

HB 101

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OF THE STATE OF WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST EXTRAORDINARY SESSION, 2008



**ENROLLED**

**House Bill No. 101**

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)  
[By Request of the Executive]



Passed March 16, 2008

In Effect from Passage

# **E N R O L L E D**

## **H. B. 101**

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(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)  
[BY REQUEST OF THE EXECUTIVE]

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[Passed March 16, 2008; in effect from passage.]

AN ACT to repeal §18-7C-1, §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, §18-7C-13, and §18-7C-14 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-7A-14, §18-7A-18, §18-7A-34 and §18-7A-40 of said code; to amend and reenact §18-7B-7, §18-7B-7a and §18-7B-8 of said code; and to amend said code by adding thereto a new article, designated §18-7D-1, §18-7D-2, §18-7D-3, §18-7D-4, §18-7D-5, §18-7D-6, §18-7D-7, §18-7D-8, §18-7D-9, §18-7D-10, and §18-7D-11, all relating to the State Teachers Retirement System and the Teachers' Defined Contribution System generally; relating to the voluntary transfer of assets from the Teachers' Defined Contribution Retirement System to the State Teachers Retirement System; computing teachers' service; authorizing certain loans; providing legislative findings and purpose; providing definitions; providing opportunities for members of the State Teachers' Defined Contribution Retirement System to affirmatively elect to transfer their assets to the State Teacher's Retirement System; establishing requirements and processes for members to affirmatively elect to transfer; providing responsibilities of the Consolidated

Public Retirement Board; setting forth dates and time periods for members to affirmatively elect to transfer; providing for education about the opportunity to affirmatively elect to transfer; requiring notice to members; allowing Consolidated Public Retirement Board to contract directly for professional services for purposes of performing its responsibilities related to the voluntary transfer; providing for voluntary transfer from the Teachers Defined Contribution Retirement System to the State Teachers Retirement System if sixty-five percent or more of the actively contributing members affirmatively elect to transfer; providing for transfer of assets from the Teachers Defined Contribution Retirement System to the State Teachers Retirement System upon the affirmative election of sixty-five percent or more of the actively contributing members; providing for service credit in the State Teachers Retirement System; permitting transferring members to pay an Actuarial Reserve in order to receive full credit upon transfer if at least sixty-five percent but less than seventy-five percent of actively contributing members affirmatively elect to transfer; permitting transferring members to pay a one and one-half percent contribution plus interest in order to receive full credit upon transfer if seventy-five percent or more of actively contributing members affirmatively elect to transfer; addressing withdrawals and cash outs; addressing qualified domestic relations orders; providing for vesting and minimum guarantees of benefits for members affirmatively electing to transfer; and prohibiting retirement without appropriate notice.

*Be it enacted by the Legislature of West Virginia:*

That §18-7C-1, §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, §18-7C-13, and §18-7C-14 of the Code of West Virginia, 1931, as amended, be repealed; that §18-7A-14, §18-7A-18, §18-7A-34 and §18-7A-40 of said code be amended and reenacted; that §18-7B-7, §18-7B-7a and §18-7B-8 of said code be amended and

reenacted; and that said code be amended by adding thereto a new article, designated §18-7D-1, §18-7D-2, §18-7D-3, §18-7D-4, §18-7D-5, §18-7D-6, §18-7D-7, §18-7D-8, §18-7D-9, §18-7D-10, and §18-7D-11, all to read as follows:

**ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

**§18-7A-14. Contributions by members; contributions by employers.**

1 (a) At the end of each month every member of the  
2 retirement system shall contribute six percent of that  
3 member's monthly gross salary to the retirement board:  
4 *Provided*, That any member employed by a state institution  
5 of higher education shall contribute on the member's full  
6 earnable compensation, unless otherwise provided in section  
7 fourteen-a of this article. The sums are due the Teachers  
8 Retirement System at the end of each calendar month in  
9 arrears and shall be paid not later than fifteen days following  
10 the end of the calendar month. Each remittance shall be  
11 accompanied by a detailed summary of the sums withheld  
12 from the compensation of each member for that month on  
13 forms, either paper or electronic, provided by the Teachers  
14 Retirement System for that purpose.

15 (b) Annually, the contributions of each member shall be  
16 credited to the member's account in the Teachers Retirement  
17 System Fund. The contributions shall be deducted from the  
18 salaries of the members as prescribed in this section and  
19 every member shall be considered to have given consent to  
20 the deductions. No deductions, however, shall be made from  
21 the earnable compensation of any member who retired  
22 because of age or service and then resumed service unless as  
23 provided in section thirteen-a of this article.

24 (c) The aggregate of employer contributions, due and  
25 payable under this article, shall equal annually the total

26 deductions from the gross salary of members required by this  
27 section. Beginning the first day of July, one thousand nine  
28 hundred ninety-four, the rate shall be seven and one-half  
29 percent; beginning on the first day of July, one thousand nine  
30 hundred ninety-five, the rate shall be nine percent; beginning  
31 on the first day of July, one thousand nine hundred ninety-  
32 six, the rate shall be ten and one-half percent; beginning on  
33 the first day of July, one thousand nine hundred ninety-seven,  
34 the rate shall be twelve percent; beginning on the first day of  
35 July, one thousand nine hundred ninety-eight, the rate shall  
36 be thirteen and one-half percent; and beginning on the first  
37 day of July, one thousand nine hundred ninety-nine and  
38 thereafter, the rate shall be fifteen percent: *Provided*, That the  
39 rate shall be seven and one-half percent for any individual  
40 who becomes a member of the Teachers Retirement System  
41 for the first time on or after the first day of July, two  
42 thousand five, or any individual who becomes a member of  
43 the Teachers Retirement System as a result of the voluntary  
44 transfer contemplated in article seven-d of this chapter.

45 (d) Payment by an employer to a member of the sum  
46 specified in the employment contract minus the amount of  
47 the employee's deductions shall be considered to be a full  
48 discharge of the employer's contractual obligation as to  
49 earnable compensation.

50 (e) Each contributor shall file with the retirement board  
51 or with the employer to be forwarded to the retirement board  
52 an enrollment form showing the contributor's date of birth  
53 and other data needed by the retirement board.

**§18-7A-18. Teachers Employers Contribution Collection  
Account; Teachers Retirement System Fund;  
transfers.**

1 (a) There is hereby created in the State Treasury a special  
2 revenue account designated the "Teachers Employers

3 Contribution Collection Account” to be administered by the  
4 Consolidated Public Retirement Board. The Teachers  
5 Employers Contribution Collection Account shall be an  
6 interest-bearing account with interest credited to and  
7 deposited in the account and transferred in accordance with  
8 the provisions of this section.

