal funds; a combined city-county health department created pursuant to article two, chapter sixteen of this code; and a corporation meeting the description set forth in section three, article twelve, chapter eighteen-b of this code that is employing a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen of this code but the corporation is not considered an employer with respect to any employee other than a 21st Century Learner Fellow. Any matters of doubt as to who is an "employer" within the meaning of this article shall be decided by the director. The term "employer" does not include within its meaning the national guard.

(5) "Finance board" means the public employees insurance agency finance board created by this article.

(6) "Person" means any individual, company, association, organization, corporation or other legal entity, including, but not limited to, hospital, medical or dental service corporations; health maintenance organizations or similar organization providing prepaid health benefits; or individuals entitled to benefits under the provisions of this article.

(7) "Plan", unless the context indicates otherwise, means the medical indemnity plan, the managed care plan option or the group life insurance plan offered by the agency.

(8) "Retired employee" means an employee of the state who retired after the twenty-ninth day of April, one thousand nine hundred seventy-one, and an employee of the higher education policy commission, the council for community and technical college education, a state institution of higher education or a county board of education who retires on or after the twenty-first day of April, one thousand nine hundred seventy-two, and all additional eligible employees who retire on or after the effective date of this article, meet the
minimum eligibility requirements for their respective state retirement system and whose last employer immediately prior to retirement under the state retirement system is a participating employer: Provided, That for the purposes of this article, the employees who are not covered by a state retirement system but who are covered by a state approved or state contracted retirement program shall, in the case of education employees, meet the minimum eligibility requirements of the State Teachers' Retirement System and in all other cases, meet the minimum eligibility requirements of the public employees retirement system.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS' RETIREMENT SYSTEM.


(a) As used in this article, unless the context clearly require a different meaning:

(1) "Accumulated contributions" means all deposits and all deductions from the gross salary of a contributor plus regular interest.

(2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member;

(3) "Annuities" means the annual retirement payments for life granted beneficiaries in accordance with this article.

(4) "Average final salary" means the average of the five highest fiscal year salaries earned as a member within the last fifteen fiscal years of total service credit, including military service as provided in this article, or if total service is less than fifteen years, the average annual salary for the period on which contributions were made.

(5) "Beneficiary" means the recipient of annuity payments made under the retirement system.
(6) “Contributor” means a member of the retirement system who has an account in the teachers accumulation fund.

(7) “Deposit” means a voluntary payment to his or her account by a member.

(8) “Employer” means the agency of and within the state which has employed or employs a member.

(9) “Employment term” means employment for at least ten months, a month being defined as twenty employment days.

(10) “Gross salary” means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary also shall include retroactive payments made to a member to correct a clerical error, or pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member’s rights to employment or wages, with all the retroactive salary payments to be allocated to and considered paid in the periods in which the work was or would have been done. Gross salary shall not include lump sum payments for bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

(11) “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been amended.

(12) “Member” means a member of the retirement system.

(13) “Members of the administrative staff of the public schools” means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.
(14) “Members of the extension staff of the public schools” means every agricultural agent, boys’ and girls’ club agent and every member of the agricultural extension staff whose work is not primarily stenographic, clerical or secretarial.

(15) “New entrant” means a teacher who is not a present teacher.

(16) “Nonteaching member” means any person, except a teacher member, who is regularly employed for full-time service by: (a) Any county board of education; (b) the State Board of Education; (c) the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board, as defined in section two, article one, chapter eighteen-b of this code; or (d) the Teachers Retirement Board: Provided, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board commences on or after the first day of July, one thousand nine hundred ninety-one, is not considered a nonteaching member.

(17) “Pick-up service” means service that a member was entitled to, but which the employer has not withheld or paid for.

(18) “Plan year” means the twelve-month period commencing on the first day of July and ending the following thirtieth day of June of any designated year.

(19) “Present member” means a present teacher who is a member of the retirement system.

