

H.B. 2776

FILED

2001 APR 30 P 4:42

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

FILED

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H. B. 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:

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Enr. H. B. 2776]

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CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

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

§7-14D-23. Loans to Members.

1 (a) A member who is not yet receiving disability or retirement
2 income benefits from the plan may borrow from the plan no
3 more than one time in any year an amount up to one half of his
4 or her accumulated contributions, but not less than five hundred
5 dollars nor more than eight thousand dollars: *Provided*, That the
6 maximum amount of any loan when added to the outstanding
7 balance of all other loans shall not exceed the lesser of the
8 following: (1) Fifty thousand dollars reduced by the excess (if
9 any) of the highest outstanding balance of loans to the member
10 during the one-year period ending on the day before the date on
11 which the loan is made, over the outstanding balance of loans
12 to the member on the day on which the loan is made; or (2) fifty
13 percent of his or her accumulated contributions. No loan may
14 be made from the plan if the board determines that the loans
15 constitute more than fifteen percent of the amortized cost value
16 of the assets of the plan as of the last day of the preceding plan
17 year. The board may discontinue the loans any time it deter-
18 mines that cash flow problems might develop as a result of the
19 loans. Each loan shall be repaid through monthly installments
20 over periods of six through sixty months and carry interest on
21 the unpaid balance and an annual effective interest rate that is
22 two hundred basis points higher than the most recent rate of
23 interest used by the board for determining actuarial contribu-
24 tions levels: *Provided*, That interest charged shall be commer-
25 cially reasonable in accordance with the provisions of section
26 72(p)(2) of the Internal Revenue Code and federal regulations
27 issued thereunder. Monthly loan payments shall be calculated
28 to be as nearly equal as possible with all but the final payment
29 being an equal amount. An eligible member may make addi-
30 tional loan payments or pay off the entire loan balance at any

31 time without incurring any interest penalty. At the member's
32 option, the monthly loan payment may include a level premium
33 sufficient to provide declining term insurance with the plan as
34 beneficiary to repay the loan in full upon the member's death.
35 If a member declines the insurance and dies before the loan is
36 repaid, the unpaid balance of the loan shall be deducted from
37 the lump sum insurance benefits payable under section twenty-
38 one of this article.

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

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

62 (d) Loans shall be evidenced by such form of obligations
63 and shall be made upon such additional terms as to default,

64 prepayment, security, and otherwise as the retirement board
65 may determine.

66 (e) Notwithstanding anything herein to the contrary, the
67 loan program authorized by this section shall comply with the
68 provisions of section 72(p)(2) and section 401 of the Internal
69 Revenue Code and the federal regulations issued thereunder.
70 The retirement board is authorized to: (a) Apply and construe
71 the provisions of this section and administer the plan loan
72 program in such a manner as to comply with the provisions of
73 sections 72(p)(2) and section 401 of the Internal Revenue Code;
74 (b) adopt plan loan policies or procedures consistent with these
75 federal law provisions; and (c) take such actions as it deems
76 necessary or appropriate to administer the plan loan program
77 created hereunder in accordance with these federal law provi-
78 sions. The retirement board is further authorized in connection
79 with the plan loan program to take any actions that may at any
80 time be required by the Internal Revenue Service regarding
81 compliance with the requirements of section 72(p)(2) or section
82 401 of the Internal Revenue Code, notwithstanding any
83 provision in this article to the contrary.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-34. Loans to members.

1 A member of the retirement system upon written applica-
2 tion may borrow from his or her individual account in the
3 teachers accumulation fund, subject to these restrictions:

4 (1) Loans shall be made in multiples of ten dollars, the
5 minimal loan being one hundred dollars and the maximum
6 being eight thousand dollars: *Provided*, That the maximum
7 amount of any loan when added to the outstanding balance of
8 all other loans shall not exceed the lesser of the following: (a)

9 Fifty thousand dollars reduced by the excess (if any) of the
10 highest outstanding balance of loans during the one-year period
11 ending on the day before the date on which the loan is made,
12 over the outstanding balance of loans to the member on the date
13 on which the loan is made; or (b) fifty percent of the member's
14 contributions to his or her individual account in the teachers
15 accumulations fund: *Provided, however,* That if the total
16 amount of loaned money outstanding exceeds forty million
17 dollars, the maximum shall not exceed three thousand dollars
18 until the retirement board determines that loans outstanding
19 have been reduced to an extent that additional loan amounts are
20 again authorized.

