

West Virginia Code

Article 7B. Teachers Defined Contribution Retirement System.

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Code of State Rules References. General provisions, 162 CSR 1, effective July 1, 2001.

18-7B-1. Short title.

This article shall be known and may be cited as the Teachers Retirement Reform Act.

History. 1990, 3rd Ex. Sess., c. 8.

Cited in West Virginia Consol. Pub. Retirement Bd. v. Carter, 219 W. Va. 392, 633 S.E.2d 521, 2006 W. Va. LEXIS 50 (2006).

18-7B-2. Definitions.

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

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

(2) Existing retirement system means the State Teachers' Retirement System established in article seven-a [18-7A-1 et seq.] of this chapter;

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

(4) Consolidated board or board means the Consolidated Public Retirement Board created and established pursuant to article ten-d [5-10D-1 et seq.], chapter five of this code;

(5) Member or employee means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (H) employees of the state Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the state Board of Education, any county board of education or the state Department of Education if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections and the Department of Health and Human Resources; (K) any person who is regularly employed for full-time service by any county board of education or the state Board of Education; (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; and (M) any person designated as a 21st Century Learner Fellow pursuant to section eleven [18A-3-

11], article three, chapter eighteen-a of this code who elects to remain a member of the Teachers' Defined Contribution System established by this article;

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

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

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

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

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

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

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

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

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

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

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

(17) Required beginning date means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy-one and one-half

years; or (b) the calendar year in which the member retires or otherwise ceases employment with a participating employer after having attained the age of seventy and one-half years; and

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

History. 1990, 3rd Ex. Sess., c. 8; 2000, c. 204; 2002, c. 261; 2005, c. 201; 2007, c. 85.

Effect of amendment of 2002. Acts 2002, c. 261, effective June 7, 2002, in (5), substituted under the state superintendent for thereunder following any other employee, division of corrections for department of corrections, and department of health and human resources for department of health or the department of human services; and made minor stylistic changes.

Effect of amendment of 2005. Acts 2005, c. 201, effective April 9, 2005, substituted require for requires in the introductory language; in (5), deleted subdivision (f), pertaining to the executive secretary of the retirement board, redesignated former subdivisions (g) through (m) as (F) through (L), deleted teacher's retirement board preceding if in (I), and deleted or the teachers retirement board following State Board of Education in (K); substituted State of West Virginia for state in (8); in (15), deleted the preceding absence, and added the second proviso; in (17), substituted age seventy-one and one-half years for age seventy-one and one-half and inserted after having attained the age of seventy and one-half years; and made minor stylistic changes.

Effect of amendment of 2007. Acts 2007, c. 85, effective July 1, 2007, substituted clearly requires for clearly require in the introductory language; and added (5)(M).

Editor's notes. The Internal Revenue Code of 1986 is codified generally at 26 USCS 1 et seq.

A.L.R. references.

Services included in computing period of service for purpose of teachers seniority, salary, tenure, or retirement benefits. 56 A.L.R.5th 493.

18-7B-3. Defined contribution retirement system created and established; body corporate.

The Teachers Defined Contribution Retirement System is hereby created and established to provide for the secure, fair and orderly retirement of the teachers and related personnel of the state. The defined contribution retirement system shall constitute a body corporate and all business of the system shall be transacted in the name of the Teachers Defined Contribution Retirement System.

History. 1990, 3rd Ex. Sess., c. 8.

18-7B-4. Article to be liberally construed; purpose; federal qualification requirements.

The provisions of this article shall be liberally construed so as to provide a general annuity based retirement system for teachers in this State. The purpose of this article is to provide a defined contribution retirement program which is fully funded on a current basis from employer and employee contribution.

The retirement system is intended to meet the federal qualification requirements of Section 401(a) and related sections of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the retirement system to fulfill this intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article referencing or relating to these federal qualification requirements shall be

effective as of the date required by federal law. The board may promulgate rules and amend or repeal conflicting rules in accordance with the authority granted to the board pursuant to section one [5-10D-1], article ten-d, chapter five of this code to assure compliance with the requirements of this section.

