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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.]

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GEORGE WASHINGTON
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

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(SENATORS FOSTER, DEEM, HUNTER
AND PLYMALE, *original sponsors*)

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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.

§18-7A-3. Definitions.

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

3 (1) "Accumulated contributions" means all deposits
4 and all deductions from the gross salary of a
5 contributor plus regular interest.

6 (2) "Accumulated net benefit" means the aggregate
7 amount of all benefits paid to or on behalf of a retired
8 member.

9 (3) "Annuities" means the annual retirement
10 payments for life granted beneficiaries in accordance
11 with this article.

12 (4) "Average final salary" means the average of the
13 five highest fiscal year salaries earned as a member
14 within the last fifteen fiscal years of total service credit,
15 including military service as provided in this article, or
16 if total service is less than fifteen years, the average
17 annual salary for the period on which contributions
18 were made.

19 (5) "Beneficiary" means the recipient of annuity
20 payments made under the retirement system.

21 (6) "Contributor" means a member of the retirement
22 system who has an account in the Teachers' Retirement
23 System Fund.

24 (7) "Deposit" means a voluntary payment to his or her
25 account by a member.

26 (8) "Employer" means the agency of and within the
27 state which has employed or employs a member.

28 (9) "Employer error" means an inadvertent omission,
29 misrepresentation or violation of relevant provisions of
30 the West Virginia Code or of the West Virginia Code of
31 State Rules or the relevant provisions of both the West
32 Virginia Code and the West Virginia Code of State
33 Rules by the participating public employer that has
34 resulted in an underpayment or overpayment of
35 required contributions. A deliberate act contrary to the
36 provisions of this section by a participating public
37 employer does not constitute employer error.

38 (10) "Employment term" means employment for at
39 least ten months, a month being defined as twenty
40 employment days.

41 (11) "Gross salary" means the fixed annual or
42 periodic cash wages paid by a participating public
43 employer to a member for performing duties for the
44 participating public employer for which the member
45 was hired. Gross salary also includes retroactive
46 payments made to a member to correct a clerical error,
47 or made pursuant to a court order or final order of an
48 administrative agency charged with enforcing federal
49 or state law pertaining to the member's rights to
50 employment or wages, with all retroactive salary

51 payments to be allocated to and considered paid in the
52 periods in which the work was or would have been
53 done. Gross salary does not include lump sum
54 payments for bonuses, early retirement incentives,
55 severance pay or any other fringe benefit of any kind
56 including, but not limited to, transportation allowances,
57 automobiles or automobile allowances, or lump sum
58 payments for unused, accrued leave of any type or
59 character.

60 (12) "Internal Revenue Code" means the Internal
61 Revenue Code of 1986, as it has been amended.

62 (13) "Member" means any person who has
63 accumulated contributions standing to his or her credit
64 in the Teachers' Retirement System.

65 (14) "Members of the administrative staff of the
66 public schools" means deans of instruction, deans of
67 men, deans of women and financial and administrative
68 secretaries.

69 (15) "Members of the extension staff of the public
70 schools" means every agricultural agent, boys' and
71 girls' club agent and every member of the agricultural
72 extension staff whose work is not primarily
73 stenographic, clerical or secretarial.

74 (16) "New entrant" means a teacher who is not a
75 present teacher.

76 (17) "Nonteaching member" means any person, except
77 a teacher member, who is regularly employed for full-
78 time service by: (a) Any county board of education; (b)
79 the State Board of Education; or (c) the Higher

80 Education Policy Commission, the West Virginia
81 Council for Community and Technical College
82 Education or a governing board, as defined in section
83 two, article one, chapter eighteen-b of this code:
84 *Provided*, That any person whose employment with the
85 Higher Education Policy Commission, the West Virginia
86 Council for Community and Technical College
87 Education or a governing board commences on or after
88 the first day of July, one thousand nine hundred ninety-
89 one, is not considered a nonteaching member.

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

93 (19) "Present member" means a present teacher who
94 is a member of the retirement system.

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

100 (21) "Prior service" means all service as a teacher
101 completed prior to the first day of July, one thousand
102 nine hundred forty-one, and all service of a present
103 member who was employed as a teacher, and did not
104 contribute to a retirement account because he or she
105 was legally ineligible for membership during the
106 service.

107 (22) "Public schools" means all publicly supported
108 schools, including colleges and universities in this state.

109 (23) "Refund beneficiary" means the estate of a
110 deceased contributor or a person he or she has
111 nominated as beneficiary of his or her contributions by
112 written designation duly executed and filed with the
113 retirement board.

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

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

123 (26) "Regularly employed for full-time service" means
124 employment in a regular position or job throughout the
125 employment term regardless of the number of hours
126 worked or the method of pay.