(20) “Present teacher” means any person who was a teacher within the thirty-five years beginning the first day of July, one thousand nine hundred thirty-four, and whose membership in the retirement system is currently active.

(21) “Prior service” means all service as a teacher completed prior to the first day of July, one thousand nine
hundred forty-one, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.

(22) "Public schools" means all publicly supported schools, including colleges and universities in this state.

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

(24) "Refund interest" means interest compounded, according to the formula established in legislative rules, series seven of the Consolidated Public Retirement Board.

(25) "Regular interest" means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board.

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

(27) "Required beginning date" means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy and one-half years; or (b) the calendar year in which the member retires or ceases covered employment under the system after having attained the age of seventy and one-half years.

(28) "Retirement system" means the State Teachers’ Retirement System provided for in this article.

(29) "Teacher member" means the following persons, if regularly employed for full-time service: (a) Any person employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) superintendents of schools and assistant county
superintendents of schools; (e) any county school attendance
director holding a West Virginia teacher's certificate; (f) the
Executive Secretary of the Retirement Board; (g) members of
the research, extension, administrative or library staffs of the
public schools; (h) the State Superintendent of Schools, heads
and assistant heads of the divisions under his or her
supervision, or any other employee under the State
Superintendent performing services of an educational nature;
(i) employees of the State Board of Education who are
performing services of an educational nature; (j) any person
employed in a nonteaching capacity by the State Board of
Education, any county board of education, the State
Department of Education or the Teachers Retirement Board,
if that person was formerly employed as a teacher in the
public schools; (k) all classroom teachers, principals and
educational administrators in schools under the supervision
of the Division of Corrections, the Division of Health or the
Division of Human Services; (l) employees of the State
Board of School Finance, if that person was formerly
employed as a teacher in the public schools; and (m) any
person designated as a 21st Century Learner Fellow pursuant
to section eleven, article three, chapter eighteen-a of this code
who elects to remain a member of the Teachers' Retirement
System provided for in this article.

(30) "Total service" means all service as a teacher while
a member of the retirement system since last becoming a
member and, in addition thereto, credit for prior service, if
any.

The masculine gender shall be construed so as to include
the feminine.

Age in excess of seventy years shall be considered to be
seventy years.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION
RETIREMENT SYSTEM.

§18-7B-2. Definitions.
As used in this article, unless the context clearly requires a different meaning:

(1) “Defined contribution system” or “system” means the Teachers’ Defined Contribution Retirement System created and established by this article:

(2) “Existing retirement system” means the State Teachers’ Retirement System established in article seven-a of this chapter;

(3) “Existing employer” means any employer who employed or employs a member of the existing retirement system;

(4) “Consolidated board” or “board” means the Consolidated Public Retirement Board created and established pursuant to article ten-d, chapter five of this code;

(5) “Member” or “employee” means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher’s certificate; (F) members of the research, extension, administrative or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the State Superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education or the State Department of Education if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections and the Department of Health and Human Resources; (K) any person who is regularly employed for full-time service by any county board of education or the
State Board of Education (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; and (M) any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code who elects to remain a member of the Teachers’ Defined Contribution System established by this article;

(6) “Regularly employed for full-time service” means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay;

(7) “Year of employment service” means employment for at least ten months, a month being defined as twenty employment days: Provided, That no more than one year of service may be accumulated in any twelve-month period;

(8) “Employer” means the agency of and within the State of West Virginia which has employed or employs a member;

(9) “Compensation” means the full compensation actually received by members for service whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions;

(10) “Public schools” means all publicly supported schools, including normal schools, colleges and universities in this state;

(11) “Member contribution” means an amount reduced from the employee’s regular pay periods, and deposited into the member’s individual annuity account within the Defined Contribution Retirement System;

(12) “Employer contribution” means an amount deposited into the member’s individual annuity account on a periodic basis coinciding with the employee’s regular pay period by an employer from its own funds;
(13) "Annuity account" or "annuity" means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends or other accumulations credited on behalf of the member;

(14) "Retirement" means a member's withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement;

(15) "Permanent, total disability" means a mental or physical incapacity requiring absence from employment service for at least six months: Provided, That the incapacity is shown by an examination by a physician or physicians selected by the Board: Provided, however, That for employees hired on or after the first day of July, two thousand five, permanent, total disability means an inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than twelve months and the incapacity is so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness.

