WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984

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ENROLLED

Com. Sub. for
HOUSE BILL No. 1338.

(By Mr. Speaker, Mr. Lee)

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Passed March 19, 1984

In Effect From Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1338
(By Mr. Speaker, Mr. See)

[Passed March 10, 1964: in effect from passage.]

AN ACT to amend and reenact section twenty-one, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, fourteen, sixteen, seventeen, eighteen, twenty-two, twenty-five, thirty-four and thirty-five, article seven-a, chapter eighteen of said code, all relating to the state public employees retirement act and the state teachers retirement system; providing for certain early retirement provisions for both public employees, under their act, and teachers, under their system, with actuarial reduction of benefits therefor; providing for generally updating the state teachers retirement system including: defining teacher member and nonteaching member; removing the continuous service requirements from the definition of "present teacher"; amending the definition of "average final salary" to mean the average of the member's five highest fiscal year salaries within the last fifteen years of total service on which contributions were made; allowing exceptions to the limit on contributions by members employed by the West Virginia board of regents at institutions of higher education; removing the requirement that all employer contributions be credited to the employer's accumulation fund; requiring state contributions and employer contributions to the teachers retirement system to be deposited in the employer's ac-
cumulation fund; requiring deficits in the benefit fund to be
met by transfers from the employer’s accumulation fund and,
if necessary, from the teachers accumulation fund; requiring
all gifts, bequests and interest earnings from investment re-
ceived by the teachers retirement board to be deposited in the
reserve fund; specifying persons who are eligible for prior serv-
ice pensions; providing increased loans to members and excep-
tions thereto; and granting service credit toward teachers re-
tirement to cooperative extension service employees employed
for thirty hours or more per week and providing for pay-
ment.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article ten, chapter five of the code
of West Virginia, one thousand nine hundred thirty-one, as amended,
be amended and reenacted; and that sections three, fourteen, sixteen,
seventeen, eighteen, twenty-two, twenty-five, thirty-four and thirty-
five, article seven-a, chapter eighteen of said code be amended and
reenacted, all to read as follows:

§5-10-21. Deferred retirement and early retirement.

(a) Any member, who has five or more years of credited
service in force, of which at least three years are contributing
service, and who leaves the employ of a participating public
employer prior to his attainment of age sixty years, for any rea-
son except his disability retirement or death, shall be entitled
to an annuity computed according to section twenty-two hereof,
as the said section was in force as of the date of his said
separation from the employ of a participating public employer;
Provided, That he does not withdraw his accumulated contrib-
utions from the members’ deposit fund. His said annuity shall
begin the first day of the calendar month next following the
month in which his application for same is filed with the
board of trustees on or after his attainment of age sixty-two
years.

(b) Any member who qualifies for deferred retirement
benefits in accordance with subsection (a) of this section,
and has ten or more years of credited service in force and
who has attained age fifty-five as of the date of his separa-
tion may, prior to the effective date of his retirement, but not thereafter, elect to receive the actuarial equivalent of his deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his date of separation and his attainment of age sixty-two years and payable throughout his life.

(c) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section, and has twenty or more years of credited service in force may elect to receive the actuarial equivalent of his deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his fifty-fifth birthday and his attainment of age sixty-two years and payable throughout his life.

(d) Notwithstanding any of the other provisions of this section or of this article and pursuant to regulations promulgated by the board, any member who has thirty or more years of credited service in force, at least three of which are contributing service, and who elects to take early retirement, which for the purposes of this subsection shall mean retirement prior to age sixty, whether an active employee or a separated employee at the time of application, shall be entitled to the full computation of annuity according to section twenty-two of this article, as the said section was in force as of the date of retirement application, but with the reduced actuarial equivalent of the annuity the member would have received if his benefit had commenced at age sixty when he would have been entitled to full computation of benefit without any reduction.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.


"Teacher member" includes the following persons, if regularly employed for at least half-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) the executive
secretary of the retirement board; (g) members of the research, extension, administrative or library staffs of the public schools; (h) the state superintendent of schools, heads and assistant heads of the divisions under his supervision, or any other employee thereunder performing services of an educational nature; (i) employees of the state board of education who are performing services of an educational nature; (j) any person employed in a nonteaching capacity by the state board of education, the West Virginia board of regents, any county board of education, the state department of education or the teachers retirement board, if such person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the department of corrections, the department of health or the department of human services; (l) employees of the state board of school finance if such person was formerly employed as a teacher in the public schools.