9 (b) There shall be deposited into the Teachers Employers  
10 Contribution Collection Account the following:

11 (1) Contributions of employers, through state  
12 appropriations, and such amounts shall be included in the  
13 budget bill submitted annually by the Governor;

14 (2) Beginning on the first day of July, two-thousand five,  
15 contributions from each county in an amount equal to fifteen  
16 percent of all salary paid in excess of that authorized for  
17 minimum salaries in sections two and eight-a, article four,  
18 chapter eighteen-a of this code and any salary equity  
19 authorized in section five of said article or any county  
20 supplement equal to the amount distributed for salary equity  
21 among the counties for each individual who was a member of  
22 the Teachers’ Retirement System before the first day of July,  
23 two-thousand five: *Provided*, That the rate shall be seven  
24 and one-half percent for any individual who becomes a  
25 member of the Teachers Retirement System for the first time  
26 on or after the first day of July, two-thousand five or any  
27 individual who becomes a member of the Teachers’  
28 Retirement System as a result of the transfer contemplated in  
29 article seven-d of this chapter;

30 (3) The amounts transferred pursuant to section eighteen-  
31 a of this article; and

32 (4) Any other moneys, available and not otherwise  
33 expended, which may be appropriated or transferred to this  
34 account.

35 (c) Moneys on deposit in the Teacher Employers  
36 Contribution Collection Account shall be transferred monthly  
37 in the following order:

38 (1) To the Teachers' Retirement System Fund the amount  
39 certified by the Consolidated Public Retirement Board as the  
40 actuarially required contribution; and

41 (2) The balance, if any, to the Employee Pension and  
42 Health Care Benefits Fund established under section thirty-  
43 nine, article seven-a of this chapter.

44 (d) There is hereby continued in the State Treasury a  
45 separate irrevocable trust designated the Teachers'  
46 Retirement System Fund. The Teachers' Retirement System  
47 Fund shall be invested as provided in section nine-a, article  
48 six, chapter twelve of this code.

49 (e) There shall be deposited into the Teachers'  
50 Retirement System Fund, the following:

51 (1) Moneys transferred from the Teachers Employers  
52 Contribution Collection Account;

53 (2) Member contributions provided for in section fifteen  
54 of this article;

55 (3) Gifts and bequests to the fund and any accretions and  
56 accumulations which may properly be paid into and become  
57 a part of the fund;

58 (4) Specific appropriations to the fund made by the  
59 Legislature;

60 (5) Interest on the investment of any part or parts of the  
61 fund; and

62 (6) Any other moneys, available and not otherwise  
63 expended, which may be appropriated or transferred to the  
64 Teachers Retirement System or the Fund.

65 (f) The Teachers Retirement System Fund shall be the  
66 fund from which annuities shall be paid.

67 (g) The Consolidated Public Retirement Board has sole  
68 authority to direct and approve the making of any and all  
69 fund transfers as provided in this section, anything in this  
70 code to the contrary notwithstanding.

71 (h) References in the code to the Teachers Accumulation  
72 Fund, the Employers Accumulation Fund, the Benefit Fund,  
73 the Reserve Fund and the Expense Fund mean the Teachers  
74 Retirement System Fund.

#### §18-7A-34. Loans to members.

1 (a) An actively contributing member of the retirement  
2 system upon written application may borrow from his or her  
3 individual account in the Teachers Retirement System,  
4 subject to these restrictions:

5 (1) Loans shall be made in multiples of ten dollars, the  
6 minimal loan being one hundred dollars and the maximum  
7 being eight thousand dollars: *Provided*, That the maximum  
8 amount of any loan when added to the outstanding balance of  
9 all other loans shall not exceed the lesser of the following:  
10 (A) Eight thousand dollars reduced by the excess (if any) of  
11 the highest outstanding balance of loans during the one-year  
12 period ending on the day before the date on which the loan is  
13 made, over the outstanding balance of loans to the member  
14 on the date on which the loan is made; or (B) fifty percent of  
15 the member's contributions to his or her individual account  
16 in the Teachers Retirement System: *Provided, however*, That

17 if the total amount of loaned money outstanding exceeds  
18 forty million dollars, the maximum shall not exceed three  
19 thousand dollars until the Retirement Board determines that  
20 loans outstanding have been reduced to an extent that  
21 additional loan amounts are again authorized: *Provided*  
22 *further*, That the amount of any loan made pursuant to article  
23 seven-d of this chapter is not included for the purposes of  
24 determining if the forty million dollar threshold has been  
25 exceeded.

26 (2) Interest charged on the amount of the loan shall be six  
27 percent per annum, or a higher rate as set by the Board:  
28 *Provided*, That interest charged shall be commercially  
29 reasonable in accordance with the provisions of section  
30 72(p)(2) of the Internal Revenue Code, and the federal  
31 regulations issued thereunder. If repayable in installments,  
32 the interest shall not exceed the annual rate so established  
33 upon the principal amount of the loan, for the entire period of  
34 the loan, and such charge shall be added to the principal  
35 amount of the loan. The minimal interest charge shall be for  
36 six months.

37 (3) No member is eligible for more than one outstanding  
38 loan at any time: *Provided*, That the foregoing provision does  
39 not apply to any loan made pursuant to article seven-d of this  
40 chapter. Upon full payment of a loan, a member may apply  
41 for a subsequent loan after sixty days beginning the first day  
42 of the month following receipt of final payment.

43 (4) If a refund is payable to the borrower or his or her  
44 beneficiary before he or she repays the loan with interest, the  
45 balance due with interest to date shall be deducted from the  
46 refund.

47 (5) From his or her monthly salary as a teacher or a  
48 nonteacher the member shall pay the loan and interest by

49 deductions which will pay the loan and interest in  
50 substantially level payments in not more than sixty nor less  
51 than six months. Upon notice of loan granted and payment  
52 due, the employer is responsible for making the salary  
53 deductions and reporting them to the Retirement Board. At  
54 the option of the board, loan deductions may be collected as  
55 prescribed herein for the collection of members' contribution,  
56 or may be collected through issuance of warrant by employer.  
57 If the borrower is no longer employed as a teacher or  
58 nonteaching member, the borrower must make monthly loan  
59 payments directly to the Consolidated Public Retirement  
60 Board and the Board must accept the payments.

61 (6) The entire unpaid balance of any loan, and interest  
62 due thereon, shall, at the option of the board, become due and  
63 payable without further notice or demand upon the  
64 occurrence with respect to the borrowing member of any of  
65 the following events of default: (A) Any payment of  
66 principal and accrued interest on a loan remains unpaid after  
67 it becomes due and payable under the terms of the loan or  
68 after the grace period established in the discretion of the  
69 Board; (B) the borrowing member attempts to make an  
70 assignment for the benefit of creditors of his or her refund or  
71 benefit under the retirement system; or (C) any other event of  
72 default set forth in rules promulgated by the board in  
73 accordance with the authority granted pursuant to section  
74 one, article ten-d, chapter five of this code: *Provided*, That  
75 any refund or offset of an unpaid loan balance shall be made  
76 only at the time the member is entitled to receive a  
77 distribution under the retirement system.

78 (7) Loans shall be evidenced by such form of obligations  
79 and shall be made upon such additional terms as to default,  
80 prepayment, security, and otherwise as the board determines.