History. 1990, 3rd Ex. Sess., c. 8; 2000, c. 204.

Editor's notes. Section 401(a) of the Internal Revenue Code, referred to in this section, is codified at 26 USCS 401(a).

18-7B-5. Administration of the teachers defined contribution retirement system.

The Consolidated Public Retirement Board created pursuant to article ten-d [5-10D-1 et seq.], chapter five of this code shall administer the Teachers Defined Contribution Retirement System. The board may sue and be sued, contract and be contracted with and conduct all the business of the defined contribution system in the name of the Teachers Defined Contribution Retirement System.

History. 1990, 3rd Ex. Sess., c. 8.

18-7B-6. Powers and duties of the consolidated board in the administration of the defined contribution system.

The board has all powers necessary to effectuate the purposes of this article. The board shall contract with a private pension, insurance, annuity, mutual fund or other qualified company or companies to administer the day-to-day operations of the system. In selecting such company or companies the board shall take into account as its highest duty, the proper safeguard and protection of the member and employer contributions and the interest dividends, or other return thereon. The board shall promulgate rules regarding the proper investment of funds notwithstanding the provisions of article six [12-6-1 et seq.], chapter twelve of this code.

History. 1990, 3rd Ex. Sess., c. 8.

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

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

(b) Members of the existing Teachers Retirement System whose employment continues beyond the first day of July, one thousand nine hundred ninety-one, and those whose employment was terminated after the thirtieth day of June, one thousand nine hundred ninety-one, under a reduction in force are not affected by subsection (a) of this section and shall continue to contribute to and participate in the existing Teachers Retirement System without a change in plan provisions or benefits.

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

(d) Any person who was, prior to the first day of July, one thousand nine hundred ninety-one, a member of the existing Teachers Retirement System who left participating employment before the creation of the Teachers' Defined Contribution Retirement System on the first day of July, one thousand nine hundred ninety-one, and who later returned to participating employment after that date and who was precluded from returning to the existing Teachers Retirement System as a result of prior provisions of this section, may become a member of the Teachers Retirement System upon meeting the requirements provided in article seven-d [18-7D-1 et seq.] of this chapter.

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

(f) An employee whose employment with an employer or an existing employer is suspended as a result of an approved leave of absence, approved maternity or paternity break in service or any other approved break in service authorized by the board is eligible for readmission to the existing retirement system in which he or she was a member.

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

(h) Any individual who is not a member or employee as defined by section two [18-7B-2] of this article and any individual who is a leased employee is not eligible to participate in the Teachers' Defined Contribution Retirement System. For purposes of this section, a leased employee means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. In all cases in which a question exists as to whether an individual is eligible for membership in this system, the Consolidated Public Retirement Board shall decide the question.

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

(j) River Valley Child Development Services, Inc., and its successors in interest shall provide for their employees a pension plan in lieu of the Teachers' Defined Contribution Retirement System on or before the first day of July, two thousand five, and continuing thereafter during the existence of the River Valley Child Development Services, Inc., and its successors in interest. All new employees hired after the thirtieth day of June, two thousand five, shall participate in the pension plan in lieu of the Teachers' Defined Contribution Retirement System.

(k) The administrative body of River Valley Child Development Services, Inc., shall, on or before the first day of June, two thousand five, give written notice to each employee who is a

member of the Teachers' Defined Contribution Retirement System of the option to withdraw from or remain in the system. The notice shall include a copy of this section and a statement explaining the member's options regarding membership. The notice shall include a statement in plain language giving a full explanation and actuarial projection figures, prepared by an independent actuary, in support of the explanation regarding the individual member's current account balance, vested and nonvested, and his or her projected return upon remaining in the Teacher's Defined Contribution Retirement System until retirement, disability or death, in comparison with the projected return upon withdrawing from the Teachers' Defined Contribution Retirement System and joining a private pension plan provided by River Valley Child Development Center, Inc., and remaining therein until retirement, disability or death. The administrative body shall keep in its records a permanent record of each employee's signature confirming receipt of the notice.