127 (27) "Required beginning date" means the first day of
128 April of the calendar year following the later of: (a) The
129 calendar year in which the member attains age seventy
130 and one-half years; or (b) the calendar year in which the
131 member retires or ceases covered employment under the
132 system after having attained the age of seventy and
133 one-half years.

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

136 (29) "Teacher member" means the following persons,
137 if regularly employed for full-time service: (a) Any

138 person employed for instructional service in the public
139 schools of West Virginia; (b) principals; (c) public school
140 librarians; (d) superintendents of schools and assistant
141 county superintendents of schools; (e) any county school
142 attendance director holding a West Virginia teacher's
143 certificate; (f) members of the research, extension,
144 administrative or library staffs of the public schools; (g)
145 the State Superintendent of Schools, heads and
146 assistant heads of the divisions under his or her
147 supervision, or any other employee under the State
148 Superintendent performing services of an educational
149 nature; (h) employees of the State Board of Education
150 who are performing services of an educational nature;
151 (i) any person employed in a nonteaching capacity by
152 the State Board of Education, any county board of
153 education, the State Department of Education or the
154 Teachers' Retirement Board, if that person was
155 formerly employed as a teacher in the public schools; (j)
156 all classroom teachers, principals and educational
157 administrators in schools under the supervision of the
158 Division of Corrections, the Division of Health or the
159 Division of Human Services; and (k) an employee of the
160 State Board of School Finance, if that person was
161 formerly employed as a teacher in the public schools;
162 and (l) any person designated as a 21st Century Learner
163 Fellow pursuant to section eleven, article three, chapter
164 eighteen-a of this code who elects to remain a member
165 of the Teachers' Retirement System provided in this
166 article.

167 (30) "Total service" means all service as a teacher
168 while a member of the retirement system since last
169 becoming a member and, in addition thereto, credit for
170 prior service, if any.

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
2 consist of the following:

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

6 (b) The membership of the retirement system shall not
7 include any person who is an active member of or who
8 has been retired by the West Virginia Public Employees
9 Retirement System, the Judges' Retirement System, or
10 the retirement system of the West Virginia State Police
11 or the supplemental retirement system as provided in
12 section four-a, article twenty-three of this chapter. The
13 membership of any person in the retirement system
14 ceases:

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

18 (c) Any former member of the retirement system who
19 has withdrawn accumulated contributions but
20 subsequently reenters the retirement system may repay
21 to the retirement fund the amount withdrawn, plus
22 interest at a rate set by the board, compounded
23 annually from the date of withdrawal to the date of
24 repayment: *Provided*, That no repayment may be made

25 until the former member has completed two years of
26 contributory service after reentry; and the member shall
27 be accorded all the rights to prior service and
28 experience as were held at the time of withdrawal of
29 the accumulated contributions: *Provided, however,*
30 That no withdrawn service may be reinstated that has
31 been transferred to another retirement system from
32 which the member is currently or will in the future
33 draw benefits based on the same service. The interest
34 paid shall be deposited in the reserve fund.

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

41 (e) Any individual who is a leased employee is not
42 eligible to participate in the system. For purposes of
43 this system, a "leased employee" means any individual
44 who performs services as an independent contractor or
45 pursuant to an agreement with an employee leasing
46 organization or other similar organization. If a
47 question arises regarding the status of an individual as
48 a leased employee, the board has final power to decide
49 the question.

**§18-7A-14. Contributions by members; contributions by
employers; correction of errors.**

1 (a) At the end of each month, every member of the
2 retirement system shall contribute six percent of that
3 member's monthly gross salary to the retirement board:
4 *Provided,* That any member employed by a state

5 institution of higher education shall contribute on the
6 member's full earnable compensation, unless otherwise
7 provided in section fourteen-a of this article. The sums
8 are due the Teachers' Retirement System at the end of
9 each calendar month in arrears and shall be paid not
10 later than fifteen days following the end of the calendar
11 month. Each remittance shall be accompanied by a
12 detailed summary of the sums withheld from the
13 compensation of each member for that month on forms,
14 either paper or electronic, provided by the Teachers'
15 Retirement System for that purpose.

16 (b) Annually, the contributions of each member shall
17 be credited to the member's account in the Teachers'
18 Retirement System Fund. The contributions shall be
19 deducted from the salaries of the members as
20 prescribed in this section, and every member shall be
21 considered to have given consent to the deductions. No
22 deductions, however, shall be made from the earnable
23 compensation of any member who retired because of
24 age or service, and then resumed service unless as
25 provided in section thirteen-a of this article.

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

38 this chapter.

39 (d) Payment by an employer to a member of the sum
40 specified in the employment contract minus the amount
41 of the employee's deductions shall be considered to be
42 a full discharge of the employer's contractual obligation
43 as to earnable compensation.