(16) "Plan year" means the twelve-month period commencing on the first day of July of any designated year and ending on the following thirtieth day of June;

(17) "Required beginning date" means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy-one and one-half years; or (b) the calendar year in which the member retires or otherwise ceases employment with a participating employer after having attained the age of seventy and one-half years; and

(18) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.
ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES OF GOVERNING BOARDS OF STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-23-4a. Supplemental and additional retirement plans for employees; payroll deductions; authority to match employee contributions; retroactive curative and technical corrective action.

(a) Any reference in this code to the “additional retirement plan” relating to state higher education employees, means the “higher education retirement plan” provided in this section. Any state higher education employee participating in a retirement plan upon the effective date of this section continues to participate in that plan and may not elect to participate in any other state retirement plan. Any such retirement plan continues to be governed by the provisions of law applicable on the effective date of this section.

(b) The Higher Education Policy Commission, on behalf of the governing boards and itself, shall contract for a retirement plan for its employees, to be known as the “Higher Education Retirement Plan”. The governing boards and Higher Education Policy Commission shall make periodic deductions from the salary payments due the employees in the amount they are required to contribute to the Higher Education Retirement Plan, which deductions shall be six percent.

(c) The Higher Education Policy Commission and the governing boards, with policy commission approval, may contract for a supplemental retirement plan for any or all of their employees to supplement the benefits the employees otherwise receive. The governing boards and Higher Education Policy Commission may make additional periodic deductions from the salary payments due the employees in the amount they are required to contribute for the supplemental retirement plan.

(d) The Higher Education Policy Commission shall
conduct a study of the feasibility of offering multiple vendors of retirement products and services to be offered for the benefit of higher education employees. The commission shall report the findings of the study, along with a plan for offering multiple vendors for the employees, to the Joint Committee on Pensions and Retirement no later than the first day of December, two thousand one. Upon approval by the Joint Committee on Pensions and Retirement, the commission shall provide a choice of vendors to their employees. Any selection of vendors made by the commission shall be determined according to a request for proposal issued pursuant to the provisions of section four, article five, chapter eighteen-b of this code.

(e) Each governing board and the Higher Education Policy Commission, by way of additional compensation to their employees, shall pay an amount equal to the contributions of the employees into the higher education retirement plan from funds appropriated to the board or commission for personal services.

(f) Each participating employee has a full and immediate vested interest in the retirement and death benefits accrued from all the moneys paid into the Higher Education Retirement Plan or a supplemental retirement plan for his or her benefit. Upon proper requisition of a board or the Higher Education Policy Commission, the auditor shall periodically issue a warrant, payable as specified in the requisition, for the total contributions so withheld from the salaries of all participating employees and for the governing board's or commission’s matching funds.

(g) Any person whose employment commences on or after the first day of July, one thousand nine hundred ninety-one, and who is eligible to participate in the Higher Education Retirement Plan, shall participate in that plan and is not eligible to participate in any other state retirement system: Provided, That the foregoing provision does not apply to a person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code. The additional retirement plan contracted for by the governing boards prior to the first day
of July, one thousand nine hundred ninety-one, remains in
effect unless changed by the Higher Education Policy
Commission. Nothing in this section may be construed to
consider employees of the governing boards as employees of
the Higher Education Policy Commission, nor is the Higher
Education Policy Commission responsible or liable for
retirement benefits contracted by, or on behalf of, the
governing boards.