History. 1990, 3rd Ex. Sess., c. 8; 1992, c. 211; 1994, c. 49; 1995, c. 230; 2000, c. 204; 2001, c. 260; 2005, c. 201; 2008, 1st Ex. Sess., c. 7.

Effect of amendment of 2005. Acts 2005, c. 201, effective April 9, 2005, substituted provided in for provided for in throughout; added and all new employees shall be required to participate at the end of the first sentence in (a); in (d), substituted a person making the election for persons making the election throughout, and substituted person who, while a member for person who, while members in the last proviso; added (i) through (k); and made minor stylistic changes.

Effect of amendment of 2008. Acts 2008, 1st Ex. Sess., c. 7, effective March 16, 2008, in (c), substituted Teachers Defined Contribution Retirement System for Defined Contribution System, substituted returns to participating for returned to participating, and substituted shall return to the existing Teachers Retirement System for has the right to elect to return to the existing Teachers Retirement System or to elect to participate in the Defined Contribution System. The election shall be made at the time of his or her reemployment, is irrevocable and shall be made upon forms approved by and filed with the West Virginia Consolidated Public Retirement Board; and, in (d), substituted may become a member of the Teachers Retirement System upon meeting the requirements provided in article seven-d of this chapter for may elect, pursuant to the provisions of this section, readmission to the existing Teachers Retirement System, deleted the two former provisos at the end, and deleted the former last two sentences.

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

The retirement system created and established in this article shall be closed and no new members accepted in the system after the thirtieth day of June, two thousand five. Notwithstanding the provisions of sections seven [18-7B-7] and eight [18-7B-8] of this article, all persons who are regularly employed for full-time service as a member or an employee whose initial employment commences after the thirtieth day of June, two thousand five, shall become a member of the State Teachers' Retirement System created and established in article seven-a [18-7A-1 et seq.] of this chapter: Provided, That any person rehired after the thirtieth day of June, two thousand five, shall become a member of the Teachers' Defined Contribution Retirement System created and established in this article, or of the Teachers Retirement System created and established in article seven-a of this chapter, depending upon which system he or she last contributed to while he or she was employed with an employer mandating membership and contributions to one of those plans: Provided, however, That a rehired person who thereby becomes a member of the Teachers' Defined Contribution Retirement System may become a member of the Teachers Retirement System within the applicable time periods and upon meeting

the requirements provided in article seven-d [18-7D-1 et seq.] of this chapter: Provided further, That any person rehired after the thirty-first day of December, two thousand seven, who did not have at least one dollar in the Teachers Defined Contribution Retirement System on the thirty-first day of December, two thousand seven, and for whom the Teachers Defined Contribution Retirement System was the system to which he or she last contributed while employed by an employer who required membership and contributions to one of the two teachers retirement plans, shall, within ten days of returning to employment, affirmatively choose to reenter the Teachers Defined Contribution Retirement System or to become a contributing member of the Teachers Retirement System. Those rehired prior to the first day of July, two thousand eight, and who did not have at least one dollar in the Teachers Defined Contribution Retirement System on the thirty-first day of December, two thousand seven, as determined by the Consolidated Public Retirement Board, shall be permitted to voluntarily elect to transfer effective the first day of August, two thousand eight, upon written request to the Consolidated Public Retirement Board received no later than the fifteenth day of July, two thousand eight.

History. 2005, c. 201; 2008, 1st Ex. Sess., c. 7; 2008, 2nd Ex. Sess., c. 19.

Effect of amendment of 2008. Acts 2008, 1st Ex. Sess., c. 7, effective March 16, 2008, rewrote the proviso at the end of the last sentence which read: Provided, however, That if, and only if, the Teachers' Defined Contribution Retirement System is merged and consolidated with the Teachers Retirement System pursuant to the provisions of article seven-c of this chapter, then all employees shall be a member of the Teachers Retirement System as of the first day of July, two thousand six, as provided in article seven-c of this chapter.