81 (8) Notwithstanding anything herein to the contrary, the  
82 loan program authorized by this section shall comply with the

83 provisions of Section 72(p)(2) and Section 401 of the Internal  
84 Revenue Code, and the federal regulations issued thereunder,  
85 and accordingly, the Retirement Board is authorized to: (A)  
86 Apply and construe the provisions of this section and  
87 administer the plan loan program in such a manner as to  
88 comply with the provisions of Section 72(p)(2) and Section  
89 401 of the Internal Revenue Code and the federal regulations  
90 issued thereunder; (B) adopt plan loan policies or procedures  
91 consistent with these federal law provisions; and (C) take  
92 such actions as it deems necessary or appropriate to  
93 administer the plan loan program created hereunder in  
94 accordance with these federal law provisions. The  
95 Retirement Board is further authorized in connection with the  
96 plan loan program to take any actions that may at any time be  
97 required by the Internal Revenue Service regarding  
98 compliance with the requirements of Section 72(p)(2) or  
99 Section 401 of the Internal Revenue Code, and the federal  
100 regulations issued thereunder, notwithstanding any provision  
101 in this article to the contrary.

102 (b) Notwithstanding anything in this article to the  
103 contrary, the loan program authorized by this section shall  
104 not be available to any teacher or nonteacher who becomes  
105 a member of the Teachers Retirement System on or after the  
106 first day of July, two thousand five: *Provided*, That a  
107 member is eligible for a loan under article seven-d of this  
108 chapter to pay all or part of the Actuarial Reserve, or if  
109 available in accordance with the provisions of subsection (d),  
110 section six, article seven-d of this chapter, the one and one-  
111 half percent contribution for service in the Teachers' Defined  
112 Contribution System for the purpose of receiving additional  
113 service credit in the State Teachers Retirement System  
114 pursuant to section six, article seven-d, of this chapter.

**§18-7A-40. Higher education employees.**

1 Nothing in this article or article seven-b of this chapter  
2 shall be construed:

3 (1) To be in conflict with section four-a, article  
4 twenty-three, chapter eighteen of this code; or

5 (2) To affect the membership of higher education  
6 employees who are currently members of either the State  
7 Teachers Retirement System created in this article or the  
8 Teachers' Defined Contribution Retirement System created  
9 in article seven-b of this chapter: *Provided*, That any higher  
10 education employees who are currently members of the  
11 Teachers' Defined Contribution Retirement System may  
12 become members of the Teachers Retirement System upon  
13 meeting the requirements of article seven-d of this chapter.

## **ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.**

### **§18-7B-7. Participation in Teachers' Defined Contribution Retirement System; limiting participation in existing Teachers Retirement System.**

1 (a) Beginning the first day of July, one thousand nine  
2 hundred ninety-one, and except as provided in this section,  
3 the Teachers' Defined Contribution Retirement System shall  
4 be the single retirement program for all new employees  
5 whose employment commences on or after that date and all  
6 new employees shall be required to participate. No  
7 additional new employees except as may be provided in this  
8 section may be admitted to the existing Teachers Retirement  
9 System.

10 (b) Members of the existing Teachers Retirement System  
11 whose employment continues beyond the first day of July,  
12 one thousand nine hundred ninety-one, and those whose

13 employment was terminated after the thirtieth day of June,  
14 one thousand nine hundred ninety-one, under a reduction in  
15 force are not affected by subsection (a) of this section and  
16 shall continue to contribute to and participate in the existing  
17 Teachers Retirement System without a change in plan  
18 provisions or benefits.

19 (c) Any person who was previously a member of the  
20 Teachers Retirement System and who left participating  
21 employment before the creation of the Teachers' Defined  
22 Contribution Retirement System on the first day of July, one  
23 thousand nine hundred ninety-one, and who later returns to  
24 participating employment after the effective date of this  
25 section shall return to the existing Teachers Retirement  
26 System.

27 (d) Any person who was, prior to the first day of July,  
28 one thousand nine hundred ninety-one, a member of the  
29 existing Teachers Retirement System who left participating  
30 employment before the creation of the Teachers' Defined  
31 Contribution Retirement System on the first day of July, one  
32 thousand nine hundred ninety-one, and who later returned to  
33 participating employment after that date and who was  
34 precluded from returning to the existing Teachers Retirement  
35 System as a result of prior provisions of this section, may  
36 become a member of the Teachers Retirement System upon  
37 meeting the requirements provided in article seven-d of this  
38 chapter.

39 (e) Any employee whose employment with an employer  
40 was suspended or terminated while he or she served as an  
41 officer with a statewide professional teaching association, is  
42 eligible for readmission to the existing retirement system in  
43 which he or she was a member.

44 (f) An employee whose employment with an employer or  
45 an existing employer is suspended as a result of an approved

46 leave of absence, approved maternity or paternity break in  
47 service or any other approved break in service authorized by  
48 the Board is eligible for readmission to the existing  
49 retirement system in which he or she was a member.

50 (g) In all cases in which a question exists as to the right  
51 of an employee to readmission to membership in the existing  
52 Teachers Retirement System, the Consolidated Public  
53 Retirement Board shall decide the question.

54 (h) Any individual who is not a "member" or "employee"  
55 as defined by section two of this article and any individual  
56 who is a leased employee is not eligible to participate in the  
57 Teachers' Defined Contribution Retirement System. For  
58 purposes of this section, a "leased" employee means any  
59 individual who performs services as an independent  
60 contractor or pursuant to an agreement with an employee  
61 leasing organization or other similar organization. In all  
62 cases in which a question exists as to whether an individual  
63 is eligible for membership in this system, the Consolidated  
64 Public Retirement Board shall decide the question.

65 (i) Effective the first day of July, two thousand five and  
66 continuing through the first day of two thousand six, any  
67 employee of River Valley Child Development Services, Inc.,  
68 who is a member of the Teachers' Defined Contribution  
69 Retirement System may elect to withdraw from membership  
70 and join the private pension plan provided by River Valley  
71 Child Development Services, Inc.

72 (j) River Valley Child Development Services, Inc., and  
73 its successors in interest shall provide for their employees a  
74 pension plan in lieu of the Teachers' Defined Contribution  
75 Retirement System on or before the first day of July, two  
76 thousand five, and continuing thereafter during the existence  
77 of the River Valley Child Development Services, Inc., and its

78 successors in interest. All new employees hired after the  
79 thirtieth day of June, two thousand five, shall participate in  
80 the pension plan in lieu of the Teachers' Defined  
81 Contribution Retirement System.

82 (k) The administrative body of River Valley Child  
83 Development Services, Inc., shall, on or before the first day  
84 of June, two thousand five, give written notice to each  
85 employee who is a member of the Teachers' Defined  
86 Contribution Retirement System of the option to withdraw  
87 from or remain in the system. The notice shall include a  
88 copy of this section and a statement explaining the member's  
89 options regarding membership. The notice shall include a  
90 statement in plain language giving a full explanation and  
91 actuarial projection figures, prepared by an independent  
92 actuary, in support of the explanation regarding the  
93 individual member's current account balance, vested and  
94 nonvested, and his or her projected return upon remaining in  
95 the Teacher's Defined Contribution Retirement System until  
96 retirement, disability or death, in comparison with the  
97 projected return upon withdrawing from the Teachers'  
98 Defined Contribution Retirement System and joining a  
99 private pension plan provided by River Valley Child  
100 Development Center, Inc., and remaining therein until  
101 retirement, disability or death. The administrative body shall  
102 keep in its records a permanent record of each employee's  
103 signature confirming receipt of the notice.

