ENROLLED

House Bill No. 2800

(By Delegate(s) Pethtel, Jones, Craig, Canterbury, Kump, Lynch and Stowers)
[By Request of the Consolidated Public Retirement Board]

Passed April 2, 2013

In effect ninety days from passage.
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H. B. 2800

(BY DELEGATE(S) PETHTEL, JONES, CRAIG, CANTERBURY, KUMP, LYNCH AND STOWERS)
[BY REQUEST OF THE CONSOLIDATED PUBLIC RETIREMENT BOARD]

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AN ACT to amend and reenact §18-7A-3, §18-7A-14, §18-7A-17, §18-7A-23, §18-7A-25 and §18-7A-26 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §18-7A-14c, all relating to the Teachers’ Retirement System; specifying the time period in which a participating public employer allocates and reports gross salary to the retirement board; including nonteachers within the definition of present member; adding a definition for the terms retire and
retirement; modifying the definition of teacher member; adding a
new section relating to correction of errors; requiring nonteachers
to file a statement with the retirement board detailing the length of
service being claimed for retirement credit; clarifying that
members granted prior service credit for qualified military service
shall have been honorably discharged from active duty; clarifying
provisions for purchasing out of state service credit for members
who transferred from the Teachers’ Defined Contribution
Retirement System; providing that a nonteaching member shall not
be considered absent from service while serving as an officer with
a statewide professional teaching association; requiring that
members make written request to the retirement board to receive
credit for service previously credited by the Public Employees
Retirement System; providing that all interest paid or transferred
on service credit from the Public Employees Retirement System be
deposited in the reserve fund; providing that an inactive member
may elect to receive an annuity at age sixty; providing that the sole
primary beneficiary of a member is eligible for an annuity if the
contributor was fifty years old with twenty-five years service;
providing that a refund beneficiary shall receive the contributor’s
accumulated contributions up to the plan year of contributor's death; providing that a refund beneficiary shall be paid the Teachers' Defined Contribution Retirement System member contributions transferred plus the vested portion of employer contributions and any earnings; providing that an actively contributing member who is at least sixty years of age is eligible for an annuity; providing that any member who has thirty years of total service in the state as a nonteaching member is eligible for an annuity; specifying that anyone who becomes a new member on or after July 1, 2013, shall have five or more years of contributory service to qualify for retirement; providing that a nonteaching member who is fifty-five years of age and has served thirty years in the state is eligible for an annuity; clarifying that a nonteaching member is eligible for disability benefits; clarifying the computation of a member's annuity; providing for the commencement date of disability annuity benefits; and making technical corrections throughout this article.

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

amended and reenacted, and that said code be amended by adding thereonto a new section, designated §18-7A-14c, all to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.


1. As used in this article, unless the context clearly requires 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) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: Provided, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.
(4) "Annuities" means the annual retirement payments for life granted beneficiaries in accordance with this article.

(5) "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: Provided, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code.

(6) "Beneficiary" means the recipient of annuity payments made under the retirement system.

(7) "Contributor" means a member of the retirement system who has an account in the teachers accumulation fund.

(8) "Deposit" means a voluntary payment to his or her account by a member.

(9) "Employer" means the agency of and within the state which has employed or employs a member.
(10) "Employer error" means an omission, misrepresentation or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error.

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

(12) "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 shall be allocated and reported in the fiscal year in which the work was done. Gross salary also includes retroactive payments made to a member to correct a clerical error, or made 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 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 does 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.

(13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

(14) "Member" means any person who has accumulated contributions standing to his or her credit in the state Teachers Retirement System. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of membership pursuant to section thirteen of this article.

(15) "Members of the administrative staff of the public schools" means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

(16) "Members of the extension staff of the public schools" means every agricultural agent, boys' and girls' club agent and
(17) "New entrant" means a teacher who is not a present teacher.

(18) "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; (D) the West Virginia Council for Community and Technical College Education; or (E) a governing board, as defined in section two, article one, chapter eighteen-b of this code:

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 July 1, 1991, is not considered a nonteaching member.

(19) "Plan year" means the twelve-month period commencing on July 1 and ending the following June 30 of any designated year.

(20) "Present member" means a present teacher or nonteacher who is a member of the retirement system.
(21) “Present teacher” means any person who was a teacher within the thirty-five years beginning July 1, 1934, and whose membership in the retirement system is currently active.

