WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2003

House Bill No. 2983
(By Delegates Campbell and Craig)

Passed March 8, 2003
In Effect from Passage
AN ACT to amend and reenact sections seventeen and thirty-four, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the teachers' retirement system; providing technical corrections for conflicting language created when federal compliance provisions were previously added; and placing loan procedures within federal standards.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§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 retire-
ment 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-
sional 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.

(g) 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
credited by the public employees retirement system and: (1)
Shall require the 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 subsection an amount
which shall be sufficient to equal the contributions he or she
would have made had the member been under the teachers
retirement system during the period of his or her membership
in the public employees retirement system plus interest at a rate
to be determined by the board compounded annually from the
date of withdrawal to the date of payment. The interest paid
shall be deposited in the reserve fund.
(h) For service as a teacher in an elementary or secondary parochial school, located within this state and fully accredited by the West Virginia department of education, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system double the amount 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 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 the West Virginia public school system. Any transfer of parochial school service, as provided in this section, may not be used to establish eligibility for a retirement allowance and the board shall grant credit for the transfer as additional service only: Provided, however, That a transfer of parochial school service is prohibited if the service is used to obtain a retirement benefit from another retirement system.

(i) Active members who previously worked in CETA (Comprehensive Employment and Training Act) may receive service credit for time served in that capacity: Provided, That in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from temporary employment with the participating employer to permanent full-time employment with the participating employer within one hundred twenty days following the termination of the member’s CETA employment; (2) the board must receive evidence that establishes to a reasonable degree of certainty as determined by the board that the member previously worked in CETA; and (3) the member shall pay to the board an amount equal to the employer and employee contribution plus interest at the amount set by the board for the amount of service credit sought pursuant to this subsection: Provided, however, That the maximum service credit that may be obtained under the provisions of this subsec-
tion is two years: Provided further, That a member must apply and pay for the service credit allowed under this subsection and provide all necessary documentation by the thirty-first day of March, two thousand three: And provided further, That the board shall exercise due diligence to notify affected employees of the provisions of this subsection.

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

(k) 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.

(l) Subject to the provisions of subsections (a) through (l), 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.

(m) 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 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 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 contri-
bution 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.

(n) The teachers retirement board shall grant service credit
to any former member of the state police death, disability and
retirement system who has been a contributing member for
more than three years, for service previously credited by the
state police death, disability and retirement system; and: (1)
Shall require the 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 the member shall add to the amounts
transferred or repaid under this paragraph an amount which is
sufficient to equal the contributions he or she would have made
had the member been under the teachers retirement system
during the period of his or her membership in the state police
death, disability and retirement system plus interest at a rate of
six percent compounded annually from the date of withdrawal
to the date of payment. The interest paid shall be deposited in
the reserve fund.

§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 outstanding loan at any time.
(4) If a refund 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 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.
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.

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

Greg Butcher
Chairman House Committee

Originating in the House.

In effect 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 1st day of April, 2003.

Governor