Acts 2008, 2nd Ex. Sess., c. 19, effective June 25, 2008, added the last proviso at the end of the second sentence and added the third sentence.

Effective dates. Acts 2005, c. 201, provided that the act take effect April 9, 2005.

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

(1) Any employee who is a member of the existing retirement system may, upon written election, voluntarily elect membership in the Teachers' Defined Contribution Retirement System, on a prospective basis, on or after the first day of July, one thousand nine hundred ninety-one. All benefits earned by any employee making a voluntary election under the existing retirement system prior to the voluntary election shall be frozen and made available to that employee upon retirement as provided by the existing retirement system. A member of the existing retirement system who has less than five years of contributing service in the existing retirement system may elect to withdraw his or her contribution plus interest thereon as if the member is terminating employment and upon withdrawal shall deposit the funds in the defined contribution system: Provided, That the member's years of contributing service in the existing system shall be applied toward the years of employment service required under section eleven [18-7B-11] of this article: Provided, however, That this election is allowed on a retroactive basis to the first day of July, one thousand nine hundred ninety-one. For the purposes of this section, frozen means that the member's salary, years of service and any other factor to determine benefits shall be calculated as of the date that the member elected membership in the defined contribution system and after that date no increase in salary, years of service or any other factor may be used to increase the retirement benefit above that which it would be if a person retired upon the date that the election is made. After having made the election, the employee may not change such election or again become a member of the existing retirement system.

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

History. 1990, 3rd Ex. Sess., c. 8; 1992, c. 211; 2008, 1st Ex. Sess., c. 7.

Effect of amendment of 2008. Acts 2008, 1st Ex. Sess., c. 7, effective March 16, 2008, substituted Teachers Defined Contribution Retirement System for defined contribution system in (1); added (2); and made minor stylistic changes.

18-7B-8a. Qualified military service.

Contributions, benefits and service credit with respect to qualified military service will 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 [5-10D-1], 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.

History. 2000, c. 204.

Editor's notes. Section 414(u) of the Internal Revenue Code, referred to in this section, is codified at 26 USCS 414(u).

18-7B-9. Members' contributions; annuity account established.

(a) Each employee who is a member of the defined contribution system shall contribute four and one-half percent of his or her gross compensation by salary deduction. The salary deductions shall be made by the employer and shall be paid to the Teachers' Defined Contribution Retirement System within fifteen days of the end of the pay period: Provided, That the board may require any employer to make the payments within such shorter period as it may determine, upon at least sixty days notice to the employer, if the board determines the employer has the technological capacity to transfer the funds within the shorter period. The employer payments shall be remitted by the board within five working days to the private pension, insurance, annuity, mutual fund, or other qualified company or companies designated by the board to administer the day-to-day operations of the system.

(b) All member contributions shall be immediately deposited to an account or accounts established in the name of the member and held in trust for the benefit of the member. An account agreement shall be issued to each member setting forth the terms and conditions under which contributions are received, and the investment and retirement options available to the member. The board shall propose for legislative approval in accordance with article three [29A-3-1 et seq.], chapter twenty-nine-a of this code, pursuant to section six [18-7B-6] of this article, rules defining the minimum requirements for the investment and retirement options to be provided to the members.

(c) The legislative rules proposed by the board, to the extent not inconsistent with the applicable provisions of the Internal Revenue Code of the United States, shall provide for varied retirement options including, but not limited to:

- (1) Lump sum or periodic payment distributions;
- (2) Joint and survivor annuities;
- (3) Other annuity forms in the discretion of the board;

(4) Variable annuities which gradually increase monthly retirement payments: Provided, That said increased payments are funded solely by the existing current value of the member's account at the time the member's retirement payments commence and not, to any extent, in a manner which would require additional employer or employee contributions to any member's account after retirement or after the cessation of employment; and

(5) The instances in which, if any, distributions or loans can be made to members from their annuity account balances prior to having attained the age of fifty-five.