(22) “Prior service” means all service as a teacher completed prior to July 1, 1941, 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.

(23) “Public schools” means all publicly supported schools, including colleges and universities in this state.

(24) “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.

(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, 162 CSR 7.

(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 April 1 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) "Retirant" means any member who commences an annuity payable by the retirement system.

(29) "Retirement board" means the Consolidated Public Retirement Board created pursuant to article ten-d, chapter five of this code.

(30) "Retirement system" means the state Teachers Retirement System established by this article.

(31) "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) 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, the State
Department of Education or the State Teachers Retirement
Board, 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, the Division of Health or the
Division of Human Services; (K) an employee of the State Board
of School Finance, if that person was formerly employed as a
teacher in the public schools; and (L) 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 State Teachers Retirement System provided in
this article.
"Total service" means all service as a teacher or nonteacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

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

§18-7A-14. Contributions by members; contributions by employers; correction of errors; forfeitures.

(a) At the end of each month every member of the retirement system shall contribute six percent of that member’s monthly gross salary to the retirement board: Provided, That any member employed by a state institution of higher education shall contribute on the member’s full earnable compensation, unless otherwise provided in section fourteen-a of this article. The sums are due the state Teachers Retirement System at the end of each calendar month in arrears and shall be paid not later than fifteen days following the end of the calendar month. Each remittance shall be accompanied by a detailed summary of the sums withheld from the compensation of each member for that month on forms, either paper or electronic, provided by the State Teachers Retirement System for that purpose.
(b) Annually, the contributions of each member shall be credited to the member’s account in the State Teachers Retirement System Fund. The contributions shall be deducted from the salaries of the members as prescribed in this section and every member shall be considered to have given consent to the deductions. No deductions, however, shall be made from the earnable compensation of any member who retired because of age or service and then resumed service unless as provided in section thirteen-a of this article.

(c) The aggregate of employer contributions, due and payable under this article, shall equal annually the total deductions from the gross salary of members required by this section. Beginning July 1, 1994, the rate shall be seven and one-half percent; beginning on July 1, 1995, the rate shall be nine percent; beginning on July 1, 1996, the rate shall be ten and one-half percent; beginning on July 1, 1997, the rate shall be twelve percent; beginning on July 1, 1998, the rate shall be thirteen and one-half percent; and beginning on July 1, 1999, and thereafter, the rate shall be fifteen percent: Provided, That the rate shall be seven and one-half percent for any individual who becomes a
member of the State Teachers Retirement System for the first time on or after July 1, 2005, or any individual who becomes a member of the State Teachers Retirement System as a result of the voluntary transfer contemplated in article seven-d of this chapter.

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

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

(f) Notwithstanding any other provisions of this article, forfeitures under the retirement system shall not be applied to increase the benefits any member would otherwise receive under the retirement system.

§18-7A-14c. Correction of errors; underpayments; overpayments.

(a) General rule: If any change or employer error in the records of any employer or the retirement system results in any
member, retiree or beneficiary receiving from the plan more or
less than he or she would have been entitled to receive had the
records been correct, the retirement board shall correct the error.
If correction of the error occurs after the effective retirement
date of a retiree, and as far as is practicable, the retirement
board shall adjust the payment of the benefit in a manner that the
actuarial equivalent of the benefit to which the retiree was
correctly entitled shall be paid.

