WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

COMMITTEE SUBSTITUTE
FOR
ENROLLED
Senate Bill No. 227
(Senators Foster, Deem, Hunter and Plymale, original sponsors)

[Passed March 8, 2008; in effect ninety days from passage.]
AN ACT to amend and reenact §18-7A-3, §18-7A-13, §18-7A-14, §18-7A-28c and §18-7A-34 of the Code of West Virginia, 1931, as amended, all relating to the State Teachers’ Retirement System; defining terms; clarifying when membership ceases in the State Teachers’ Retirement System; providing for correction of errors; permitting rollovers of any dollar amount; and permitting subsequent loans to members.
Be it enacted by the Legislature of West Virginia:

That §18-7A-3, §18-7A-13, §18-7A-14, §18-7A-28c and §18-7A-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7A. STATE TEACHERS’ RETIREMENT SYSTEM.


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

(1) “Accumulated contributions” means all deposits and all deductions from the gross salary of a contributor plus regular interest.

(2) “Accumulated net benefit” means the aggregate amount of all benefits paid to or on behalf of a retired member.

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

(4) “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 in this article, or if total service is less than fifteen years, the average annual salary for the period on which contributions were made.

(5) “Beneficiary” means the recipient of annuity payments made under the retirement system.
(6) “Contributor” means a member of the retirement system who has an account in the Teachers’ Retirement System Fund.

(7) “Deposit” means a voluntary payment to his or her account by a member.

(8) “Employer” means the agency of and within the state which has employed or employs a member.

(9) “Employer error” means an inadvertent omission, misrepresentation or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant provisions of both the West Virginia Code and the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of required contributions. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error.

(10) “Employment term” means employment for at least ten months, a month being defined as twenty employment days.

(11) “Gross salary” means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary also includes retroactive payments made to a member to correct a clerical error, or made pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member’s rights to employment or wages, with all retroactive salary
payments to be allocated to and considered paid in the
periods in which the work was or would have been
done. Gross salary does not include lump sum
payments for bonuses, early retirement incentives,
severance pay or any other fringe benefit of any kind
including, but not limited to, transportation allowances,
avтомobiles or automobile allowances, or lump sum
payments for unused, accrued leave of any type or
character.

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

(13) “Member” means any person who has
accumulated contributions standing to his or her credit
in the Teachers’ Retirement System.

(14) “Members of the administrative staff of the
public schools” means deans of instruction, deans of
men, deans of women and financial and administrative
secretaries.

(15) “Members of the extension staff of the public
schools” means 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.

(16) “New entrant” means a teacher who is not a
present teacher.

(17) “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; or (c) the Higher
Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board, as defined in section two, article one, chapter eighteen-b of this code:

Provided, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board commences on or after the first day of July, one thousand nine hundred ninety-one, is not considered a nonteaching member.

(18) “Plan year” means the twelve-month period commencing on the first day of July and ending the following thirtieth day of June of any designated year.

(19) “Present member” means a present teacher who is a member of the retirement system.

(20) “Present teacher” means any person who was a teacher within the thirty-five years beginning the first day of July, one thousand nine hundred thirty-four, and whose membership in the retirement system is currently active.

(21) “Prior service” means all service as a teacher completed prior to the first day of July, 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 or she was legally ineligible for membership during the service.

(22) “Public schools” means all publicly supported schools, including colleges and universities in this state.
(23) "Refund beneficiary" means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

(24) "Refund interest" means interest compounded, according to the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.

(25) "Regular interest" means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.

(26) "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.

(27) "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 and one-half years; or (b) the calendar year in which the member retires or ceases covered employment under the system after having attained the age of seventy and one-half years.

(28) "Retirement system" means the State Teachers' Retirement System established by this article.

(29) "Teacher member" 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, the State Department of Education or the Teachers' Retirement Board, 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, the Division of Health or the Division of Human Services; and (k) an employee of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools; and (l) any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code who elects to remain a member of the Teachers' Retirement System provided in this article.

(30) "Total service" means all service as a teacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.
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171 Age in excess of seventy years shall be considered to
172 be seventy years.

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

1 The membership of the retirement system shall consist of the following:

2 (a) New entrants, whose membership in the system is compulsory upon employment as teachers and nonteachers.

3 (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 Judges' Retirement System, or the retirement system of the West Virginia State Police 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:

4 (1) Upon the withdrawal of accumulated contributions after the cessation of service; or (2) upon the effective retirement date; or (3) at death.