21 (2) Interest charged on the amount of the loan shall be six
22 percent per annum, or a higher rate as set by the retirement
23 board: *Provided,* That interest charged shall be commercially
24 reasonable in accordance with the provisions of section 72(p)(2)
25 of the Internal Revenue Code, and the federal regulations issued
26 thereunder. If repayable in installments, the interest shall not
27 exceed the annual rate so established upon the principal amount
28 of the loan, for the entire period of the loan, and such charge
29 shall be added to the principal amount of the loan. The minimal
30 interest charge shall be for six months.

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

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

37 (5) From his or her monthly salary as a teacher the member
38 shall pay the loan and interest by deductions which will pay the
39 loan and interest in substantially level payments in not more
40 than sixty nor less than six months. Upon notice of loan granted

41 and payment due, the employer shall be responsible for making
42 such salary deductions and reporting them to the retirement
43 board. At the option of the retirement board, loan deductions
44 may be collected as prescribed herein for the collection of
45 members' contribution, or may be collected through issuance of
46 warrant by employer. If the borrower decides to make loan
47 payments while not paid for service as a teacher, the retirement
48 board must accept such payments.

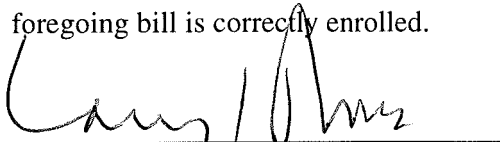
49 (6) The entire unpaid balance of any loan, and interest due
50 thereon, shall, at the option of the retirement board, become due
51 and payable without further notice or demand upon the occur-
52 rence with respect to the borrowing member of any of the
53 following events of default: (A) Any payment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

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

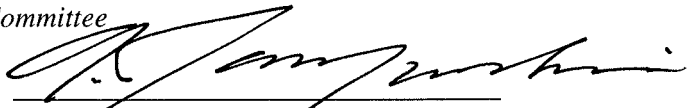
70 (8) Notwithstanding anything herein to the contrary, the
71 loan program authorized by this section shall comply with the
72 provisions of section 72(p)(2) and section 401 of the Internal
73 Revenue Code, and the federal regulations issued thereunder,

74 and accordingly, the retirement board is authorized to: (a)
75 Apply and construe the provisions of this section and adminis-
76 ter the plan loan program in such a manner as to comply with
77 the provisions of section 72(p)(2) and section 401 of the
78 Internal Revenue Code and the federal regulations issued
79 thereunder; (b) adopt plan loan policies or procedures consistent
80 with these federal law provisions; and (c) take such actions as
81 it deems necessary or appropriate to administer the plan loan
82 program created hereunder in accordance with these federal law
83 provisions. The retirement board is further authorized in
84 connection with the plan loan program to take any actions that
85 may at any time be required by the Internal Revenue Service
86 regarding compliance with the requirements of section 72(p)(2)
87 or section 401 of the Internal Revenue Code, and the federal
88 regulations issued thereunder, notwithstanding any provision in
89 this article to the contrary.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



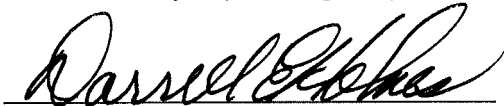
Chairman Senate Committee



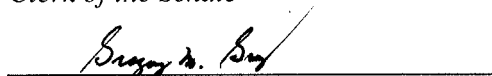
Chairman House Committee

Originating in the House.

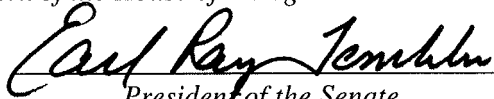
In effect ninety days from passage.



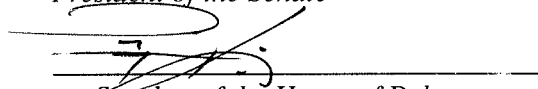
Clerk of the Senate



Clerk of the House of Delegates

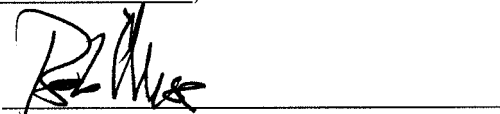


President of the Senate



Speaker of the House of Delegates

The within as approved this the 30th
day of April, 2001.



Governor

PRESENTED TO THE
GOVERNOR

Date 4/23/01

Time 6:45pm