"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 West Virginia board of regents or (d) the teachers retirement board.

"Members of the administrative staff of the public school" includes deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

"Members of the extension staff" of the public schools includes 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.

"Retirement system" means the state teachers retirement system provided for in this article.

"Present teacher" means any person who was a teacher within the thirty-five years beginning July one, one thousand nine hundred thirty-four, and whose membership in the retirement system is currently active.

"New entrant" means a teacher who is not a present teacher.
"Present member" means a present teacher who is a member of the retirement system.

"Total service" means all service as a teacher while a member of the retirement system since last becoming a member and, in addition thereto, his credit for prior service, if any.

"Prior service" means: All service as a teacher completed prior to July first, one thousand nine hundred forty-one, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he was legally ineligible for membership during such service.

"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 herein, or if total service is less than fifteen years, the average annual salary for the period on which contributions were made.

"Accumulated contributions" means all deposits and all deductions from the earnable compensation of a contributor minus the total of all supplemental fees deducted from his compensation.

"Regular interest" means interest at three percent compounded annually, or a higher earnable rate if approved by the retirement board.

"Refund interest" means interest compounded annually at a rate of three percent.

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

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

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

"Refund beneficiary" means the estate of a deceased contributor, or such person as he shall have nominated as bene-
iciary of his contributions by written designation duly executed
and filed with the retirement board.

“Earnable compensation” means the full compensation
actually received by members for service as teachers whether
or not a part of such compensation is received from other
funds, federal or otherwise, than those provided by the
state or its subdivisions. Allowances from employers for
maintenance of members shall be deemed a part of earnable
compensation for such members whose allowances were ap-
proved by the teachers retirement board and contributions to
the teachers retirement system were made, in accordance
therewith, on or before the first day of July, one thousand nine
hundred eighty.

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

“Member” means a member of the retirement system.

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

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

The masculine gender shall be construed so as to include
the feminine.

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

§18-7A-14. Contributions by members.

At the end of each month every member of the retirement
system shall contribute six percent of his monthly earnable
compensation to the retirement board: Provided, That any
member employed by the West Virginia board of regents at
an institution of higher education under its control shall con-
tribute on his full earnable compensation, unless otherwise
provided in section fourteen-a of this article.

Annually, the contributions of each member shall be credited
to his account in the teachers accumulation fund. The con-
tributions shall be deducted from the salaries of the members as herein prescribed, and every member shall be deemed to have given his consent to such 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.

The aggregate of employer contributions, due and payable under this article, shall equal annually the total deductions from the earnable compensation of members required by this section.

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 deemed to be a full discharge of the employer's contractual obligation as to earnable compensation.

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


The retirement board, on receipt of contributions from teachers deducted and remitted by employers as provided in section fifteen of this article, shall make requisition on the state auditor for an amount equaling such contributions. On receipt of the requisitions duly certified, the state auditor shall transfer the amount so requisitioned from the general state revenue fund to the employers accumulation fund.

At the beginning of each quarter the governor shall transfer to the employers accumulation fund one fourth of the annual appropriations therefor.

§18-7A-17. Statement and computation of teachers' service.

Under such rules and regulations as the retirement board may adopt, each teacher shall file a detailed statement of his length of service as a teacher for which he claims credit. The retirement board shall determine what part of a year is the
equivalent of a year of service. In computing such 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.

For the purpose of this article, the retirement board shall grant prior service credit to new entrants and other members of the retirement system for 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" shall include 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. Such military service shall be deemed equivalent to public school teaching, and the salary equivalent for each year of such service shall be the actual salary of the member as a teacher for his 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.

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 such state or territory, the retirement board shall grant credit to the member: Provided, that the member shall pay to the system double the amount he contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. Such interest shall be deposited in the reserve fund and service credit so 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 transfer 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 such transferred service as additional service only: Provided, however, That a transfer of out-of-state service shall be prohibited if such 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 such member
under the retirement system.

No member shall be deemed absent from service as a teacher
while serving as a member of the Legislature of the state of
West Virginia during any duly constituted session of that
body: Provided, That the member makes contributions to
the system equal to what would have been contributed during
the period of absence had he performed his duties as a
teacher.