**§18-7B-7a. Plan closed to persons employed for the first time  
after June, 2005; former employees.**

1 The retirement system created and established in this  
2 article shall be closed and no new members accepted in the  
3 system after the thirtieth day of June, two thousand five.  
4 Notwithstanding the provisions of sections seven and eight of  
5 this article, all persons who are regularly employed for full-

6 time service as a member or an employee whose initial  
7 employment commences after the thirtieth day of June, two  
8 thousand five, shall become a member of the State Teachers'  
9 Retirement System created and established in article seven-a  
10 of this chapter: *Provided*, That any person rehired after the  
11 thirtieth day of June, two thousand five, shall become a  
12 member of the Teachers' Defined Contribution Retirement  
13 System created and established in this article, or of the  
14 Teachers Retirement System created and established in article  
15 seven-a of this chapter, depending upon which system he or  
16 she last contributed to while he or she was employed with an  
17 employer mandating membership and contributions to one of  
18 those plans: *Provided, however*, That a rehired person who  
19 thereby becomes a member of the Teachers' Defined  
20 Contribution Retirement System may become a member of  
21 the Teachers Retirement System within the applicable time  
22 periods and upon meeting the requirements provided in  
23 article seven-d of this chapter.

**§18-7B-8. Voluntary participation in system; expiration of right  
to elect membership in defined contribution  
system.**

1 (1) Any employee who is a member of the existing  
2 retirement system may, upon written election, voluntarily  
3 elect membership in the Teachers' Defined Contribution  
4 Retirement System, on a prospective basis, on or after the  
5 first day of July, one thousand nine hundred ninety-one. All  
6 benefits earned by any employee making a voluntary election  
7 under the existing retirement system prior to the voluntary  
8 election shall be frozen and made available to that employee  
9 upon retirement as provided by the existing retirement  
10 system. A member of the existing retirement system who has  
11 less than five years of contributing service in the existing  
12 retirement system may elect to withdraw his or her  
13 contribution plus interest thereon as if the member is

14 terminating employment and upon withdrawal shall deposit  
15 the funds in the defined contribution system: *Provided*, That  
16 the member's years of contributing service in the existing  
17 system shall be applied toward the years of employment  
18 service required under section eleven of this article:  
19 *Provided, however*, That this election is allowed on a  
20 retroactive basis to the first day of July, one thousand nine  
21 hundred ninety-one. For the purposes of this section,  
22 "frozen" means that the member's salary, years of service and  
23 any other factor to determine benefits shall be calculated as  
24 of the date that the member elected membership in the  
25 defined contribution system and after that date no increase in  
26 salary, years of service or any other factor may be used to  
27 increase the retirement benefit above that which it would be  
28 if a person retired upon the date that the election is made.  
29 After having made the election, the employee may not  
30 change such election or again become a member of the  
31 existing retirement system.

32 (2) Notwithstanding any provision of this section to the  
33 contrary, after the thirtieth day of June, two thousand five, no  
34 person who is a member of the State Teachers Retirement  
35 System may elect membership in the Teachers' Defined  
36 Contribution Retirement System.

**ARTICLE 7D. VOLUNTARY TRANSFER FROM  
TEACHERS' DEFINED  
CONTRIBUTION RETIREMENT  
SYSTEM TO STATE TEACHERS  
RETIREMENT SYSTEM.**

**§18-7D-1. Legislative findings and purpose.**

1 a) The Legislature hereby finds and declares as follows:

2 (1) That the quality of this state's education system is  
3 largely dependent upon the quality of its teachers and  
4 educational service personnel;

5 (2) That many West Virginia teachers and education  
6 service personnel who currently are members of the  
7 Teachers' Defined Contribution Retirement System desire to  
8 join a defined benefit system, which relieves participants of  
9 bearing the risk of investment performance and offers the  
10 security of providing participants with advanced knowledge  
11 of their anticipated retirement benefit;

12 (3) That other members of the Teachers' Defined  
13 Contribution Retirement System remain comfortable with  
14 bearing the attendant market risks and performance of their  
15 investments associated with managing the individual  
16 retirement accounts of that system;

17 (4) That it is in the best interests of the teachers and  
18 education service personnel in this state, as well as the state's  
19 system of public education as a whole, to permit members of  
20 the Teachers' Defined Contribution Retirement System to  
21 voluntarily elect membership in the State Teachers  
22 Retirement System pursuant to the provisions of this article;  
23 and

24 (5) That the prudent and fiscally sound management of  
25 the State Teachers Retirement System necessitates that a  
26 sufficient number of members of the Teachers' Defined  
27 Contribution Retirement System elect to voluntarily transfer  
28 their assets to the State Teachers Retirement System in  
29 accordance with the provisions of this article.

**§18-7D-2. Definitions.**

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

3           (1) “Actively contributing member of the Teachers’  
4 Defined Contribution Retirement System” means a member  
5 of that retirement system who was actively contributing to  
6 the Teachers’ Defined Contribution Retirement System on  
7 the thirty-first day of December, two thousand seven.

8           (2) “Actuarial Reserve” means the Actuarial Reserve  
9 Lump Sum Value of the additional service credit being  
10 purchased by a member so electing in accordance with the  
11 provisions of section six of this article.

12           (3) “Actuarial Reserve Adjusted Salary” means either:

13           (A) For a member with a full year service credit in the  
14 fiscal year ending the thirtieth day of June, two thousand  
15 seven, the member’s two thousand seven fiscal year salary  
16 increased by seven percent;

17           (B) For a member with less than a full year service credit  
18 in the fiscal year ending the thirtieth day of June, two  
19 thousand seven, the member’s two thousand seven fiscal year  
20 salary annualized to a full year based on the partial year  
21 service credit increased by seven percent; or

22           (C) For a member without service credit in the fiscal year  
23 ending the thirtieth day of June, two thousand seven, the  
24 member’s annualized contract salary in effect on the thirty-  
25 first day of December, two thousand seven increased by  
26 seven percent, or the member’s annual contract salary on the  
27 date of rehire if after the thirty-first day of December, two  
28 thousand seven.

29           (4) “Actuarial Reserve Benefit Date” means the first day  
30 of the month coincident with or next following the date at

31 which the member attains the age of sixty, or the thirtieth day  
32 of June, two thousand nine, whichever is later.

33 (5) "Actuarial Reserve Benefit Date Factors" mean the  
34 actuarial lump sum value factors based on a life only annuity  
35 starting on the Actuarial Reserve Benefit Date applying the  
36 1983 Group Annuity Mortality Tables on a seventy-five  
37 percent female and a twenty-five percent male blended  
38 Unisex basis and interest at seven and one-half percent.

39 (6) "Actuarial Reserve Discount Factor" means the  
40 annual discount factor applied for the period between the  
41 thirtieth day of June, two thousand nine and the Actuarial  
42 Reserve Benefit Date, if any. Such factor based on the State  
43 Teachers Retirement System actuarial valuation assumptions  
44 shall estimate the impact of mortality, disability, and  
45 economic factors for such discount period by application of  
46 a net four percent discount rate.

