House Bill No. 2778

(By Delegates Hubbard and Harrison)

Passed April 14, 2001

In Effect Ninety Days from Passage
AN ACT to amend and reenact sections thirteen and seventeen, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the teachers retirement system and providing that the interest rate charged members for repayment of service previously withdrawn shall be as set by the consolidated public retirement board in legislative rules.

Be it enacted by the Legislature of West Virginia:

That sections thirteen and seventeen, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-13. Membership in retirement system; cessation of membership; reinstatement of withdrawn service.

1 The membership of the retirement system shall consist of
2 the following:
(a) New entrants, whose membership in the system is compulsory upon employment as teachers and nonteachers.

(b) The membership of the retirement system shall not include any person who is an active member of or who has been retired by the West Virginia public employees retirement system, the judge’s retirement system, or the retirement system of the department of public safety or the supplemental retirement system as provided in section four-a, article twenty-three of this chapter. The membership of any person in the retirement system ceases:

1. Upon the withdrawal of accumulated contributions after the cessation of service; or
2. Upon retirement; or
3. At death; or
4. If service amounts to fewer than five years in any period of ten consecutive years.

(c) Any former member of the retirement system who has withdrawn accumulated contributions but subsequently reenters the retirement system may repay to the retirement fund the amount withdrawn, plus interest at a rate set by the Board, compounded annually from the date of withdrawal to the date of repayment: Provided, That no repayment may be made until the former member has completed two years of contributory service after reentry; and the member shall be accorded all the rights to prior service and experience as were held at the time of withdrawal of the accumulated contributions: Provided, however, That no withdrawn service may be reinstated that has been transferred to another retirement system from which the member is currently or will in the future draw benefits based on the same service. The interest paid shall be deposited in the reserve fund.

(d) No member is eligible for prior service credit unless he or she is eligible for prior service pension, as prescribed by section twenty-two of this article; however, a new entrant who
becomes a present teacher as provided in this subdivision shall be considered eligible for prior service pension upon retirement.

(e) Any individual who is a leased employee is not eligible to participate in the system. For purposes of this system, 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. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

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

(a) Under rules adopted by the retirement board, each teacher shall file a detailed statement of his or her length of service as a teacher for which he or she claims credit. The retirement board shall determine what part of a year is the equivalent of a year of service. In computing the 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.

(b) 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" includes 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. The military service is considered equivalent to public school teaching, and the salary equivalent for each year of that service is the actual salary of the member as a teacher for his or
her 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. Notwithstanding the preceding provisions of this subsection, contributions, benefits and service credit with respect to qualified military service shall 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, 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.

(c) 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 that 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 or she 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. The interest shall be deposited in the reserve fund and service credit 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 the transferred service as additional service only: Provided, however, That a transfer of out-of-state service is prohibited if the 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
the member under the retirement system.

(d) Service credit for members or retired members shall not
be denied on the basis of minimum income rules promulgated
by the teachers retirement board: Provided, That the member or
retired member shall pay to the system the amount he or she
would have contributed during the year or years of public
school service for which credit was denied as a result of the
minimum income rules of the teachers retirement board.

(e) No members shall be considered absent from service
while serving as a member or employee of the Legislature of
the state of West Virginia during any duly constituted session
of that body or while serving as an elected member of a county
commission during any duly constituted session of that body.

(f) No member shall be considered absent from service as
a teacher while serving as an officer with a statewide profes-

ional teaching association, or who has served in that capacity,
and no retired teacher, who served in that capacity while a
member, shall be considered to have been absent from service
as a teacher by reason of that service: Provided, That the period
of service credit granted for that service shall not exceed ten
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 absence, in an
amount double the amount which he or she would have
contributed in his or her 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
89 credited by the public employees retirement system and: (1)
90 Shall require the transfer of the member’s contributions to the
91 teachers retirement system; or (2) shall require a repayment of
92 the amount withdrawn any time prior to the member’s retire-
93 ment: Provided, That there shall be added by the member to the
94 amounts transferred or repaid under this subsection an amount
95 which is sufficient to equal the contributions he or she would
96 have made had the member been under the teachers retirement
97 system during the period of his or her membership in the public
98 employees retirement system plus interest compounded
99 annually from the date of withdrawal to the date of payment at
100 a rate set by the Board. The interest paid shall be deposited in
101 the reserve fund.

102 (g) For service as a teacher in an elementary or secondary
103 parochial school, located within this state and fully accredited
104 by the West Virginia department of education, the retirement
105 board shall grant credit to the member: Provided, That the
106 member shall pay to the system double the amount contributed
107 during the first full year of current employment, times the
108 number of years for which credit is granted, plus interest at a
109 rate to be determined by the retirement board. The interest shall
110 be deposited in the reserve fund and service granted at the time
111 of retirement shall not exceed the lesser of ten years or fifty
112 percent of the member’s total service as a teacher in the West
113 Virginia public school system. Any transfer of parochial school
114 service, as provided in this section, may not be used to establish
115 eligibility for a retirement allowance and the board shall grant
116 credit for the transfer as additional service only: Provided,
117 however, That a transfer of parochial school service is prohib-
118 ited if the service is used to obtain a retirement benefit from
119 another retirement system.

120 (h) If a member is not eligible for prior service credit or
121 pension as provided in this article, then his or her prior service
122 shall not be considered a part of his or her total service.
(i) A member who withdrew from membership may regain his or her former membership rights as specified in section thirteen of this article only in case he or she has served two years since his or her last withdrawal.

(j) Subject to the provisions of subsections (a) through (i), inclusive, of this section, 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 for the certificates under the provisions of this article. The certificates shall state the length of the prior service credit, but in no case shall the prior service credit exceed forty years.

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 require that member to be absent from his or her teaching 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: Provided, 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, however, That nothing in this section 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 June, two thousand: 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. The periods of time upon which the member paid his or her contribution shall then be included for purposes of determining his or
her final average salary as well as for determining years of
service: And provided further, That a member utilizing the
provisions of this subsection is not required to pay interest on
any contributions he or she may decide to make.
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 __th day of ___, 2001.

Governor