(b) Underpayments: Any error resulting in an underpayment
to the retirement system of required contributions may be
corrected by the member or retiree remitting the required
member contribution and the employer remitting the required
employer contribution. Interest shall accumulate in accordance
with the Legislative Rule 162 CSR 7 concerning retirement
board refund, reinstatement, retroactive service, loan and
employer error interest factors and any accumulating interest
owed on the member and employer contributions resulting from
an employer error shall be the responsibility of the employer.
The employer may remit total payment and the member
reimburse the employer through payroll deduction over a period
23 equivalent to the time period during which the employer error 
24 occurred. If the correction of an error involving an 
25 underpayment of required contributions to the retirement system 
26 will result in increased payments to a retirant, including 
27 increases to payments already made, any adjustments shall be 
28 made only after the retirement board receives full payment of all 
29 required member and employer contributions, including interest. 
30 (c) Overpayments: (1) When mistaken or excess employer 
31 contributions, including any overpayments, have been made to 
32 the retirement system by an employer, due to error or other 
33 reason, the retirement board shall credit the employer with an 
34 amount equal to the erroneous contributions, to be offset against 
35 the employer's future liability for employer contributions to the 
36 retirement system. Earnings or interest shall not be credited to 
37 the employer. 
38 (2) When mistaken or excess member contributions, 
39 including any overpayments, have been made to the retirement 
40 system, due to error or other reason, the retirement board shall 
41 have sole authority for determining the means of return, offset or 
42 credit to or for the benefit of the member of the amounts, and 
43 may use any means authorized or permitted under the provisions
of Section 401(a), et seq. of the Internal Revenue Code and
guidance issued thereunder applicable to governmental plans.
Alternatively, in its full and complete discretion, the retirement
board may require the employer to pay the member the amounts
as wages, with the retirement board crediting the employer with
a corresponding amount to offset against its future contributions
to the retirement system: Provided, That the wages paid to the
member shall not be considered compensation for any purposes
under this article. Earnings or interest shall not be returned,
offset, or credited under any of the means used by the retirement
board for returning mistaken or excess member contributions,
including any overpayments, to a member.
§18-7A-17. Statement and computation of teachers’ service;
qualified military service.
(a) Under rules adopted by the retirement board, each
teacher and nonteaching member shall file a detailed statement
of his or her length of service as a teacher or nonteacher for
which he or she claims credit. The Retirement Board shall
determine what part of a year is the equivalent of a year of
service. In computing the service, however, it shall credit no
period of more than a month’s duration during which a member
was absent without pay, nor shall it credit for more than one year of service performed in any calendar year.

(b) For the purpose of this article, the retirement board shall grant prior service credit to members of the retirement system who were honorably discharged from active duty service in any of the Armed Forces of the United States in any period of national emergency within which a federal Selective Service Act was in effect. For purposes of this section, “Armed Forces” includes Women’s Army Corps, women’s appointed volunteers for emergency service, Army Nurse Corps, SPARS, Women’s Reserve and other similar units officially parts of the military service of the United States. The military service is considered equivalent to public school teaching, and the salary equivalent for each year of that service is the actual salary of the member as a teacher for his or her first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement. Notwithstanding the preceding provisions of this subsection, contributions, benefits and service credit with respect to
qualified military service shall be provided in accordance with
Section 414(u) of the Internal Revenue Code. For purposes of
this section, "qualified military service" has the same meaning
as in Section 414(u) of the Internal Revenue Code. The
Retirement Board is authorized to determine all questions and
make all decisions relating to this section and, pursuant to the
authority granted to the retirement board in section one, article
ten-d, chapter five of this code, may promulgate rules relating to
contributions, benefits and service credit to comply with Section
414(u) of the Internal Revenue Code. No military service credit
may be used in more than one retirement system administered by
the Consolidated Public Retirement Board.

(c) For service as a teacher in the employment of the federal
government, or a state or territory of the United States, or a
governmental subdivision of that state or territory, the retirement
board shall grant credit to the member: Provided, That the
member shall pay to the system twelve percent of that member's
gross salary earned during the first full year of current
employment whether a member of the Teachers' Retirement
System or the Teachers' Defined Contribution Retirement
System, times the number of years for which credit is granted, 
plus interest at a rate to be determined by the retirement board. 
The interest shall be deposited in the reserve fund and service 
credit granted at the time of retirement shall not exceed the 
lesser of ten years or fifty percent of the member's total service 
as a teacher in West Virginia. Any purchase of out-of-state 
service, as provided in this article, shall not be used to establish 
eligibility for a retirement allowance and the retirement board 
shall grant credit for the purchased service as additional service 
only: Provided, however, That a purchase of out-of-state service 
is prohibited if the service is used to obtain a retirement benefit 
from another retirement system: Provided further, That salaries 
paid to members for service prior to entrance into the retirement 
system shall not be used to compute the average final salary of 
the member under the retirement system. 
(d) No members shall be considered absent from service 
while serving as a member or employee of the Legislature of the 
State of West Virginia during any duly constituted session of 
that body or while serving as an elected member of a county 
commission during any duly constituted session of that body.
(e) No member shall be considered absent from service as a teacher or nonteacher while serving as an officer with a statewide professional teaching association, or who has served in that capacity, and no retirant, who served in that capacity while a member, shall be considered to have been absent from service as a teacher by reason of that service: *Provided, That the period of service credit granted for that service shall not exceed ten years: Provided, however, That a member who is serving or has served as an officer of a statewide professional teaching association shall make deposits to the Teachers Retirement System, for the time of any absence, in an amount double the amount which he or she would have contributed in his or her regular assignment for a like period of time.