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

49 (f) If any change or employer error in the records of
50 any participating public employer or the retirement
51 system results in any person receiving from the system
52 more or less than he or she would have been entitled to
53 receive had the records been correct, the board shall
54 correct the error and, as far as is practicable, shall
55 adjust the payment of the benefit in a manner that the
56 actuarial equivalent of the benefit to which the person
57 was correctly entitled is paid. Any employer error
58 resulting in an underpayment to the retirement system
59 may be corrected by the employee remitting the
60 required employee contribution and the participating
61 public employer remitting the required employer
62 contribution. Interest shall accumulate in accordance
63 with Legislative Rule Retirement Board Reinstatement
64 Interest 162 CSR 7, and any accumulating interest owed
65 on the employee and employer contributions resulting
66 from the employer error are the responsibility of the
67 participating public employer. The participating public
68 employer may remit total payment and the employee
69 reimburse the participating public employer through

70 payroll deduction over a period equivalent to the time
71 period during which the employer error occurred.

§18-7A-28c. Direct rollovers.

1 (a) This section applies to distributions made on or
2 after the first day of January, one thousand nine
3 hundred ninety-three. Notwithstanding any provision
4 of this article to the contrary that would otherwise limit
5 a distributee's election under this system, a distributee
6 may elect, at the time and in the manner prescribed by
7 the board, to have any portion of an eligible rollover
8 distribution paid directly to an eligible retirement plan
9 specified by the distributee in a direct rollover. For
10 purposes of this section, the following definitions apply:

11 (1) "Eligible rollover distribution" means any
12 distribution of all or any portion of the balance to the
13 credit of the distributee, except that an eligible rollover
14 distribution does not include any of the following: (i)
15 Any distribution that is one of a series of substantially
16 equal periodic payments not less frequently than
17 annually made for the life or life expectancy of the
18 distributee or the joint lives or the joint life
19 expectancies of the distributee and the distributee's
20 designated beneficiary, or for a specified period of ten
21 years or more; (ii) any distribution to the extent the
22 distribution is required under Section 401(a)(9) of the
23 Internal Revenue Code; (iii) the portion of any
24 distribution that is not includable in gross income
25 determined without regard to the exclusion for net
26 unrealized appreciation with respect to employer
27 securities; and (iv) any hardship distribution described
28 in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue
29 Code. For distributions after the thirty-first day of

30 December, two thousand one, a portion of a distribution
31 shall not fail to be an eligible rollover distribution
32 merely because the portion consists of after-tax
33 employee contributions which are not includable in
34 gross income. However, this portion may be paid only
35 to an individual retirement account or annuity
36 described in Section 408(a) or (b) of the Internal
37 Revenue Code, or to a qualified defined contribution
38 plan described in Section 401(a) or 403(a) of the
39 Internal Revenue Code that agrees to separately
40 account for amounts transferred, including separately
41 accounting for the portion of the distribution which is
42 includable in gross income and the portion of the
43 distribution which is not includable.

44 (2) "Eligible retirement plan" means an individual
45 retirement account described in Section 408(a) of the
46 Internal Revenue Code, an individual retirement
47 annuity described in Section 408(b) of the Internal
48 Revenue Code, an annuity plan described in Section
49 403(a) of the Internal Revenue Code, or a qualified plan
50 described in Section 401(a) of the Internal Revenue
51 Code, that accepts the distributee's eligible rollover
52 distribution: *Provided*, That in the case of an eligible
53 rollover distribution to the surviving spouse, an eligible
54 retirement plan is an individual retirement account or
55 individual retirement annuity. For distributions after
56 the thirty-first day of December, two thousand one, an
57 eligible retirement plan also means an annuity contract
58 described in Section 403(b) of the Internal Revenue
59 Code and an eligible plan under Section 457(b) of the
60 Internal Revenue Code which is maintained by a state,
61 political subdivision of a state, or any agency or
62 instrumentality of a state or political subdivision of a
63 state and which agrees to separately account for

64 amounts transferred into the plan from this system.

65 (3) "Distributee" means an employee or former
66 employee. In addition, the employee's or former
67 employee's surviving spouse and the employee's or
68 former employee's spouse or former spouse who is the
69 alternate payee under a qualified domestic relations
70 order, as defined in Section 414(p) of the Internal
71 Revenue Code, as applicable to governmental plans, are
72 distributees with regard to the interest of the spouse or
73 former spouse.

74 (4) "Direct rollover" means a payment by the system
75 to the eligible retirement plan.

76 (b) Nothing in this section may be construed as
77 permitting rollovers into this system or any other
78 retirement system administered by the board.

§18-7A-34. Loans to members.

