WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 430
(Senators Jenkins and McCabe, original sponsors)

[Passed April 8, 2013; in effect ninety days from passage.]
AN ACT to amend and reenact §18-7B-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18-7B-21, all relating to the Teachers' Defined Contribution Retirement System; adding a definition of employment term; and providing for correction of errors by participating public employers and the Consolidated Public Retirement Board.

Be it enacted by the Legislature of West Virginia:

That §18-7B-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18-7B-21, all to read as follows:

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:
(1) "Annual addition" means, for purposes of the limitations under Section 415(c) of the Internal Revenue Code, the sum credited to a member's account for any limitation year of: (A) Employer contributions; (B) employee contributions; and (C) forfeitures. Repayment of cashouts or contributions as described in Section 415(k)(3) of the Internal Revenue Code, rollover contributions and picked-up employee contributions to a defined benefit plan shall not be treated as annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-1;

(2) "Annuity account" or "annuity" means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends or other accumulations credited on behalf of the member;

(3) "Compensation" means the full compensation actually received by members for service whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions: Provided, That annual compensation for determining contributions 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: Provided, however, That solely for purposes of applying the limitations of Section 415 of the Internal Revenue Code to any annual addition, "compensation" has the meaning given it in subsection (d), section thirteen of this article;

(4) "Consolidated board" or "board" means the Consolidated Public Retirement Board created and established pursuant to article ten-d, chapter five of this code;
"Defined contribution system" or "system" means the Teachers' Defined Contribution Retirement System created and established by this article;

"Employer" means the agency of and within the State of West Virginia which has employed or employs a member;

"Employer contribution" means an amount deposited into the member's individual annuity account on a periodic basis coinciding with the employee's regular pay period by an employer from its own funds;

"Employment term" means employment for at least ten months in any plan year with a month being defined as twenty employment days;

"Existing employer" means any employer who employed or employs a member of the system;

"Existing retirement system" means the State Teachers' Retirement System established in article seven-a of this chapter;

"Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended;

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

(13) "Member contribution" means an amount reduced
from the employee's regular pay periods, and deposited into
the member's individual annuity account within the
Teachers' Defined Contribution Retirement System;

(14) "Permanent, total disability" means a mental or
physical incapacity requiring absence from employment
service for at least six months: Provided, That the incapacity
is shown by an examination by a physician or physicians
selected by the board: Provided, however, That for employees
hired on or after July 1, 2005, "permanent, total disability"
means an inability to engage in substantial gainful activity by
reason of any medically determinable physical or mental
impairment that can be expected to result in death, or has
lasted or can be expected to last for a continuous period of
not less than twelve months and the incapacity is so severe
that the member is likely to be permanently unable to perform
the duties of the position the member occupied immediately
prior to his or her disabling injury or illness;

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

(16) "Public schools" means all publicly supported
schools, including normal schools, colleges and universities
in this state;

(17) "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;

(18) "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
otherwise ceases employment with a participating employer
after having attained the age of seventy and one-half years;

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

(20) "Year of employment service" means employment
for at least ten months, with a month being defined as twenty
employment days: Provided, That no more than one year of
service may be accumulated in any twelve-month period.
§18-7B-21. Correction of errors; underpayments; overpayments.

(a) General rule. — If any change or employer error in the records of any existing employer or the retirement system results in a member, retirant or beneficiary receiving from the system more or less than he or she would have been entitled to receive had the records been correct, the board shall correct the error. If correction of the error occurs after retirement, the board shall adjust the payment of the benefit in an amount computed by the board to which the retirant was correctly entitled.

(b) Underpayments. — Any error resulting in an underpayment to the retirement system of required contributions may be corrected by the member or retirant remitting the required employee contribution and the existing employer remitting the required employer contribution. Interest accumulates in accordance with the board’s Rule, Refund, Reinstatement, Retroactive Service, Loan and Employer Error Interest Factors, 162 CSR 7, and any accumulating interest owed on the employee and employer contributions resulting from an employer error is the responsibility of the participating public employer. The existing employer may remit total payment and the employee may reimburse the existing employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment of required contributions to the retirement system will result in increased payments to a retirant, including increases to payments already made, any adjustments may be made only after the board receives full payment of all required employee and employer contributions, including interest.
(c) **Overpayments.** — (1) When mistaken or excess employer contributions, including any overpayments, have been made to the retirement system by an existing employer, due to error or other reason, the board shall credit the existing employer with an amount computed by the board, to be offset against the existing employer's future liability for employer contributions to the system.

(2) When mistaken or excess employee contributions, including any overpayments, have been made to the retirement system, due to error or other reason, the board has sole authority for determining the means of return, offset or credit to or for the benefit of the employee of the amounts, and 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 board may require the existing employer to pay the employee the amounts as wages, with the board crediting the existing employer with an amount to offset against its future contributions to the plan: **Provided,** That the wages paid to the employee are not considered compensation for any purposes under this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days 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 approved... this the 18th Day of April, 2013.

Governor
PRESENTED TO THE GOVERNOR

APR 15 2013

Time 4:10 pm