(f) The Teachers Retirement System shall grant service credit to any former or present member of the West Virginia Public Employees Retirement System who has been a contributing member of the Teachers’ Retirement System for more than three years, for service previously credited by the Public Employees Retirement System upon his or her written request and: (1) Shall require the transfer of the member’s Public
Employees Retirement System accumulated contributions to the Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn from the Public Employees Retirement System, plus interest at a rate to be determined by the retirement board, compounded annually from the date of withdrawal to the date of payment, any time prior to the member's effective retirement date: Provided, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the Teachers Retirement System during the period of his or her membership in the Public Employees Retirement System. All interest paid or transferred shall be deposited in the reserve fund.

(g) For service as a teacher in an elementary or secondary parochial school, located within this state and fully accredited by the West Virginia Department of Education, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system twelve percent of that member's gross salary earned during the first full year of current employment.
whether a member of the Teachers' Retirement System or the Teachers' Defined Contribution Retirement System, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in the West Virginia public school system. Any transfer of parochial school service, as provided in this section, may not be used to establish eligibility for a retirement allowance and retirement board shall grant credit for the transfer as additional service only: Provided, however, That a transfer of parochial school service is prohibited if the service is used to obtain a retirement benefit from another retirement system.

(h) Active members who previously worked in CETA (Comprehensive Employment and Training Act) may receive service credit for time served in that capacity: Provided, That in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from temporary employment with the
participating employer to permanent full-time employment with
the participating employer within one hundred twenty days
following the termination of the member's CETA employment;
(2) the retirement board must receive evidence that establishes to
a reasonable degree of certainty as determined by the retirement
board that the member previously worked in CETA; and (3) the
member shall pay to the retirement board an amount equal to the
employer and employee contribution plus interest at the amount
set by the retirement board for the amount of service credit
sought pursuant to this subsection: Provided, however, That the
maximum service credit that may be obtained under the
provisions of this subsection is two years: Provided further, That
a member must apply and pay for the service credit allowed
under this subsection and provide all necessary documentation
by March 31, 2003: And provided further, That the retirement
board shall exercise due diligence to notify affected employees
of the provisions of this subsection.
(i) If a member is not eligible for prior service credit or
pension as provided in this article, then his or her prior service
shall not be considered a part of his or her total service.
(j) A member who withdrew from membership may regain his or her former membership rights as specified in section thirteen of this article only in case he or she has served two years since his or her last withdrawal.

(k) Subject to the provisions of subsections (a) through (l), inclusive, of this section, the retirement board shall verify as soon as practicable the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible for the certificates under the provisions of this article. The certificates shall state the length of the prior service credit, but in no case shall the prior service credit exceed forty years.

(l) Notwithstanding any provision of this article to the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office require that member to be absent from his or her teaching or administrative duties, the time served in discharge of his or her duties of the legislative office are credited as time served for purposes of computing service credit: Provided, That the retirement board may not require any additional contributions from that member in order for the board
retirement board to credit him or her with the contributing service credit earned while discharging official legislative duties:

Provided, however, That nothing in this section may be construed to relieve the employer from making the employer contribution at the member's regular salary rate or rate of pay from that employer on the contributing service credit earned while the member is discharging his or her official legislative duties. These employer payments shall commence as of June 1, 2000: Provided further, That any member to which the provisions of this subsection apply may elect to pay to the board retirement board an amount equal to what his or her contribution would have been for those periods of time he or she was serving in the Legislature. The periods of time upon which the member paid his or her contribution shall then be included for purposes of determining his or her final average salary as well as for determining years of service: And provided further, That a member using the provisions of this subsection is not required to pay interest on any contributions he or she may decide to make.