(h) It is the intent of the Legislature in amending and
reenacting this section during its two thousand one regular
session solely to:

(1) Maintain the current retirement plans offered to state
higher education employees in their current form;

(2) Clarify that employees of the Higher Education Policy
Commission are participants in the higher education
retirement plan;

(3) Codify the current contribution levels of the
governing boards, the Higher Education Policy Commission
and their employees toward the present higher education
retirement plan;

(4) Make mandatory the contribution levels of the
governing boards and Higher Education Policy Commission;

(5) Establish a standardized retirement policy for all state
higher education employees as determined by the policy
commission;

(6) Clarify the application and purposes of the additional
and supplemental retirement plans previously provided for in
this section; and

(7) Remove obsolete and archaic language.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING,
PROFESSIONAL DEVELOPMENT.
§18A-3-3. Renewal of certificates; permanent certification.

(a) Until the person qualifies for a permanent certificate, any professional or first class certificate based upon a bachelor's degree shall be renewable provided the holder within five years from the date the certificate became valid:

1. Files application on a prescribed form with the State Department of Education;

2. Presents an official transcript of six semester hours of approved credit as may be prescribed by the state board;

3. Successfully completes a beginning teacher internship program, if applicable; and

4. Submits a recommendation based on successful teaching experience from the county superintendent of schools of the county in which the holder last taught or resides.

(b) The holder of a professional certificate, valid for five years, shall have the certificate made permanent upon meeting any of the following requirements:

1. Completion of the second renewal, in accordance with the provisions set forth in subsection (a) of this section; or

2. After five years of service in the public schools, presentation of a transcript showing the completion of requirements for a master's degree from an institution of higher education accredited to offer the master's degree and in a program relevant to the public school program or completes the fifth year of training leading to a bachelor's degree in library science from a school fully approved by the American Library Association; or

3. Receives certification through the National Board for Professional Teaching Standards.

(c) To satisfy any of the requirements of subsection (b) of
this section, the person must file application on a prescribed form with the State Department of Education and must submit a recommendation from the county superintendent of schools of the county in which the person last taught or resides.

(d) All certificates and permits, other than the professional certificate, shall be renewed in accordance with state board regulations.

(e) If the applicant seeking renewal has cause to believe that the county superintendent refuses to give a recommendation without just cause, the applicant shall have the right, in such case, to appeal to the State Superintendent of Schools whose responsibility it shall be to investigate the matter and issue a certificate if, in the opinion of the state superintendent, the county superintendent's recommendation was withheld arbitrarily.

(f) A person who has reached the age of sixty and holds a renewable certificate, as provided in this section, need not present renewal credit but shall meet all other renewal requirements.


(a) The Legislature finds that:

(1) There are instances, especially for the purpose of professional development, where it would be beneficial for persons who are members of the Teachers' Retirement System or the Teachers' Defined Contribution System to be employed by state institutions of higher education or research corporations;

(2) Members of the Teachers' Retirement System are discouraged from terminating their membership to that system because their annuity is based on their final average salary and their total service credit;

(3) A member of the Teachers' Defined Contribution System may be discouraged from terminating his or her
membership to that system because the member may be completely vested in that system or have made substantial progress toward being vested;

(4) These members also are discouraged from leaving employment that allows them to participate in the Public Employees Insurance Program pursuant to article sixteen, chapter five of this code; and

(5) An example of this beneficial arrangement would be the employment of a member of the Teachers’ Retirement System or a member of the Teachers’ Defined Contribution System by an entity that otherwise would not be considered an employer under article seven-a, chapter eighteen of this code or article seven-b, chapter eighteen of this code for the purpose of working on a joint professional development project between higher education and public education.

(b) For the purposes of this section only, unless the context clearly indicates otherwise:

(1) “Employer” means either the state institution of higher education or the research corporation employing a 21st Century Learner Fellow;

(2) “Research corporation” means a corporation meeting the description set forth in section three, article twelve, chapter eighteen of this code; and

(3) “State institution of higher education” means the same as defined in section two, article one, chapter eighteen-b of this code.