No member shall be deemed absent from service as a teacher
while serving on leave of absence as an officer with a state-
wide professional teaching association, or who has served
in such capacity, and no retired teacher, who served on such
leave of absence while a member, shall be deemed to have
been absent from service as a teacher by reason of such service
on leave of absence: Provided, That the period of service
credit granted for such service on leave of absence shall not
exceed two years: Provided, however, That a member or
retired teacher who is serving or has served as an officer of a
statewide professional teaching association shall make deposits
to the teachers retirement board, for the time of any such
absence, in an amount double the amount which he would have
contributed in his regular assignment for a like period of
time.

The teachers retirement board shall grant service credit to
any former or present member of the West Virginia public
employees retirement system who has been a contributing
member for more than three years, for service previously cred-
ited by the public employees retirement system, and (1) shall
require and 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 retire-
ment: Provided, That there shall be added by the member to
the amounts transferred or repaid under this paragraph an
amount which shall be sufficient to equal the contributions he
would have made had the member been under the teachers re-

tirement system during the period of his membership in the
public employees retirement system plus interest at a rate
of six percent compounded annually from the date of with-
drawal to the date of payment. The interest paid shall be de-
posited in the reserve fund.

If a member is not eligible for prior service credit or pension
as provided in this article, then his prior service shall not be
deemed a part of his total service.

A member who withdrew from membership shall be per-
mitted to regain his former membership rights as specified in
section thirteen of this article only in case he has served
two years since his last withdrawal.

Subject to the above provisions, the board shall verify as
soon as practicable, the statements of service submitted. The
retirement board shall issue prior service certificates to all
persons eligible therefor under the provisions of this article.
Such certificates shall state the length of such prior service
credit, but in no case shall the prior service credit exceed
forty years.

§18-7A-18. Funds created; fund transfers.

The funds created are the teachers accumulation fund, the
employers accumulation fund, the benefit fund, the reserve
fund, and the expense fund. Each fund shall constitute a
separate trust.

(a) The teachers accumulation fund shall be the fund in
which the contributions of members shall be accumulated.
The accumulated contributions of a member returned to him
upon his withdrawal, or paid to his estate or designated
beneficiary in the event of death, shall be paid from the
teachers accumulation fund. Any accumulated contributions
forfeited by failure to claim such contributions shall be trans-
ferred from the teachers accumulation fund to the reserve
fund.

(b) Beginning on the first day of July, one thousand nine
hundred eighty-four, contributions of employers, equalling
annually the members' contributions, shall be deposited in the
employers accumulation fund through state appropriations, and such amounts shall be included in the budget bill submitted annually by the Governor.

(c) The benefit fund shall be the fund from which annuities shall be paid. Upon the retirement of a member, his accumulated contributions shall be transferred from the teachers accumulation fund to the benefit fund; the accumulated employers' contribution shall be transferred from the employers accumulation fund to the benefit fund; and annually a sum for prior service pension and disability credits, if needed, shall be transferred from the reserve fund to the benefit fund. Any deficit occurring in the benefit fund which is not automatically met by payments to that fund, as provided for by this article, shall be met by additional transfers from the employers accumulation fund and, if necessary, by transfers from the teachers accumulation fund.

(d) The retirement board is hereby authorized to accept gifts and bequests. All gifts, bequests and interest earnings from investment received by the board shall be deposited in the reserve fund. Any funds that may come into possession of the retirement system in this manner or which may be transferred from the teachers accumulation fund by reason of the lack of a claimant or because of a surplus in any of the funds; or any other moneys the disposition of which is not otherwise provided for shall be credited to the reserve fund. The retirement board shall allow interest on the contributions in the teachers accumulation fund. Such interest shall be paid from the reserve fund and credited to the teachers accumulation fund. Any deficit occurring in any fund which would not be automatically covered by the payments to that fund as otherwise provided by this article shall be met by transfers from the reserve fund to such fund. In the reserve fund shall be accumulated moneys from retirement board appropriations to pay the accrued liabilities of the system, caused by the granting of prior service, ad hoc increases granted prior to the first day of July, one thousand nine hundred eighty and disability pensions. Costs associated with board investments such as premiums, accrued interest, and commissions, shall be paid from the reserve fund.
(e) The expense fund shall be the fund from which shall be paid the expense incurred in the administration of the retirement system. The retirement board is herewith authorized to pay, from the expense fund, membership fees in such voluntary organizations as the national council on teacher retirement, anything in this code to the contrary notwithstanding. Interest on loans to members shall be deposited in the expense fund.

The retirement board is herewith given sole authority to direct and approve the making of any and all fund transfers as provided herein, anything in this code to the contrary notwithstanding.