(m) The Teachers Retirement System shall grant service credit to any former member of the State Police Death, Disability and Retirement System who has been a contributing member for
more than three years, for service previously credited by the State Police Death, Disability and Retirement System; and: (1) Shall require the transfer of the member's contributions to the Teachers Retirement System; or (2) shall require a repayment of the amount withdrawn any time prior to the member's retirement: Provided, That the member shall add to the amounts transferred or repaid under this paragraph an amount which is sufficient to equal the contributions he or she would have made had the member been under the Teachers Retirement System during the period of his or her membership in the State Police Death, Disability and Retirement System plus interest at a rate to be determined by the board compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.


(a) Benefits upon withdrawal from service prior to retirement under the provisions of this article shall be as follows:

(1) A contributor who withdraws from service for any cause other than death, disability or retirement shall, upon application, be paid his or her accumulated contributions up to the end of the fiscal year preceding the year in which application is made, after
offset of any outstanding loan balance, plus accrued loan
interest, pursuant to section thirty-four of this article, but in no
event shall interest be paid beyond the end of five years
following the year in which the last contribution was made:
Provided, That the contributor, at the time of application, is then
no longer under contract, verbal or otherwise, to serve as a
teacher; or
(2) If the inactive member has completed twenty years of
total service, he or she may elect to receive at age sixty an
annuity which shall be computed as provided in this article:
Provided, That if the inactive member has completed at least
five, but fewer than twenty, years of total service in this state, he
or she may elect to receive at age sixty-two an annuity which
shall be computed as provided in this article. The inactive
member must notify the retirement board in writing concerning
the election. If the inactive member has completed fewer than
five years of service in this state, he or she shall be subject to the
provisions as outlined in subdivision (1) of this subsection.
(b) Benefits upon the death of a contributor prior to
retirement under the provisions of this article shall be paid as
follows:
(1) If the contributor was at least fifty years old and if his or her total service as a teacher or nonteaching member was at least twenty-five years at the time of his or her death, then the surviving spouse of the deceased, provided the spouse is designated as the sole primary refund beneficiary, is eligible for an annuity computed as though the deceased were actually a retirant at the time of death and had selected a survivorship option which pays the spouse the same monthly amount which would have been received by the deceased; or

(2) If the facts do not permit payment under subdivision (1) of this subsection, then the following sum shall be paid to the refund beneficiary of the contributor: (A) The contributor’s accumulated contributions up to the plan year of his or her death plus an amount equal to his or her member contributions. Provided, That the latter sum shall emanate from the Employer’s Accumulation Fund; and (B) the refund beneficiary of any individual who became a member of the retirement system as a result of the voluntary transfer contemplated in article seven-d of this chapter shall also be paid the member contributions plus the vested portion of employer contributions made on his or her
§18-7A-25. Eligibility for retirement allowance.

(a) Any actively contributing member who has attained the age of sixty years or any member who has had thirty-five years of total service as a teacher or nonteaching member in West Virginia, regardless of age, is eligible for an annuity. No new entrant nor present member is eligible for an annuity, however, if either has less than five years of service to his or her credit:

Provided, That on and after July 1, 2013, any person who becomes a new member of this retirement system shall, in qualifying for retirement under this section, have five or more years of contributory service, all of which shall be actual, contributory ones.

(b) Any member who has attained the age of fifty-five years and who has served thirty years as a teacher or nonteaching member in West Virginia is eligible for an annuity.

(c) Any member who has served at least thirty but less than thirty-five years as a teacher or nonteaching member in West Virginia and is less than fifty-five years of age is eligible for an
annuity, but the annuity shall be the reduced actuarial equivalent of the annuity the member would have received if the member were age fifty-five at the time such annuity was applied for.

(d) The request for any annuity shall be made by the member in writing to the retirement board, but in case of retirement for disability, the written request may be made by either the member or the employer.

(e) A member is eligible for annuity for disability if he or she satisfies the conditions in either subdivision (1) or (2) of this subsection and meets the conditions of subdivision (3) of this subsection as follows:

(1) His or her service as a teacher or nonteaching member in West Virginia must total at least ten years and service as a teacher or nonteaching member must have been terminated because of disability, which disability must have caused absence from service for at least six months before his or her application for disability annuity is approved.

(2) His or her service as a teacher or nonteaching member in West Virginia must total at least five years and service as a teacher or nonteaching member must have been terminated
because of disability, which disability must have caused absence from service for at least six months before his or her application for disability annuity is approved and the disability is a direct and total result of an act of student violence directed toward the member.

