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WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003



ENROLLED

House Bill No. 2983

(By Delegates Campbell and Craig)



Passed March 8, 2003

In Effect from Passage

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STATE OF WEST VIRGINIA

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H. B. 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.

1 (a) Under rules adopted by the retirement board, each
2 teacher shall file a detailed statement of his or her length of
3 service as a teacher for which he or she claims credit. The
4 retirement board shall determine what part of a year is the
5 equivalent of a year of service. In computing the service,
6 however, it shall credit no period of more than a month's
7 duration during which a member was absent without pay, nor
8 shall it credit for more than one year of service performed in
9 any calendar year.

10 (b) For the purpose of this article, the retirement board shall
11 grant prior service credit to new entrants and other members of
12 the retirement system for service in any of the armed forces of
13 the United States in any period of national emergency within
14 which a federal Selective Service Act was in effect. For
15 purposes of this section, "armed forces" includes women's
16 army corps, women's appointed volunteers for emergency
17 service, army nurse corps, spars, women's reserve and other
18 similar units officially parts of the military service of the United
19 States. The military service is considered equivalent to public
20 school teaching, and the salary equivalent for each year of that
21 service is the actual salary of the member as a teacher for his or
22 her first year of teaching after discharge from military service.
23 Prior service credit for military service shall not exceed ten
24 years for any one member, nor shall it exceed twenty-five
25 percent of total service at the time of retirement. Notwithstand-
26 ing the preceding provisions of this subsection, contributions,
27 benefits and service credit with respect to qualified military
28 service shall be provided in accordance with Section 414(u) of
29 the Internal Revenue Code. For purposes of this section,
30 "qualified military service" has the same meaning as in Section
31 414(u) of the Internal Revenue Code. The retirement board is
32 authorized to determine all questions and make all decisions
33 relating to this section and, pursuant to the authority granted to
34 the retirement board in section one, article ten-d, chapter five of
35 this code, may promulgate rules relating to contributions,

36 benefits and service credit to comply with Section 414(u) of the
37 Internal Revenue Code.

38 (c) For service as a teacher in the employment of the federal
39 government, or a state or territory of the United States, or a
40 governmental subdivision of that state or territory, the retire-
41 ment board shall grant credit to the member: *Provided*, That the
42 member shall pay to the system double the amount he or she
43 contributed during the first full year of current employment,
44 times the number of years for which credit is granted, plus
45 interest at a rate to be determined by the retirement board. The
46 interest shall be deposited in the reserve fund and service credit
47 granted at the time of retirement shall not exceed the lesser of
48 ten years or fifty percent of the member's total service as a
49 teacher in West Virginia. Any transfer of out-of-state service,
50 as provided in this article, shall not be used to establish
51 eligibility for a retirement allowance and the retirement board
52 shall grant credit for the transferred service as additional service
53 only: *Provided, however*, That a transfer of out-of-state service
54 is prohibited if the service is used to obtain a retirement benefit
55 from another retirement system: *Provided further*, That salaries
56 paid to members for service prior to entrance into the retirement
57 system shall not be used to compute the average final salary of
58 the member under the retirement system.

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

66 (e) No members shall be considered absent from service
67 while serving as a member or employee of the Legislature of
68 the state of West Virginia during any duly constituted session

69 of that body or while serving as an elected member of a county
70 commission during any duly constituted session of that body.

71 (f) No member shall be considered absent from service as
72 a teacher while serving as an officer with a statewide profes-
73 sional teaching association, or who has served in that capacity,
74 and no retired teacher, who served in that capacity while a
75 member, shall be considered to have been absent from service
76 as a teacher by reason of that service: *Provided*, That the period
77 of service credit granted for that service shall not exceed ten
78 years: *Provided, however*, That a member or retired teacher
79 who is serving or has served as an officer of a statewide
80 professional teaching association shall make deposits to the
81 teachers retirement board, for the time of any absence, in an
82 amount double the amount which he or she would have
83 contributed in his or her regular assignment for a like period of
84 time.

85 (g) The teachers retirement board shall grant service credit
86 to any former or present member of the West Virginia public
87 employees retirement system who has been a contributing
88 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 shall be sufficient to equal the contributions he or she
96 would have made had the member been under the teachers
97 retirement system during the period of his or her membership
98 in the public employees retirement system plus interest at a rate
99 to be determined by the board compounded annually from the
100 date of withdrawal to the date of payment. The interest paid
101 shall be deposited in the reserve fund.