47 (7) "Actuarial Reserve Lump Sum Value" means a single  
48 sum amount calculated as: A benefit of two percent  
49 multiplied by the Defined Contribution Retirement System  
50 service credit being purchased multiplied by the Actuarial  
51 Reserve Adjusted Salary; such benefit multiplied by the  
52 Actuarial Reserve Benefit Date Factors to determine the lump  
53 sum value multiplied by the Actuarial Reserve Discount  
54 Factor.

55 (8) "Affirmatively elect to transfer" means the voluntary  
56 execution and delivery to the Consolidated Public Retirement  
57 Board, by a member of the Teachers' Defined Contribution  
58 Retirement System of a document in a form prescribed by the  
59 board that irrevocably authorizes the board to transfer the  
60 member and all the member's assets in the Teachers' Defined  
61 Contribution Retirement System to the State Teachers  
62 Retirement System: *Provided*, That delivery of the document

63 to the Consolidated Public Retirement Board may be  
64 accomplished through submission of the document to the  
65 supervisor of a work site pursuant to section seven of this  
66 article: *Provided, however,* That any previous member of the  
67 State Teachers Retirement System who voluntarily elected to  
68 terminate his or her membership in the State Teachers  
69 Retirement System to become a member of the Teachers'  
70 Defined Contribution Retirement System and signed an  
71 irrevocable transfer request also may affirmatively elect to  
72 transfer notwithstanding the prior transfer request.

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

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

82 (11) "Date of transfer" means, in the event that sixty-five  
83 percent or more of the actively contributing members of the  
84 Defined Contribution Retirement System affirmatively elect  
85 to transfer to the State Teachers Retirement System within  
86 the period provided in section seven of this article, the first  
87 day of July, two thousand eight.

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

91 (13) "Member" means any person who has an account  
92 balance standing to his or her credit in the Teachers' Defined  
93 Contribution Retirement System.

94 (14) "Salary" means:

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

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

103 (15) "State Teachers Retirement System" means the State  
104 Teachers Retirement System established in article seven-a of  
105 this chapter.

### **§18-7D-3. Voluntary transfers.**

1 (a) In accordance with the provisions of this article, the  
2 Consolidated Public Retirement Board shall effect the  
3 voluntary transfer of members of the Teachers' Defined  
4 Contribution Retirement System to the State Teachers  
5 Retirement System.

6 (b) If at least sixty-five percent of actively contributing  
7 members of the Teachers' Defined Contribution System  
8 affirmatively elect to transfer to the State Teachers  
9 Retirement System within the period provided in section  
10 seven of this article, then the Consolidated Public Retirement  
11 Board shall transfer to the State Teachers Retirement System,  
12 effective the first day of July, two thousand eight, all  
13 members who affirmatively elected to do so during that  
14 period. If at least sixty-five percent of actively contributing  
15 members of the Teachers' Defined Contribution Retirement  
16 System do not affirmatively elect to transfer to the State  
17 Teachers Retirement System within that period, the Defined

18 Contribution Retirement System continues as the retirement  
19 system for all members in that system as of the thirtieth day  
20 of June, two thousand eight.

**§18-7D-4. Notice, education, record-keeping requirements.**

1 (a) Commencing not later than the first day of April, two  
2 thousand eight, the board shall begin an educational program  
3 with respect to the voluntary transfer of actively contributing  
4 members of the Teachers' Defined Contribution Retirement  
5 System and their assets to the State Teachers Retirement  
6 System.

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

9 (A) The law providing for the transfer;

10 (B) The mechanics of the transfer;

11 (C) The process by which an actively contributing  
12 member may affirmatively elect to transfer;

13 (D) Relevant dates and time periods;

14 (E) The benefits, potential advantages and potential  
15 disadvantages if members fail or refuse to affirmatively elect  
16 to transfer;

17 (F) The benefits, potential advantages and potential  
18 disadvantages of becoming a member of the State Teachers  
19 Retirement System;

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

22 (H) For each member, a summary to include his or her  
23 most recent account balance; the average rate of return of the  
24 Standard and Poor's and the Lehman U. S.  
25 Corporate/Government Index for the previous ten years; the  
26 average rate of return of an indexed balanced fund for the  
27 previous ten years; the member's projected account balance  
28 if he or she retires at age sixty and age sixty-five; the current  
29 cost of purchasing a monthly annuity under the Teachers'  
30 Defined Contribution Retirement System; the monthly  
31 annuity that the member would receive under the Teachers  
32 Retirement System if the member chooses to purchase the  
33 full service credit and retire at age sixty and age sixty-five;  
34 the monthly annuity under the Teachers Retirement System  
35 if the participant chooses not to purchase the full service  
36 credit and retires at age sixty and age sixty-five, and the  
37 potential cost to the member of purchasing the Actuarial  
38 Reserve or the one and one-half percent contribution plus  
39 accrued interest, as the case may be, not including the cost of  
40 obtaining a loan under section five of this article.

41 (I) Any other pertinent information considered relevant  
42 by the board.

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

44 (A) Its website;

45 (B) Computer programs;

46 (C) Written or electronic materials, or both;

47 (D) Classes or seminars, pursuant to subdivision (3) of  
48 this subsection;

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

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

54 (3) The Consolidated Public Retirement Board shall  
55 provide the information set forth in subdivision (1) of this  
56 subsection through classes or seminars in accordance with the  
57 following:

58 (A) The Consolidated Public Retirement Board shall  
59 provide training for conducting the classes or seminars for  
60 employees of county boards, for employees of state  
61 institutions of higher education or for any other person that  
62 the county board or the institution of higher learning  
63 determines, with the approval of the Consolidated Public  
64 Retirement Board, would be appropriate to conduct the  
65 classes or seminars;

66 (B) Each county board shall require at least two  
67 representatives to attend the training. The representatives  
68 must be approved by the Consolidated Public Retirement  
69 Board prior to attending the Board's training class;

70 (C) Each county board shall ensure that each employee  
71 of that county board who is a member of the Teachers'  
72 Defined Contribution Retirement System has had an  
73 opportunity to attend a class or a seminar on the topics set  
74 forth in subdivision (1) of this subsection at his or her work  
75 site during his or her workday;

76 (D) The class or seminar shall be conducted by any  
77 person who attended the training or by a representative of a  
78 school personnel organization that the Consolidated Public  
79 Retirement Board considers qualified to conduct the class or  
80 seminar;

81 (E) The classes or seminars may be conducted at the time  
82 allocated for professional activities for teachers on

83 instructional support and enhancement days, before school,  
84 after school and at any other time during an employee's work  
85 day: *Provided*, That the classes or seminars may interfere  
86 with instructional time only if no other time is available to  
87 conduct the classes or seminars;

88 (F) Each county board shall ensure that informational  
89 booths are set up at each work site under the jurisdiction of  
90 the county board and that the booths are attended on a  
91 rotating basis by an person trained to conduct the classes or  
92 seminars or by a representative of a school personnel  
93 organization that the Consolidated Public Retirement Board  
94 considers qualified to attend the booth;

95 (G) During the period provided by this section for the  
96 educational program, each county board and its  
97 superintendent shall allow representatives of the  
98 Consolidated Public Retirement Board entry upon the  
99 premises of each school in this state where the Consolidated  
100 Public Retirement Board determines appropriate on at least  
101 one occasion for the duration of at least sixty minutes during  
102 regular school hours to provide educational programs as the  
103 Consolidated Public Retirement Board determines  
104 appropriate for members of the Teachers' Defined  
105 Contribution Retirement System;

106 (b) The board shall provide each actively contributing  
107 member with a copy of the written or electronic educational  
108 materials and with a copy of the notice of the opportunity to  
109 affirmatively elect to transfer, to the extent deliverable, by  
110 mailing a copy thereof, first class postage prepaid, through  
111 the United States mails to the most current mailing address  
112 provided by the member to the board. The board is not  
113 required to deliver, nor is any member entitled to delivery of,  
114 these materials by any other means. The notice shall provide  
115 full and appropriate disclosure regarding the process by

116 which a member may affirmatively elect to transfer,  
117 including the period of the opportunity to affirmatively elect  
118 to transfer.