(c) The State Superintendent is authorized to designate up to twenty-five professional educators who are currently employed and who are members of either the Teachers’ Retirement System set forth in article seven-a, chapter eighteen of this code or the Teachers’ Defined Contribution System set forth in article seven-b, chapter eighteen of this code as 21st Century Learner Fellows, subject to the following:
(1) Before designating a person as a 21st Century Learner Fellow, the State Superintendent shall consult with the state institution of higher education or the research corporation that would employ the member if designated;

(2) In determining whether or not to designate a person as a 21st Century Learner Fellow, the State Superintendent shall give preference to a person who:

(A) Is certified by the National Board for Professional Teaching Standards; and

(B) Demonstrates leadership within his or her content field in the county, regional education service agency area or the State;

(3) The duration of the person’s designation as a 21st Century Learner Fellow shall be for the period in which the specific project to be undertaken by the person will last as determined by the State Superintendent at the time he or she designates the person; and

(4) Only the employer may terminate the employment of a person designated as a 21st Century Learner Fellow prior to the end of the duration of the person’s designation as set forth in subsection (3) of this subsection.

(d) Notwithstanding any other provision of the code to the contrary, the professional educators designated as 21st Century Learner Fellows may elect to remain a member of the retirement system in which they were a member of immediately preceding their designation while they are employed by either a state institution of higher education or a research corporation, subject to the following:

(1) This authorization to remain a member of the retirement system in which they were a member of immediately preceding their designation only applies to authorization to remain a member of either the Teachers’ Retirement System set forth in article seven-a, chapter eighteen of this code or to the Teachers’ Defined
Contribution System set forth in article seven-b, chapter eighteen of this code, but not both;

(2) Both the employer and the member each shall contribute their share as required by article seven-a, chapter eighteen of this code or article seven-b, chapter eighteen of this code, as applicable;

(3) If a 21st Century Learner Fellow elects to remain a member of either the Teachers’ Retirement System set forth in article seven-a, chapter eighteen of this code or the Teachers’ Defined Contribution System set forth in article seven-b, chapter eighteen of this code, he or she may not participate in any retirement plan offered by the employer; and

(4) Notwithstanding any other provision of law to the contrary, the employer does not assume any liability for benefits accrued by the 21st Century Learner Fellow while he or she was employed by any other entity.

(e) Notwithstanding any other provision of code to the contrary, each 21st Century Learner Fellow also qualifies as an employee for the purposes of being authorized to participate in the Public Employees Insurance Program pursuant to article sixteen, chapter five of this code and the state institution of higher education or the research corporation, as applicable, shall be considered an employer under that program, subject to the following:

(1) The state institution of higher education or the research corporation, as applicable, is not considered an employer with respect to any employee other than a 21st Century Learner Fellow;

(2) For any employee that elects to participate in the program pursuant to this subdivision, the employer shall pay their share of the premium and the employee shall pay his or her share of the premium pursuant to article sixteen, chapter five of this code; and
(3) Notwithstanding any other provision of law to the contrary, the employer does not assume any liability for benefits accrued by the 21st Century Learner Fellow while he or she was employed by any other entity.

(f) Notwithstanding any other provision of law to the contrary:

(1) The employer is not responsible for any accrued annual leave, sick leave or both that a 21st Century Learner Fellow has accumulated during any prior employment; and

(2) If a 21st Century Learner Fellow has accumulated sick leave from prior employment, and if not for this subsection that sick leave obligation or any part of that obligation otherwise would have been transferred to the employer, after expending all sick leave accrued with the employer, the 21st Century Learner may expend the sick leave accumulated with the prior employer, and the prior employer is responsible for paying the cost of the sick leave expended by the 21st Century Learner Fellow at a rate equivalent to the salary and benefits paid to the 21st Century Learner Fellow at the time his or her employment with the prior employer ended.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect on July 1, 2007

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 4th day of April, 2007.

Governor