1 (a) An actively contributing member of the retirement
2 system upon written application may borrow from his
3 or her individual account in the Teachers' Retirement
4 System Fund, subject to these restrictions:

5 (1) Loans shall be made in multiples of ten dollars, the
6 minimal loan being one hundred dollars and the
7 maximum being eight thousand dollars: *Provided*, That
8 the maximum amount of any loan when added to the
9 outstanding balance of all other loans shall not exceed
10 the lesser of the following: (A) Eight thousand dollars
11 reduced by the excess (if any) of the highest
12 outstanding balance of loans during the one-year
13 period ending on the day before the date on which the

14 loan is made, over the outstanding balance of loans to
15 the member on the date on which the loan is made; or
16 (B) fifty percent of the member's contributions to his or
17 her individual account in the Teachers' Accumulations
18 Fund: *Provided, however*, That if the total amount of
19 loaned money outstanding exceeds forty million dollars,
20 the maximum shall not exceed three thousand dollars
21 until the retirement board determines that loans
22 outstanding have been reduced to an extent that
23 additional loan amounts are again authorized.

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

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

41 (4) If a refund is payable to the borrower or his or her
42 beneficiary before he or she repays the loan with
43 interest, the balance due with interest to date shall be
44 deducted from the refund.

45 (5) From his or her monthly salary as a teacher or a
46 nonteacher the member shall pay the loan and interest
47 by deductions which will pay the loan and interest in
48 substantially level payments in not more than sixty nor
49 less than six months. Upon notice of loan granted and
50 payment due, the employer is responsible for making
51 the salary deductions and reporting them to the
52 retirement board. At the option of the board, loan
53 deductions may be collected as prescribed in this
54 section for the collection of members' contribution, or
55 may be collected through issuance of a warrant by the
56 employer. If the borrower is no longer employed as a
57 teacher or nonteaching member, the borrower shall
58 make monthly loan payments directly to the
59 Consolidated Public Retirement Board and the board
60 must accept the payments.

61 (6) The entire unpaid balance of any loan, and interest
62 due thereon, shall, at the option of the board, become
63 due and payable without further notice or demand
64 upon the occurrence with respect to the borrowing
65 member of any of the following events of default: (A)
66 Any payment of principal and accrued interest on a
67 loan remains unpaid after it becomes due and payable
68 under the terms of the loan or after the grace period
69 established in the discretion of the board; (B) the
70 borrowing member attempts to make an assignment for
71 the benefit of creditors of his or her refund or benefit
72 under the retirement system; or (C) any other event of
73 default set forth in rules promulgated by the board in
74 accordance with the authority granted pursuant to
75 section one, article ten-d, chapter five of this code:
76 *Provided*, That any refund or offset of an unpaid loan
77 balance shall be made only at the time the member is
78 entitled to receive a distribution under the retirement

79 system.

80 (7) Loans shall be evidenced by such form of
81 obligations and shall be made upon any additional
82 terms as to default, prepayment, security, and otherwise
83 determined by the retirement board.

84 (8) Notwithstanding anything in this section to the
85 contrary, the loan program authorized by this section
86 shall comply with the provisions of Section 72(p)(2) and
87 Section 401 of the Internal Revenue Code, and the
88 federal regulations issued thereunder, and accordingly,
89 the retirement board is authorized to: (A) Apply and
90 construe the provisions of this section and administer
91 the plan loan program in such a manner as to comply
92 with the provisions of Section 72(p)(2) and Section 401
93 of the Internal Revenue Code and the federal
94 regulations issued thereunder; (B) adopt plan loan
95 policies or procedures consistent with these federal law
96 provisions; and (C) take the actions it considers
97 necessary or appropriate to administer the plan loan
98 program created under this section in accordance with
99 these federal law provisions. The retirement board may
100 also in connection with the plan loan program take any
101 actions that may at any time be required by the Internal
102 Revenue Service regarding compliance with the
103 requirements of Section 72(p)(2) or Section 401 of the
104 Internal Revenue Code, and the federal regulations
105 issued thereunder, notwithstanding any provision in
106 this article to the contrary.

107 (b) Notwithstanding anything in this article to the
108 contrary, the loan program authorized by this section
109 shall not be available to any teacher or nonteacher who
110 becomes a member of the Teachers' Retirement System

111 on or after the first day of July, two thousand five:
112 *Provided*, That a member is eligible for loan under
113 subsection (c), section six, article seven-c of this chapter
114 to pay all or part of the one and one-half percent
115 contribution for service in the defined contribution
116 plan.

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

Handwritten signature of Randy White
.....
Chairman Senate Committee

Handwritten signature of J. H. [unclear]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Handwritten signature of Darrell Holmes
.....
Clerk of the Senate

Handwritten signature of Susan D. [unclear]
.....
Clerk of the House of Delegates

Handwritten signature of Carl Roy Tomblin
.....
President of the Senate

Handwritten signature of [unclear]
.....
Speaker House of Delegates

The within *is disapproved* this
the *28th* Day of *May* 2008.

Handwritten signature of [unclear]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 18 2008

Time 3:05 pm