119 (c) It is the responsibility of each member of the  
120 Teachers' Defined Contribution Retirement System to keep  
121 the board informed of his or her current address. A member  
122 who does not is considered to have waived his or her right to  
123 receive any information from the board with respect to the  
124 purposes of this article.

125 (d) Once the board has complied with the provisions of  
126 this section, each actively contributing member of the  
127 Teachers' Defined Contribution Retirement System is  
128 considered to have actual notice of the opportunity to  
129 affirmatively elect to transfer and all matters pertinent  
130 thereto.

131 (e) The executive director of the Consolidated Public  
132 Retirement Board shall report to the Governor, the President  
133 of the Senate, and the Speaker of the House of Delegates no  
134 later than April, 1, two thousand eight, a plan for the  
135 execution of the education and outreach requirements set  
136 forth in this section.

**§18-7D-5. Conversion of assets from Defined Contribution  
Retirement System to State Teachers Retirement  
System; contributions; loans.**

1 (a) If at least sixty-five percent of actively contributing  
2 members of the Teachers' Defined Contribution Retirement  
3 System affirmatively elect to transfer to the State Teachers  
4 Retirement System within the period provided in section  
5 seven of this article, then the Consolidated Public Retirement  
6 Board shall transfer the members and all properties held in  
7 the Teachers' Defined Contribution Retirement System's

8 Trust Fund in trust for those members who affirmatively  
9 elected to do so during that period to the State Teachers  
10 Retirement System, effective on the first day of July, two  
11 thousand eight.

12 (b) The board shall make available to each member a loan  
13 for the purpose of paying all or part of the Actuarial Reserve,  
14 or if available in accordance with the provisions of  
15 subsection (d), section six of this article, the one and one-half  
16 percent contribution for service in the Teachers' Defined  
17 Contribution System to receive additional service credit in  
18 the State Teachers Retirement System for service in the  
19 Teachers' Defined Contribution Retirement System pursuant  
20 to section six of this article. The loan shall be offered in  
21 accordance with the provisions of section thirty-four, article  
22 seven-a of this chapter.

23 (1) Notwithstanding any provision of this code, rule or  
24 policy of the board to the contrary, the interest rate on any  
25 loan may not exceed seven and one-half percent per annum.  
26 The total amount borrowed may not exceed forty thousand  
27 dollars: *Provided*, That the loan may not exceed the  
28 limitations of the Internal Revenue Code Section 72(p).

29 (2) In the event a loan made pursuant to this section is  
30 used to pay the Actuarial Reserve or the one and one-half  
31 percent contribution, as the case may be, the board shall  
32 make any necessary adjustments at the time the loan is made.

33 (3) The board shall make this loan available until the  
34 thirtieth day of June, two thousand nine.

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

38 (d) If at least sixty-five percent of actively contributing  
39 members of the Teachers' Defined Contribution Retirement  
40 System affirmatively elect to transfer to the State Teachers  
41 Retirement System within the period provided in section  
42 seven of this article:

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

46 (2) All transferred members who work one hour or more  
47 and who make a contribution into the State Teachers  
48 Retirement System on or after the first day of July, two  
49 thousand eight, are governed by the provisions of article  
50 seven-a of this chapter, subject to the provisions of this  
51 article.

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

60 (1) A member may repay those amounts he or she  
61 previously cashed out or withdrew, along with interest as  
62 determined by the board, and receive the same credit as if the  
63 withdrawal or cash-out never occurred. To receive full credit  
64 for the cashed-out or withdrawn amounts being repaid to the  
65 State Teachers Retirement System, the member also shall pay  
66 the actuarial reserve, or the one and one-half percent  
67 contribution, as the case may be, pursuant to section six of  
68 this article.

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

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

76       (f) Notwithstanding any provision of subsection (e) to the  
77 contrary, if a member has cashed out or withdrawn any of his  
78 or her assets after the last day of June, two thousand three,  
79 and that member chooses to repurchase that service after the  
80 thirtieth day of June, two thousand eight, the member shall  
81 repay the previously distributed amounts and any applicable  
82 interest to the State Teachers Retirement System.

83       (g) Any service in the State Teachers Retirement System  
84 a member has before the date of the transfer is not affected by  
85 the provisions of this article.

86       (h) The board shall take all necessary steps to see that the  
87 voluntary transfers of persons and assets authorized by this  
88 article do not affect the qualified status with the Internal  
89 Revenue Service of either retirement plan.

**§18-7D-6. Service credit in State Teachers Retirement System  
following transfer; conversion of assets;  
adjustments.**

1       (a) Any member who has affirmatively elected to  
2 transfer to the State Teachers Retirement System within the  
3 period provided in section seven of this article whose assets  
4 have been transferred from the Teachers' Defined  
5 Contribution Retirement System to the State Teachers  
6 Retirement System pursuant to the provisions of this article

7 and who has not made any withdrawals or cash-outs from his  
8 or her assets is, depending upon the percentage of actively  
9 contributing members affirmatively electing to transfer,  
10 entitled to service credit in the State Teachers Retirement  
11 System in accordance with the provisions of subsections (c)  
12 or (d) of this section.

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

17 (c) If at least sixty-five percent but less than seventy-five  
18 percent of actively contributing members of the Teachers'  
19 Defined Contribution Retirement System affirmatively elect  
20 to transfer to the State Teachers Retirement System within  
21 the period provided in section seven of this article, for any  
22 member of the Defined Contribution Retirement System who  
23 elects to transfer to the State Teachers Retirement System, his  
24 or her service credit in the State Teachers Retirement System  
25 is determined as follows:

26 (1) For any member affirmatively electing to transfer, the  
27 member's State Teachers Retirement System credit shall be  
28 seventy-five percent of the member's Teachers' Defined  
29 Contribution Retirement System service credit, less any  
30 service previously withdrawn by the member or due to a  
31 qualified domestic relations order and not repaid;

32 (2) To receive full credit in the State Teachers Retirement  
33 System for service in the Teachers' Defined Contribution  
34 Retirement System for which assets are transferred,  
35 transferring members shall have the option to pay into the  
36 State Teachers Retirement System the Actuarial Reserve, as  
37 defined in section two of this article, by no later than the  
38 thirtieth day of June, two thousand nine.

