WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2001

ENROLLED

House Bill No. 2776
(By Delegates Campbell, J. Smith, Keener, Browning, Hubbard, Hall and Harrison)

Passed April 12, 2001
In Effect Ninety Days from Passage
AN ACT to amend and reenact section twenty-three, article fourteen-d, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirty-four, article seven-a, chapter eighteen of said code; all relating to plan loan programs for the deputy sheriff's retirement system and the teachers retirement system; incorporating federal tax law provisions; and authorizing the consolidated public retirement board to issue loans and administer the loan programs in compliance with federal law, including the adoption of policies and procedures and taking any action necessary or appropriate to comply with federal tax law or otherwise required by the Internal Revenue Service.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, article fourteen-d, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section thirty-four, article seven-a, chapter eighteen of said code, be amended and reenacted; all to read as follows:
CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. WEST VIRGINIA DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-23. Loans to Members.

(a) A member who is not yet receiving disability or retirement income benefits from the plan may borrow from the plan no more than one time in any year an amount up to one half of his or her accumulated contributions, but not less than five hundred dollars nor more than eight thousand dollars: Provided, That the maximum amount of any loan when added to the outstanding balance of all other loans shall not exceed the lesser of the following: (1) Fifty thousand dollars reduced by the excess (if any) of the highest outstanding balance of loans to the member during the one-year period ending on the day before the date on which the loan is made, over the outstanding balance of loans to the member on the day on which the loan is made; or (2) fifty percent of his or her accumulated contributions. No loan may be made from the plan if the board determines that the loans constitute more than fifteen percent of the amortized cost value of the assets of the plan as of the last day of the preceding plan year. The board may discontinue the loans any time it determines that cash flow problems might develop as a result of the loans. Each loan shall be repaid through monthly installments over periods of six through sixty months and carry interest on the unpaid balance and an annual effective interest rate that is two hundred basis points higher than the most recent rate of interest used by the board for determining actuarial contributions levels: Provided, That interest charged shall be commercially reasonable in accordance with the provisions of section 72(p)(2) of the Internal Revenue Code and federal regulations issued thereunder. Monthly loan payments shall be calculated to be as nearly equal as possible with all but the final payment being an equal amount. An eligible member may make additional loan payments or pay off the entire loan balance at any
time without incurring any interest penalty. At the member's option, the monthly loan payment may include a level premium sufficient to provide declining term insurance with the plan as beneficiary to repay the loan in full upon the member's death. If a member declines the insurance and dies before the loan is repaid, the unpaid balance of the loan shall be deducted from the lump sum insurance benefits payable under section twenty-one of this article.

(b) A member with an unpaid loan balance who wishes to retire may have the loan repaid in full by accepting retirement income payments reduced by deducting from the actuarial reserve for the accrued benefit the amount of the unpaid balance and then converting the remaining of the reserve to a monthly pension payable in the form of the annuity desired by the member.

(c) The entire unpaid balance of any loan, and interest due thereon, shall at the option of the retirement board become due and payable without further notice or demand upon the occurrence with respect to the borrowing member of any of the following events of default: (1) Any payment of principal and accrued interest on a loan remains unpaid after the same become due and payable under the terms of the loan or after such grace period as may be established in the discretion of the retirement board; (2) the borrowing member attempts to make an assignment for the benefit of creditors of his or her benefit under the retirement system; or (3) any other event of default set forth in rules promulgated by the board pursuant to the authority granted in section one, article ten-d, chapter five of this code: Provided, That any offset of such unpaid loan balance shall be made only at such time as the member is entitled to receive a distribution under the plan.

(d) Loans shall be evidenced by such form of obligations and shall be made upon such additional terms as to default,
prepayment, security, and otherwise as the retirement board may determine.

(e) Notwithstanding anything herein to the contrary, the loan program authorized by this section shall comply with the provisions of section 72(p)(2) and section 401 of the Internal Revenue Code and the federal regulations issued thereunder. The retirement board is authorized to: (a) Apply and construe the provisions of this section and administer the plan loan program in such a manner as to comply with the provisions of sections 72(p)(2) and section 401 of the Internal Revenue Code; (b) adopt plan loan policies or procedures consistent with these federal law provisions; and (c) take such actions as it deems necessary or appropriate to administer the plan loan program created hereunder in accordance with these federal law provisions. The retirement board is further authorized in connection with the plan loan program to take any actions that may at any time be required by the Internal Revenue Service regarding compliance with the requirements of section 72(p)(2) or section 401 of the Internal Revenue Code, notwithstanding any provision in this article to the contrary.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-34. Loans to members.

A member of the retirement system upon written application may borrow from his or her 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: Provided, That the maximum amount of any loan when added to the outstanding balance of all other loans shall not exceed the lesser of the following: (a)
Fifty thousand dollars reduced by the excess (if any) of the highest outstanding balance of loans during the one-year period ending on the day before the date on which the loan is made, over the outstanding balance of loans to the member on the date on which the loan is made; or (b) fifty percent of the member's contributions to his or her individual account in the teachers accumulations fund: Provided, however, That if the total amount of loaned money outstanding exceeds forty million dollars, the maximum shall not exceed three thousand dollars until the retirement board determines that loans outstanding have been reduced to an extent that additional loan amounts are again authorized.

(2) Interest charged on the amount of the loan shall be six percent per annum, or a higher rate as set by the retirement board: Provided, That interest charged shall be commercially reasonable in accordance with the provisions of section 72(p)(2) of the Internal Revenue Code, and the federal regulations issued thereunder. 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.

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

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

(5) From his or her monthly salary as a teacher the member shall pay the loan and interest by deductions which will pay the loan and interest in substantially level payments 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.

(6) The entire unpaid balance of any loan, and interest due thereon, shall, at the option of the retirement board, become due and payable without further notice or demand upon the occurrence with respect to the borrowing member of any of the following events of default: (A) Any payment of principal and accrued interest on a loan remains unpaid after the same becomes due and payable under the terms of the loan or after such grace period as may be established in the discretion of the retirement board; (B) the borrowing member attempts to make an assignment for the benefit of creditors of his or her refund or benefit under the retirement system; or (C) any other event of default set forth in rules promulgated by the retirement board in accordance with the authority granted pursuant to section one, article ten-d, chapter five of this code: Provided, That any refund or offset of an unpaid loan balance shall be made only at the time the member is entitled to receive a distribution under the retirement system.

(7) Loans shall be evidenced by such form of obligations and shall be made upon such additional terms as to default, prepayment, security, and otherwise as the retirement board may determine.

(8) Notwithstanding anything herein to the contrary, the loan program authorized by this section shall comply with the provisions of section 72(p)(2) and section 401 of the Internal Revenue Code, and the federal regulations issued thereunder,
and accordingly, the retirement board is authorized to: (a) apply and construe the provisions of this section and administer the plan loan program in such a manner as to comply with the provisions of section 72(p)(2) and section 401 of the Internal Revenue Code and the federal regulations issued thereunder; (b) adopt plan loan policies or procedures consistent with these federal law provisions; and (c) take such actions as it deems necessary or appropriate to administer the plan loan program created hereunder in accordance with these federal law provisions. The retirement board is further authorized in connection with the plan loan program to take any actions that may at any time be required by the Internal Revenue Service regarding compliance with the requirements of section 72(p)(2) or section 401 of the Internal Revenue Code, and the federal regulations issued thereunder, notwithstanding any provision in this article to the contrary.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 20th day of April, 2001.

Governor