(3) An examination by a physician or physicians selected by the retirement board must show that the member is at the time mentally or physically incapacitated for service as a teacher or nonteaching member, that for that service the disability is total and likely to be permanent and that he or she should be retired in consequence of the disability.

(f) Continuance of the disability of the retirant shall be established by medical examination, as prescribed in subdivision (3), subsection (e) of this section, annually for five years after retirement, and thereafter at such times required by the retirement board. Effective July 1, 1998, a member who has retired because of a disability may select an option of payment under the provisions of section twenty-eight of this article:

Provided, That any option selected under the provisions of section twenty-eight of this article shall be in all respects the
actuarial equivalent of the straight life annuity benefit the
disability retirant receives or would receive if the options under
said section were not available and that no beneficiary or
beneficiaries of the disability retirant may receive a greater
benefit, nor receive any benefit for a greater length of time, than
the beneficiary or beneficiaries would have received had the
disability retirant not made any election of the options available
under said section. In determining the actuarial equivalence, the
retirement board shall take into account the life expectancies of
the member and the beneficiary: Provided, however, That the life
expectancies may at the discretion of the retirement board be
established by an underwriting medical director of a competent
insurance company offering annuities. Payment of the disability
annuity provided in this article shall cease immediately if the
retirement board finds that the disability of the retirant no longer
exists, or if retirant refuses to submit to medical examination as
required by this section.


(a) Retirants whose annuities were approved by the
retirement board effective before July 1, 1980, shall be paid the
annuities which were approved by the retirement board.
(b) Annuities approved by the retirement board effective after June 30, 1980, shall be computed as provided in this section.

(c) Upon establishment of eligibility for a retirement allowance, a member shall be granted an annuity which shall be two percent of the member’s average salary multiplied by his or her total service credit, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section twenty-eight-a of this article.

In this subsection “average salary” means the average of the highest annual salaries received by the member during any five plan years contained within his or her last fifteen years of total service credit: Provided, That the highest annual salary used in this calculation for certain members employed by the West Virginia Higher Education Policy Commission under its control shall be $4,800, as provided by section fourteen-a of this article.

(d) The disability annuities of disabled retirants shall be based upon a disability table prepared by a competent actuary approved by the retirement board. Disability annuity benefits
will begin the first day of the month following the latter of: (1)
Six months of absence caused by said disability; (2) date of
written report by physician selected by retirement board stating
member is mentally or physically incapacitated for service and
that disability is total and likely to be permanent; and (3)
termination of employment.

(e) Upon the death of a retirant who qualified for an annuity
as the surviving spouse of an active member or because of
permanent disability, the estate of the deceased or beneficiary
designated for such purpose shall be paid the difference, if any,
between the member’s contributions with regular interest
thereon, and the sum of the annuity payments. Upon the death of
a spouse who was named as the member’s survivor, a retirant
may elect an annuity option approved by the retirement board in
an amount adjusted on a fair basis to be of equal actuarial value
as the annuity prospectively in effect relative to the surviving
member at the time the new option is elected.

(f) All annuities shall be paid in twelve monthly payments.

In computing the monthly payments, fractions of a cent shall be
considered a cent. The monthly payments shall cease with the
payment for the month within which the beneficiary dies, and shall begin with the payment for the month succeeding the month within which the retirant became eligible under this article for the annuity granted; in no case, however, a retirant receive more than four monthly payments which are retroactive after the retirement board receives his or her application for annuity. The monthly payments shall be made on the twenty-fifth day of each month, except the month of December, when the payment shall be made on December 18. If the date of payment falls on a holiday, Saturday or Sunday, then the payment shall be made on the preceding workday.

(g) In case the retirement board receives data affecting the approved annuity of a retirant, the annuity shall be changed in accordance with the data, the change being effective with the payment for the month within which the retirement board received the new data.

(h) Any person who has attained the age of sixty-five and who has served at least twenty-five years as a teacher or nonteacher prior to July 1, 1941, is eligible for prior service credit and for prior service pensions as prescribed in this section.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 19th day of April, 2013.

Governor
PRESENTED TO THE GOVERNOR

APR 17 2013

Time 11:24 am