39 (d) If at least seventy-five percent of actively contributing  
40 members of the Teachers' Defined Contribution Retirement  
41 System affirmatively elect to transfer to the State Teachers  
42 Retirement System within the period provided in section  
43 seven of this article, for any member of the Defined  
44 Contribution Retirement System who elects to transfer to the  
45 State Teachers Retirement System, his or her service credit  
46 in the State Teachers Retirement System is determined as  
47 follows:

48 (1) For any member affirmatively electing to transfer, the  
49 member's State Teachers Retirement System credit shall be  
50 seventy-five percent of the member's Teachers' Defined  
51 Contribution Retirement System service credit, less any  
52 service previously withdrawn by the member or due to a  
53 qualified domestic relations order and not repaid;

54 (2) To receive full credit in the State Teachers Retirement  
55 System for service in the Teachers' Defined Contribution  
56 Retirement System for which assets are transferred, members  
57 who affirmatively elected to transfer shall pay into the State  
58 Teachers Retirement System a one and one-half percent  
59 contribution. This contribution shall be calculated as one and  
60 one-half percent of the member's estimated total earnings for  
61 which assets are transferred, plus interest of four percent per  
62 annum accumulated from the date of the member's initial  
63 participation in the Defined Contribution Retirement System.

64 (A) For a member contributing to the Defined  
65 Contribution Retirement System at any time during the two  
66 thousand eight fiscal year and commencing membership in  
67 the State Teachers Retirement System on the first day of July,  
68 two thousand eight:

69 (i) The estimated total earnings shall be calculated based  
70 on the member's salary and the member's age nearest birthday  
71 on the thirtieth day of June, two thousand eight;

72 (ii) This calculation shall apply both an annual backward  
73 salary scale from that date for prior years' salaries and a  
74 forward salary scale for the salary for the two thousand eight  
75 fiscal year.

76 (B) The calculations in paragraph (A) of this subdivision  
77 are based upon the salary scale assumption applied in the  
78 West Virginia Teachers Retirement System Actuarial  
79 Valuation as of the first day of July, two thousand seven,  
80 prepared for the Consolidated Public Retirement Board. This  
81 salary scale shall be applied regardless of breaks in service.

82 (e) All service previously transferred from the State  
83 Teachers Retirement System to the Teachers' Defined  
84 Contribution Retirement System is considered Teachers'  
85 Defined Contribution Retirement System service for the  
86 purposes of this article.

87 (f) Notwithstanding any provision of this code to the  
88 contrary, the retirement of a member who becomes eligible  
89 to retire after the member's assets are transferred to the State  
90 Teachers Retirement System pursuant to the provisions of  
91 this article may not commence prior to the first day of  
92 September, two thousand eight: *Provided*, That the  
93 Consolidated Public Retirement Board may not retire any  
94 member who is eligible to retire during the school year  
95 beginning two thousand eight during the school year two  
96 thousand eight unless the member has provided a written  
97 notice to his or her county board of education by the first day  
98 of July, two thousand eight, of his or her intent to retire.

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

1 (a) The board shall provide the members of the Teachers'  
2 Defined Contribution Retirement System an opportunity to

3 voluntarily execute and deliver to the Consolidated Public  
4 Retirement Board, or its designee, a written document in a  
5 form prescribed by the board that irrevocably authorizes the  
6 board to transfer the member and all the member's assets in  
7 the Teachers' Defined Contribution Retirement System to the  
8 State Teachers Retirement System in accordance with the  
9 provisions of this article.

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

14 (1) The Consolidated Public Retirement Board shall, for  
15 each member who affirmatively elected to transfer as  
16 provided in this section, transfer the assets held in the  
17 Teachers' Defined Contribution Retirement System's Trust  
18 Fund in trust for that member to the State Teachers  
19 Retirement System on the first day of July, two thousand  
20 eight;

21 (2) On the first day of July, two thousand eight, each  
22 member who so elected becomes a member of the State  
23 Teachers Retirement System and after working one or more  
24 hours and contributing to the State Teachers Retirement  
25 System is entitled to the benefits of the State Teachers  
26 Retirement System; and

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

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

35 (d) Any person who has one dollar or more in assets in  
36 the Teachers' Defined Contribution Retirement System on  
37 the last day of December, two thousand seven, may and is  
38 eligible to affirmatively elect to transfer to the State Teachers  
39 Retirement System as provided in this section. For purposes  
40 of this article:

41 (1) The tabulation of the percentage required for transfer  
42 as required in this article shall only include documents  
43 affirmatively electing to transfer submitted under the  
44 provisions of this subsection by those who are actively  
45 contributing members of the Teachers' Defined Contribution  
46 Retirement System as that term is defined in section two of  
47 this article; and

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

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

- 66 (1) Assist in the preparation of educational materials;
- 67 (2) Assist in the educational process;
- 68 (3) Assist in the process for submission of the documents  
69 whereby members may affirmatively elect to transfer; and
- 70 (4) Ensure compliance with all relevant state and federal  
71 laws.
- 72 (f) Due to the time constraints inherent in the initial  
73 processes established for the submission of documents  
74 affirmatively electing to transfer set forth in this article in  
75 specific, and due to the nature of the professional services  
76 required by the Consolidated Public Retirement Board in  
77 general, the provisions of article three, chapter five-a of this  
78 code, do not apply to any materials, contracts for any  
79 actuarial services, investment services, legal services or other  
80 professional services authorized under the provisions of this  
81 article and the provisions of article six, chapter twenty-nine  
82 do not apply to any employment of or contracting for  
83 personnel by the board for the purposes of implementing the  
84 provisions of this article.
- 85 (g) The submission of the documents whereby members  
86 may affirmatively elect to transfer may be held through any  
87 method the board determines is in the best interest of the  
88 members: *Provided*, That for members of the Teachers'  
89 Defined Contribution Retirement System, the submission of  
90 the documents whereby those members elect to transfer shall  
91 be pursuant to the procedure established by the Consolidated  
92 Public Retirement Board set forth in subsection (j) of this  
93 section.
- 94 (h) The period for submission of the documents whereby  
95 members may affirmatively elect to transfer shall begin not

96 later than the first day of April, two thousand eight. The  
97 board shall ascertain the results of the submissions not later  
98 than the last day of May, two thousand eight. The board shall  
99 certify the results of the submissions to the Governor, the  
100 Legislature and the members not later than the fifth day of  
101 June, two thousand eight.

102 (i) The submission period terminates and elections to  
103 transfer may not be accepted from a member after the twelfth  
104 day of May, two thousand eight, subject to the following:

105 (1) If elections to transfer are permitted through the mail,  
106 any submission postmarked later than the twelfth day of May,  
107 two thousand eight, is void and may not be counted;

108 (2) If elections to transfer are delivered to a supervisor on  
109 selection day or on or before the ninth day of May, two  
110 thousand eight, any submission postmarked or deposited with  
111 a commercial carrier later than the thirteenth day of May, two  
112 thousand eight, is void and may not be counted: *Provided*,  
113 That delivery by mail must be by certified mail, return receipt  
114 requested or delivery by commercial courier that requires  
115 written confirmation by the board of delivery;

116 (3) The fifth day of May, two thousand eight, is selection  
117 day upon which each county board and superintendent shall  
118 provide an opportunity in each school within the county for  
119 members of the Teachers' Defined Contribution System to  
120 affirmatively elect to transfer.