History. 1990, 3rd Ex. Sess., c. 8; 1995, c. 230; 2005, c. 201.

Effect of amendment of 2005. Acts 2005, c. 201, effective April 9, 2005, deleted the former third paragraph pertaining to a feasibility study of employees making personal contributions to the defined contribution system; in (a), substituted salary deduction for salary reduction at the end of the first sentence, and rewrote the remainder of the subsection; substituted propose for legislative approval in accordance with article three, chapter twenty-nine-a of this code for promulgate by the thirtieth day of June, one thousand nine hundred ninety-one in the last sentence of (b); substituted The legislative rules proposed by the Board for Such rules at the beginning of the introductory language in (c); inserted or periodic payment in (c)(1); substituted commence for commencement in (c)(4); and made minor stylistic changes.

18-7B-10. Employer contributions.

Each participating employer shall annually make a contribution equal to seven and one-half percent of each members gross compensation. The pro rata share of this amount shall be paid upon each date that a member contribution is made and shall be remitted as provided for in section nine [18-7B-9] of this article for credit to the members annuity account. Each participating employer has a fiduciary duty to its employees to ensure that the employer contributions are timely made. In the case of an officer or employee of the State, any unpaid contribution shall be a state debt, contracted as a result of a casual deficit in state revenues, to be accorded preferred status over other expenditures.

In the event that any payment is not timely made, the participating employer shall immediately give to the employee and the State Auditor notice in writing of the nonpayment, in such form and accompanied by such documentation as may be required by the Auditor. Notice to the Auditor shall operate in the manner of a requisition, and the Auditor shall transmit a warrant to the Treasurer. At such time as funds are available in the appropriate account, the Treasurer shall pay the employer contribution, together with appropriate daily interest.

History. 1990, 3rd Ex. Sess., c. 8; 1993, 1st Ex. Sess., c. 8; 1994, 1st Ex. Sess., c. 24.

18-7B-11. Termination of membership.

(a) Any member whose employment with a participating employer terminates after the completion of six complete years of employment service is eligible to terminate his or her annuity account and receive a distribution from the member's annuity account, in an amount equal to the member's contribution plus one third of the employer contributions and any earnings thereon. Any member whose employment with a participating employer terminates after the completion of nine complete years of employment service is eligible to terminate his or her annuity account and receive a distribution from the member's annuity account, in an amount equal to the member's contribution plus two thirds of the employer's contributions and any earnings thereon. Any member whose employment with a participating employer terminates after the completion of twelve complete years of employment service is eligible to terminate his or her annuity account and receive a distribution of all funds contributed and accumulated in his or her annuity account. Any member whose employment with a participating employer terminates prior to the completion of six complete years of employment service is eligible to terminate his or her annuity account and receive a distribution from the member's annuity account, in an amount equal to the member's contribution plus any earnings thereon: Provided, That on the death or permanent, total disability of any member, that member is eligible to terminate his or her annuity account and receive all funds contributed to or accumulated in his or her annuity account.

(b) (1) Upon termination of employment, regardless of whether the member has taken a distribution of all or a portion of his or her vested account, the remaining balance, if any, in the member's employer account that is not vested shall be remitted and paid into a suspension account to be administered by the board. The board shall propose rules for legislative approval in accordance with article three [29A-3-1 et seq.], chapter twenty-nine-a of this code regarding the distribution of any balance in the special account created by this section: Provided, That any funds in the account shall be used solely for the purpose of reducing employer contributions in future years.

(2) Any account balances remitted to the suspension account herein shall be maintained by the board in the suspension account in the name of the terminated employee for a period of five years following the member's termination of employment. For each terminated employee at the culmination of the five-year period, the board shall certify in writing to each contributing employer the amount of the account balance plus earnings thereon attributable to each separate contributing employer's previously terminated employee's account which has been irrevocably forfeited due to the elapse of a five-year period since termination pursuant to section sixteen [18-7B-16] of this article.