102 (h) 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 (i) Active members who previously worked in CETA
121 (Comprehensive Employment and Training Act) may receive
122 service credit for time served in that capacity: *Provided*, That
123 in order to receive service credit under the provisions of this
124 subsection the following conditions must be met: (1) The
125 member must have moved from temporary employment with
126 the participating employer to permanent full-time employment
127 with the participating employer within one hundred twenty days
128 following the termination of the member's CETA employment;
129 (2) the board must receive evidence that establishes to a
130 reasonable degree of certainty as determined by the board that
131 the member previously worked in CETA; and (3) the member
132 shall pay to the board an amount equal to the employer and
133 employee contribution plus interest at the amount set by the
134 board for the amount of service credit sought pursuant to this
135 subsection: *Provided, however*, That the maximum service
136 credit that may be obtained under the provisions of this subsec-

137 tion is two years: *Provided further*, That a member must apply
138 and pay for the service credit allowed under this subsection and
139 provide all necessary documentation by the thirty-first day of
140 March, two thousand three: *And provided further*, That the
141 board shall exercise due diligence to notify affected employees
142 of the provisions of this subsection.

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

146 (k) A member who withdrew from membership may regain
147 his or her former membership rights as specified in section
148 thirteen of this article only in case he or she has served two
149 years since his or her last withdrawal.

150 (l) Subject to the provisions of subsections (a) through (l),
151 inclusive, of this section, the board shall verify as soon as
152 practicable the statements of service submitted. The retirement
153 board shall issue prior service certificates to all persons eligible
154 for the certificates under the provisions of this article. The
155 certificates shall state the length of the prior service credit, but
156 in no case shall the prior service credit exceed forty years.

157 (m) Notwithstanding any provision of this article to the
158 contrary, when a member is or has been elected to serve as a
159 member of the Legislature, and the proper discharge of his or
160 her duties of public office require that member to be absent
161 from his or her teaching or administrative duties, the time
162 served in discharge of his or her duties of the legislative office
163 are credited as time served for purposes of computing service
164 credit: *Provided*, That the board may not require any additional
165 contributions from that member in order for the board to credit
166 him or her with the contributing service credit earned while
167 discharging official legislative duties: *Provided, however*, That
168 nothing herein may be construed to relieve the employer from

169 making the employer contribution at the member's regular
170 salary rate or rate of pay from that employer on the contributing
171 service credit earned while the member is discharging his or her
172 official legislative duties. These employer payments shall
173 commence as of the first day of June, two thousand: *Provided*
174 *further*, That any member to which the provisions of this
175 subsection apply may elect to pay to the board an amount equal
176 to what his or her contribution would have been for those
177 periods of time he or she was serving in the Legislature. The
178 periods of time upon which the member paid his or her contri-
179 bution shall then be included for purposes of determining his or
180 her final average salary as well as for determining years of
181 service: *And provided further*, That a member utilizing the
182 provisions of this subsection is not required to pay interest on
183 any contributions he or she may decide to make.

184 (n) The teachers retirement board shall grant service credit
185 to any former member of the state police death, disability and
186 retirement system who has been a contributing member for
187 more than three years, for service previously credited by the
188 state police death, disability and retirement system; and: (1)
189 Shall require the transfer of the member's contributions to the
190 teachers retirement system; or (2) shall require a repayment of
191 the amount withdrawn any time prior to the member's retire-
192 ment: *Provided*, That the member shall add to the amounts
193 transferred or repaid under this paragraph an amount which is
194 sufficient to equal the contributions he or she would have made
195 had the member been under the teachers retirement system
196 during the period of his or her membership in the state police
197 death, disability and retirement system plus interest at a rate of
198 six percent compounded annually from the date of withdrawal
199 to the date of payment. The interest paid shall be deposited in
200 the reserve fund.

§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 out-
32 standing loan at any time.

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

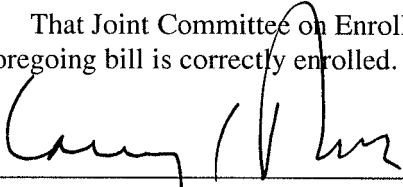
37 (5) From his or her monthly salary as a teacher the member
38 shall pay the loan and interest by deductions which will pay the
39 loan and interest in substantially level payments in not more
40 than sixty nor less than six months. Upon notice of loan granted
41 and payment due, the employer shall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



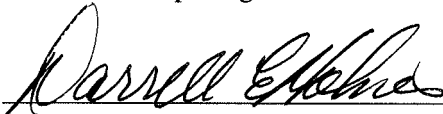
Chairman Senate Committee



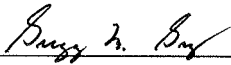
Chairman House Committee

Originating in the House.

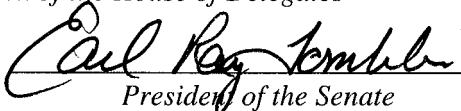
In effect from passage



Clerk of the Senate



Clerk of the House of Delegates

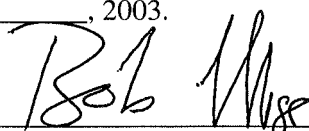


President of the Senate



Speaker of the House of Delegates

The within is approved this the 15th
day of April, 2003.



Governor

PRESENTED TO THE
GOVERNOR

Date 3/26/03

Time 3:50