121 (j) The Consolidated Public Retirement Board shall  
122 collaborate with the state superintendent, the Chancellor for  
123 Higher Education and the Chancellor for Community and  
124 Technical College Education to establish a procedure  
125 whereby all actively contributing members of the Teachers'  
126 Defined Contribution Retirement System may deliver to the

127 Consolidated Public Retirement Board or its designee the  
128 written document authorizing transfer through a supervisor  
129 at each work site where any contributing member of the  
130 Defined Contribution Retirement System is employed. The  
131 procedure shall include at least the following:

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

141 (2) On and after the sixth day of May, two thousand  
142 eight, but on or before the ninth day of May, two thousand  
143 eight, the supervisor at the work site shall make reasonable  
144 efforts to contact verbally and in writing all actively  
145 contributing members of the Teachers' Defined Contribution  
146 Retirement System employed at the work site that have not  
147 submitted their written documents as of that date to remind  
148 those members of the upcoming deadline for submitting their  
149 written document authorizing transfer: *Provided*, That failure  
150 of the supervisor to make contact with any of those members  
151 shall not be a basis for a cause of action to allow a member  
152 to transfer after the period provided in this section or for any  
153 other cause of action.

154 (3) The supervisor at each work site shall forward all of  
155 the written documents to the Consolidated Public Retirement  
156 Board, or its designee, through certified mail, or delivery by  
157 commercial courier that requires written confirmation by the  
158 board of delivery, no later than the thirteenth day of May,  
159 two thousand eight. The work site supervisor shall inform

160 the Consolidated Public Retirement Board of all of the  
161 written documents received each day so that the board, or its  
162 designee, can record which members of the Teachers'  
163 Defined Contribution Retirement System have submitted  
164 their written documents authorizing transfer pursuant to  
165 subsection (k) of this section.

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

179 (5) The state board, the Chancellor for Higher Education  
180 and the Chancellor for Community and Technical College  
181 Education shall ascertain the names of all work site  
182 supervisors under their jurisdiction and transmit a list of the  
183 names of the work site supervisors to the Consolidated Public  
184 Retirement Board on or before the thirty-first day of March,  
185 two thousand eight.

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

**§18-7D-8. Results considered final.**

1 Every member of the Teachers' Defined Contribution  
2 Retirement System is considered to have made an informed,  
3 educated, knowing and voluntary decision and choice with  
4 respect to the opportunities provided by this article to transfer  
5 membership and assets to the State Teachers Retirement  
6 System. Each member who failed or refused to affirmatively  
7 elect to transfer is also considered to have made an informed,  
8 educated, knowing and voluntary decision and choice with  
9 respect thereto and is bound by the results thereof, except as  
10 may be required by federal law.

**§18-7D-9. Qualified domestic relations orders.**

1 Any transferring member having a qualified domestic  
2 relations order against his or her defined contribution account  
3 is allowed to repurchase service in the State Teachers  
4 Retirement System. The member shall repay any moneys  
5 previously distributed to the alternate payee along with the  
6 interest as set by the board. The member shall repay by the  
7 last day of June, two thousand fourteen. The provisions of  
8 this section are void and of no effect if there is no transfer  
9 from the Teachers' Defined Contribution Retirement System  
10 to the State Teachers Retirement System. An alternate payee  
11 is not, solely as a result of that status, a member of either the  
12 Teachers' Defined Contribution Retirement System or the  
13 State Teachers Retirement System for any purpose under the  
14 provisions of this article and no interest held by the alternate  
15 payee is transferred to the State Teachers Retirement System  
16 pursuant thereto.

**§18-7D-10. Vesting.**

1 Any member who works one hour or more after his or her  
2 assets are transferred to the State Teachers Retirement

3 System pursuant to this article is subject to the vesting  
4 schedule set forth in article seven-a of this chapter: *Provided*,  
5 That if a member is vested under the Teachers' Defined  
6 Contribution Retirement System and his or her last  
7 contribution was not made to the State Teachers Retirement  
8 System, that member is subject to the vesting schedule set  
9 forth in article seven-b of this chapter.

**§18-7D-11. Minimum guarantees.**

1 (a) Any member of the Teachers' Defined Contribution  
2 Retirement System who works one hour or more and who has  
3 made a contribution to the State Teachers Retirement System  
4 after his or her assets are transferred to the State Teachers  
5 Retirement System pursuant to this article, is guaranteed a  
6 minimum benefit equal to his or her member contributions  
7 plus the vested portion of employer contributions made on  
8 his or her behalf to the Teachers' Defined Contribution  
9 Retirement System, plus any earnings thereon, as of the  
10 thirtieth day of June, two thousand eight, as stated by the  
11 board.

12 (b) A member of the Teachers' Defined Contribution  
13 Retirement System who works one hour or more and who has  
14 made contributions to the State Teachers Retirement System  
15 after his or her assets are transferred to the State Teachers  
16 Retirement System, upon eligibility to receive a distribution  
17 under article seven-a of this chapter, shall have at a minimum  
18 the following three options:

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

22 (2) The right to withdraw from the State Teachers  
23 Retirement System and receive his or her member

24 accumulated contributions in the State Teachers Retirement  
25 System, plus refund interest thereon, as set forth in article  
26 seven-a of this chapter; or

27 (3) The right to withdraw and receive his or her member  
28 contributions plus the vested portion of employer  
29 contributions made on his or her behalf to the Teachers'  
30 Defined Contribution Retirement System, plus any earnings  
31 thereon as of the date his or her assets are transferred to the  
32 State Teachers Retirement System pursuant to this article, as  
33 determined by the board pursuant to the vesting provisions of  
34 article seven-a of this chapter. This amount shall be  
35 distributed in a lump sum.

36 (c) Any member of the Teachers' Defined Contribution  
37 Retirement System who does not work one hour or more and  
38 who makes no contribution to the State Teachers Retirement  
39 System after his or her assets are transferred to the State  
40 Teachers Retirement System pursuant to this article, is  
41 guaranteed the receipt of the amount in his or her total vested  
42 account in the Teachers' Defined Contribution Retirement  
43 System on the date of the transfer, plus interest thereon, at  
44 four percent accruing from the date of the transfer. This  
45 amount shall be distributed in a lump sum: *Provided*, That  
46 no benefits may be obtained under this subsection solely by  
47 the reciprocity provisions of sections three, four, and six,  
48 article thirteen, chapter five of this code.

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

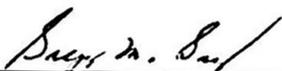
  
\_\_\_\_\_  
Chairman Senate Committee

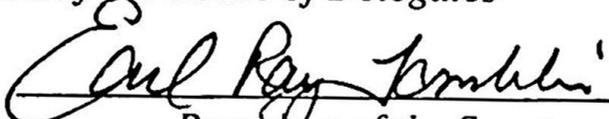
  
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Chairman House Committee

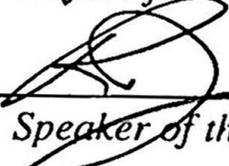
Originating in the House.

In effect from passage.

  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is passed this the 1st  
day of April, 2008.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 26 2008

Time 3:05 pm