(c) Upon certification to the several contributing employers of the aggregate account balances plus earnings thereon which have been irrevocably forfeited pursuant to this section, the several contributing employers shall be permitted in the next succeeding fiscal year or years to reduce their total aggregate contribution requirements pursuant to section seventeen [18-7B-17] of this article, for the then current fiscal year by an amount equal to the aggregate amounts irrevocably forfeited and certified as such to each contributing employer: Provided, That should the participating employer no longer be contributing to the defined contribution system, any funds in the account shall be paid directly to the employer.

(d) Upon the use of the amounts irrevocably forfeited to any contributing employer as a reduction in the then current fiscal year contribution obligation and upon notification provided by the several contributing employers to the board of their intention to use irrevocably forfeited amounts, the board shall direct the distribution of the irrevocably forfeited amounts from the

suspension account to be deposited on behalf of the contributing employer to the member annuity accounts of its then current employees pursuant to section seventeen [18-7B-17] of this article: Provided, That 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 requires that member to be absent from his or her teaching, nonteaching 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, regardless when this time was served: Provided, however, That the board may not require any additional contributions from that member in order for the board to credit him or her with the contributing service credit earned while discharging official legislative duties: Provided further, That nothing herein 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 the first day of July, two thousand three: And provided further, That any member to which the provisions of this subsection apply may elect to pay to the 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.

History. 1990, 3rd Ex. Sess., c. 8; 2003, c. 194; 2005, c. 201.

Effect of amendment of 2003. Acts 2003, c. 194, effective March 8, 2003, added the final paragraph.

Effect of amendment of 2005. Acts 2005, c. 201, effective April 9, 2005, deleted the former second and third paragraphs pertaining to a suspension account for remaining account balances to be maintained by the board; added the subsection designations; added (b)(1) and (b)(2); in (a), substituted is for shall be throughout; added the proviso at the end of (c); and, in (d), substituted the first instance of use for utilization, substituted the second instance of use for utilize, substituted the irrevocably forfeited amounts for said irrevocably forfeited amounts in the language preceding the provisos, and substituted requires for require in the first proviso.

18-7B-11a. Rollovers and transfers to repay cashed-out or withdrawn contributions.

(a) This section applies to rollovers and transfers as specified in this section made on or after the first day of January, two thousand two. Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the defined contribution system shall accept the following rollovers and plan transfers on behalf of a member solely for the purpose of repayment of cashed-out or withdrawn contributions, in whole or in part, as otherwise provided in this article or the rules applicable to the defined contribution system: (i) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (ii) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code: Provided, That any rollovers or transfers pursuant to this section shall be

accepted by the system only if made in cash or other asset permitted by the board and only in accordance with the policies established by the board from time to time.

(b) Nothing in this section shall be construed as permitting rollovers or transfers into this system or any other system administered by the retirement board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the repayment of cashed-out or withdrawn contributions.

(c) Nothing in this section shall be construed as permitting the repayment of cashed-out or withdrawn contributions except as otherwise permitted in this article or the rules applicable to the defined contribution system.

History. 2002, c. 261.

Editor's notes. The Internal Revenue Code of 1986 is codified generally at 26 USCS 1 et seq.

Effective dates. Acts 2002, c. 261, provided that the act take effect June 7, 2002.

18-7B-12. Retirement, commencement of annuity payments, payments under a qualified domestic relations order.

(a) Subject to the provisions of section twelve-a [18-7B-12a] of this article, an employee attaining fifty-five years of age, may elect to take retirement by notifying the board or its designee in writing of his or her intention to retire. The notice of retirement must be received by the board or its designee no fewer than sixty days prior to the effective date of retirement. Retirement payments shall commence within thirty days of the retirement date under the payment option selected by the employee.