The following shall be eligible for prior service pensions:

(a) Present member upon retirement;

(b) Any person who has served at least twenty-five years as a teacher prior to July one, one thousand nine hundred forty-one; and

(c) A new entrant who becomes a present teacher.

§18-7A-25. Eligibility for retirement allowance.

Any member who has attained the age of sixty years or who has had thirty-five years of total service as a teacher in West Virginia, regardless of age, shall be eligible for an annuity. No new entrant nor present member shall be eligible for an annuity, however, if either has less than five years of service to his credit.

Any member who has attained the age of fifty-five years and who has served thirty years as a teacher in West Virginia shall be eligible for an annuity.

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

A member shall be eligible for annuity for disability, if he satisfies the conditions in both (a) and (b) as follows:

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

(b) 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, that for such service the disability is total and likely to be permanent, and that he should be retired in consequence thereof.

Continuance of the disability of the retired teacher shall be established by medical examination, as prescribed in the preceding paragraph, annually for five years after retirement, and thereafter at such times as the retirement board may require. Payment of the disability annuity provided in this article shall cease immediately, if the retirement board finds that the disability of the retired teacher no longer exists, or if the retired teacher refuses to submit to medical examination as required by this section.

§18-7A-34. Loans to members.

A member of the retirement system upon written application may borrow from his individual account in the teachers accumulation fund, subject to these restrictions:

1. Loans shall be made in multiples of ten dollars, the minimal loan being one hundred dollars and the maximum being eight thousand dollars except if the total amount of loaned money outstanding exceeds twenty million dollars, the maximum will be three thousand dollars until the teachers retirement board determines that loans outstanding have been reduced to an extent that eight thousand dollar loans are again authorized.
(2) Loans to any one member shall not exceed one half of
his contributions to his individual account in the teachers
accumulation fund.

(3) Interest charged on the amount of the loan shall be
six percent per annum, or a higher rate as set by the
teachers retirement board. If repayable in installments, the
interest shall not exceed the annual rate so established upon
the principal amount of the loan, for the entire period of
the loan, and such charge shall be added to the principal
amount of the loan. The minimal interest charge shall be
for six months.

(4) No member shall be eligible for more than one loan
in any one year.

(5) If a refund or benefit is payable to the borrower or
his beneficiary before he repays the loan with interest, the
balance due with interest to date shall be deducted from
such benefit or refund.

(6) From his monthly salary as a teacher the member
shall pay the loan and interest by deductions which will pay
the loan and interest in not more than sixty nor less than six
months. Upon notice of loan granted and payment due, the
employer shall be responsible for making such salary deductions
and reporting them to the retirement board. At the option
of the retirement board, loan deductions may be collected as
prescribed herein for the collection of members' contribution,
or may be collected through issuance of warrant by employer.
If the borrower decides to make loan payments while not paid
for service as a teacher, the retirement board must accept such
payments."

§18-7A-35. Coverage for nonteaching employees; prior service
credit.

(a) Nonteaching employees shall mean all persons, except
teachers, regularly employed for full-time service by the
following educational agencies: (a) Any county board of
education, (b) the state board of education, (c) the West
Virginia board of regents, (d) and the teachers retirement
board.
(b) Such nonteaching employees shall be entitled to all the rights, privileges and benefits provided for teachers by this article, upon the same terms and conditions as are herein prescribed for teachers. Any member who was employed as a regular full-time employee in a nonteaching capacity by a board of education, school principal or school administrator, prior to the time he became eligible for membership in the state teachers retirement system, shall be granted prior service credit for such service upon making application to the retirement board and providing satisfactory evidence of such service.

(c) Except as provided in section thirteen-b of this article, employees of the cooperative extension service and its predecessors in title, (agricultural extension division, West Virginia extension agency, and West Virginia University Cooperative extension service) shall be entitled to all the rights, privileges and benefits provided for teachers by this article, upon the same terms and conditions as are herein prescribed for teachers. Any member of the extension service or its predecessors in title, who was employed for thirty hours or more per week, prior to the time he became eligible for membership in the state teachers retirement system, shall be granted service credit for such service upon making application to the retirement board and providing satisfactory evidence of such service. When the prior service is credited, each member of the retirement system so credited shall contribute an amount equal to the amount he would have contributed had he been a member of the retirement system during the period credited.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 26 day of March, 1984.

Governor