5 (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-14. Contributions by members; contributions by employers; correction of errors.

(a) At the end of each month, every member of the retirement system shall contribute six percent of that member’s monthly gross salary to the retirement board: Provided, That any member employed by a state
institution of higher education shall contribute on the member’s full earnable compensation, unless otherwise provided in section fourteen-a of this article. The sums are due the Teachers’ Retirement System at the end of each calendar month in arrears and shall be paid not later than fifteen days following the end of the calendar month. Each remittance shall be accompanied by a detailed summary of the sums withheld from the compensation of each member for that month on forms, either paper or electronic, provided by the Teachers’ Retirement System for that purpose.

(b) Annually, the contributions of each member shall be credited to the member’s account in the Teachers’ Retirement System Fund. The contributions shall be deducted from the salaries of the members as prescribed in this section, and every member shall be considered to have given consent to the 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.

(c) The aggregate of employer contributions, due and payable under this article, shall equal annually the total deductions from the gross salary of members required by this section. Beginning on the first day of July, one thousand nine hundred ninety-nine, and thereafter, the rate shall be fifteen percent: Provided, That the rate shall be seven and one-half percent for any individual who becomes a member of the Teachers’ Retirement System for the first time on or after the first day of July, two thousand five, or any individual who becomes a member of the Teachers’ Retirement System as a result of the merger contemplated in article seven-c of
this chapter.

(d) 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 considered to be a full discharge of the employer's contractual obligation as to earnable compensation.

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

(f) If any change or employer error in the records of any participating public employer or the retirement system results in any person receiving from the system more or less than he or she would have been entitled to receive had the records been correct, the board shall correct the error and, as far as is practicable, shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the person was correctly entitled is paid. Any employer error resulting in an underpayment to the retirement system may be corrected by the employee remitting the required employee contribution and the participating public employer remitting the required employer contribution. Interest shall accumulate in accordance with Legislative Rule Retirement Board Reinstatement Interest 162 CSR 7, and any accumulating interest owed on the employee and employer contributions resulting from the employer error are the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through
payroll deduction over a period equivalent to the time period during which the employer error occurred.

§18-7A-28c. 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 distributee’s 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 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 distributee’s designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent the 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; and (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. 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 distributee’s 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 also means 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 employee's or former employee's surviving spouse and the employee's or former employee's 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, as applicable 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 system or any other retirement system administered by the board.

§18-7A-34. Loans to members.

(a) An actively contributing member of the retirement system upon written application may borrow from his or her individual account in the Teachers' Retirement System 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) Eight 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 set by the
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 established upon the principal amount
of the loan, for the entire period of the loan, and the
charge shall be added to the principal amount of the
loan. The minimal interest charge shall be for six
months.

(3) A member is not eligible for more than one
outstanding loan at any time. Upon full payment of a
loan, a member may apply for a subsequent loan after
sixty days beginning the first day of the month
following receipt of final payment.

(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 the refund.
From his or her monthly salary as a teacher or a non-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 is responsible for making the salary deductions and reporting them to the retirement board. At the option of the board, loan deductions may be collected as prescribed in this section for the collection of members' contribution, or may be collected through issuance of a warrant by the employer. If the borrower is no longer employed as a teacher or nonteaching member, the borrower shall make monthly loan payments directly to the Consolidated Public Retirement Board and the board must accept the payments.

The entire unpaid balance of any loan, and interest due thereon, shall, at the option of the 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 it becomes due and payable under the terms of the loan or after the grace period established in the discretion of the 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 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
(7) Loans shall be evidenced by such form of obligations and shall be made upon any additional terms as to default, prepayment, security, and otherwise determined by the retirement board.

(8) Notwithstanding anything in this section 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 the actions it considers necessary or appropriate to administer the plan loan program created under this section in accordance with these federal law provisions. The retirement board may also in connection with the plan loan program 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.

(b) Notwithstanding anything in this article to the contrary, the loan program authorized by this section shall not be available to any teacher or nonteacher who becomes a member of the Teachers' Retirement System.
on or after the first day of July, two thousand five: 

Provided, That a member is eligible for loan under subsection (c), section six, article seven-c of this chapter to pay all or part of the one and one-half percent contribution for service in the defined contribution plan.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within bill is disapproved this 28th Day of __________________________, 2008.

Governor
PRESENTED TO THE GOVERNOR

MAR 18 2008

Time 3:05 pm