(b) An alternate payee named in a qualified domestic relations order may elect to receive a distribution awarded from this plan. If the alternate payee elects, the board or its designee shall promptly compute the amount due without regard to whether the employee is receiving benefits at the time of election. After the amount due has been computed, the board shall promptly initiate payments to the alternate payee.

(c) For purposes of this section, the term qualified domestic relations order means a qualified domestic relations order as defined in Section 414(p) of the Internal Revenue Code with respect to government plans.

History. 1990, 3rd Ex. Sess., c. 8; 2000, c. 204; 2001, c. 92.

Editor's notes. Section 414(p) of the Internal Revenue Code, referred to in this section, is codified at 26 USCS 414(p).

18-7B-12a. Federal minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this defined contribution system. This section applies to plan years beginning after the thirty-first day of December, one thousand nine hundred eighty-six. Notwithstanding anything in this system to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder, including without limitation the

incidental death benefit provisions of Section 401(a)(9)(G) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:

(a) The payment of benefits under the Defined Contribution System to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the system shall be distributed by the thirty-first day of December of the calendar year containing the fifth anniversary of the member's death, except as follows:

(1) If a member's interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of the beneficiary commencing on or before the thirty-first day of December of the calendar year immediately following the calendar year in which the participant died; or

(2) If the member's beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one-half years; or

(B) The earlier of (i) The thirty-first day of December of the calendar year in which the member died; or (ii) the thirty-first day of December of the calendar year following the calendar year in which the spouse died.

(d) For purposes of this section, any amount paid to a child of a member will be treated as if it had been paid to the surviving spouse of the member if the remaining amount becomes payable to the surviving spouse when the child reaches the age of majority.

History. 2000, c. 204; 2001, c. 257; 2005, c. 201.

Effect of amendment of 2005. Acts 2005, c. 201, effective April 9, 2005, added including without limitation the incidental death benefit provisions of Section 401 (a) (9)(G) of the Internal Revenue Code and the regulations thereunder at the end of the first sentence in the introductory paragraph; substituted age seventy and one-half years for age seventy and one-half in (c)(2)(A); and made minor stylistic changes.

Editor's notes. Section 401 of the Internal Revenue Code, referred to in this section, is codified at 26 USCS 401.

Effective dates. Acts 2000, c. 204, provided the act take effect July 1, 2000.

18-7B-13. Amount of annuity payments; federal law maximum benefit limitations.

(a) The amount of annuity payments a retired member shall receive shall be based solely upon the balance in the members annuity account at the date of retirement, the retirement option selected, or in the event of an annuity option being selected, the actuarial life expectancy of the member and such other factors as normally govern annuity payments.

(b) The board, or its designee, is authorized upon retirement of a member, with the approval of that member, to purchase an annuity with the balance of the members account. Upon delivery of the annuity to the member upon his or her retirement, the member shall execute a release surrendering any claim the member may have against the retirement trust.

(c) Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and treasury regulations under that section to the extent applicable to governmental plans so that no annuity or other benefit provided under this system shall exceed those limitations. The extent to which any annuity or other benefit payable under this retirement system shall be reduced as compared to the extent which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced shall be determined by the board in a manner that shall maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities required by this section.

History. 1990, 3rd Ex. Sess., c. 8; 2000, c. 204.

Editor's notes. Section 415 of the Internal Revenue Code, referred to in this section, is codified at 26 USCS 415.

18-7B-13b. Direct rollovers.

(a) This section applies to distributions made on or after the first day of January, one thousand nine hundred ninety-three. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributees election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) Eligible rollover distribution means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributees designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution or distributions reasonably expected to total less than two hundred dollars during a year. For distributions after the thirty-first day of December, two thousand one, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion

consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts transferred, including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not includable.

(2) Eligible retirement plan means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code or a qualified plan described in Section 401(a) of the Internal Revenue Code that accepts the distributees eligible rollover distribution: Provided, That in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. For distributions after the thirty-first day of December, two thousand one, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system.

(3) Distributee means an employee or former employee. In addition, the employees or former employees surviving spouse and the employees or former employees spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse.

