SB 26

WEST VIRGINIA LEGISLATURE
2019 REGULAR SESSION

Enrolled
Committee Substitute
for
Senate Bill 26

SENATOR BLAIR, original sponsor

[Passed February 25, 2019; in effect 90 days from passage]
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Committee Substitute for

Senate Bill 26

SENIOR BLAIR, original sponsor

[Passed February 25, 2019; in effect 90 days from passage]
AN ACT to amend and reenact §18-7A-3 of the Code of West Virginia, 1931, as amended; and
to amend and reenact §18-7B-2 of said code, all relating to permitting full-time employees
of educational services cooperatives to participate in the State Teachers Retirement
System; and permitting full-time employees of educational services cooperatives to
participate in the State Teachers’ Defined Contribution Retirement System.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.


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

“Accumulated contributions” means all deposits and all deductions from the gross salary
of a contributor plus regular interest.

“Accumulated net benefit” means the aggregate amount of all benefits paid to or on behalf
of a retired member.

“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.

“Annuities” means the annual retirement payments for life granted beneficiaries in
accordance with this article.

“Average final salary” means the average of the five highest fiscal year salaries earned as
a member within the last 15 fiscal years of total service credit, including military service as
provided in this article, or if total service is less than 15 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 §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

“Beneficiary” means the recipient of annuity payments made under the retirement system.

“Contributor” means a member of the retirement system who has an account in the Teachers Accumulation Fund.

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

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

“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.

“Employment term” means employment for at least 10 months, a month being defined as 20 employment days.

“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.

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

“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 §18-7A-13 of this code.

“Members of the administrative staff of the public schools” means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

“Members of the extension staff of the public schools” means every agricultural agent, boys and girls club agent, and every member of the agricultural extension staff whose work is not primarily stenographic, clerical, or secretarial.

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

“Nonteaching member” means any person, except a teacher member, who is regularly employed for full-time service by: (A) Any county board of education or educational services cooperative; (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 §18B-1-2 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.

“Plan year” means the 12-month period commencing on July 1 and ending the following June 30 of any designated year.

“Present member” means a present teacher or nonteacher who is a member of the retirement system.
“Present teacher” means any person who was a teacher within the 35 years beginning July 1, 1934, and whose membership in the retirement system is currently active.

“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.

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

“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.

“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.

“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.

“Required beginning date” means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70 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 70 and one-half years.

“Retirant” means any member who commences an annuity payable by the retirement system.

“Retirement board” means the Consolidated Public Retirement Board created pursuant to §5-10D-1 et seq. of this code.

“Retirement system” means the State Teachers Retirement System established by this article.
“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; (L) employees of an educational services cooperative who are performing services of an educational nature; and (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 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 70 years shall be considered to be 70 years.

ARTICLE 7B. TEACHERS’ DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

As used in this article, unless the context clearly requires a different meaning:
“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 cash-outs 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 may not be treated as annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-1.

“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.

“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 §5-100-7 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 §18-7B-13d of this code.

“Consolidated board” or “board” means the Consolidated Public Retirement Board created and established pursuant to §5-100-1 et seq. 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 10 months in any plan year with a month being defined as 20 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 §18-7A-1 et seq. of this code.

“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, educational services cooperative, 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 §18A-3-11 of this code who elects to remain a member of the Teachers’ Defined Contribution Retirement System established by this article.

“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.

“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 12 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.

“Plan year” means the 12-month period commencing on July 1 of any designated year and ending on the following June 30.

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

“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.

“Required beginning date” means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70 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 70 and one-half years.

“Retirement” means a member’s withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement.
“Year of employment service” means employment for at least ten months, with a month being defined as 20 employment days: *Provided,* That no more than one year of service may be accumulated in any 12-month period.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, Senate Committee

Originated in the Senate.

In effect 90 days from passage.

Chairman, House Committee

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 1st Day of March 2019.

Governor
PRESENTED TO THE GOVERNOR

MAR 01 2019

Time 10:00 AM