(4) Direct rollover means a payment by the system to the eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this retirement system or any other retirement system administered by the board.

History. 2000, c. 204; 2002, c. 261.

Effect of amendment of 2002. Acts 2002, c. 261, effective June 7, 2002, in (a)(1), added the last two sentences; in (a)(2) added the last sentence; and in (b), deleted retirement preceding board.

Editor's notes. Acts 2000, c. 204, enacted this section as 18-7B-13b, despite the fact that no section numbered 18-7B-13a existed; it has been codified here as passed by the Legislature.

The Internal Revenue Code of 1986 is codified generally at 26 USCS 1 et seq.

18-7B-14. Supplemental annuity contracts.

The board shall authorize the private pension, insurance, annuity, mutual fund or other qualified company or companies with whom it contracts to make available to members such supplemental annuity options, disability and other insurance or benefits as the board deems appropriate: Provided, That such supplemental annuities, insurance and benefits shall be funded solely from employee contributions.

History. 1990, 3rd Ex. Sess., c. 8.

18-7B-15. Account statements.

The board shall prepare or cause to be prepared, on an annual basis, an account statement for each members annuity account. The statement shall include, but not be limited to, a statement of the current market value of the members account. The board shall prescribe the form and content of the account statement not inconsistent with the provisions of this section.

History. 1990, 3rd Ex. Sess., c. 8.

18-7B-16. Years of employment service.

(a) A member of the defined contribution system who terminates employment with a participating employer and does not remove any funds from his or her vested employee and employer account, or who removes the funds and repays them within five years after termination, and becomes reemployed with a participating employer within five years does not forfeit any amounts placed into the suspension account pursuant to section eleven [18-7B-11] of this article and they shall be returned to his or her employer account.

(b) All years of employment service shall be counted for vesting purposes under section eleven [18-7B-11] of this article.

History. 1990, 3rd Ex. Sess., c. 8; 2005, c. 201.

Effect of amendment of 2005. Acts 2005, c. 201, effective April 9, 2005, added (b); and substituted vested employee and employer account shall be returned to his or her employer account for annuity account and becomes reemployed with a participating employer within five years shall retain his or her previous years of employment service for purposes of the provisions of section eleven of this article in (a).

18-7B-17. Deposits to the members annuity accounts.

Beginning on the first day of July, one thousand nine hundred ninety-one and thereafter, each county board of education shall deposit in the members annuity account created pursuant to section nine [18-7B-9] of this article an amount equal to seven and one-half percent of all compensation paid to members of the defined contribution system in excess of that authorized for minimum salaries in sections two [18A-4-2] and eight-a [18A-4-8a], article four, chapter eighteen-a of this code to the extent that the excess exceeds the amount distributed for salary equity to the county.

History. 1990, 3rd Ex. Sess., c. 8.

18-7B-18. Right to benefits not subject to execution, etc.; exception for qualified domestic relations orders.

The right of any person to a benefit provided for in this article shall not be subjected to execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other process whatsoever with the exception that the benefits or contributions under this system shall be subject to qualified domestic relations orders as that term is defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, nor shall any assignment thereof be enforceable in any court.

History. 1990, 3rd Ex. Sess., c. 8; 2000, c. 204.

Editor's notes. Section 414(p) of the Internal Revenue Code, referred to in this section, is codified at 26 USCS 414(p).

18-7B-19. Benefits not forfeited if system terminates.

If the retirement system is terminated or contributions are completely discontinued, the rights of all members to contributions made to the date of such termination or discontinuance, to the extent then funded, are not forfeited.

History. 2000, c. 204.

18-7B-20. Prohibition of involuntary cash-outs.

Notwithstanding any provision of this section or of any legislative rule contained in series three, involuntary cash-outs to members may not be made after the thirtieth day of June, two thousand five.

History. 2005, c. 201.

Effective dates. Acts 2005, c. 201, provided that the act take effect April 9, 2005.