

# WEST VIRGINIA CODE: §18-7A-35B

## **§18-7A-35b. Temporary early retirement incentives program; legislative declarations and findings; termination date.**

Under the prior enactment of this section, the Legislature found and declared that a compelling state interest existed in providing a temporary, early retirement incentives program for encouraging the early, voluntary retirement of those public employees who were current, active, contributing members of this retirement system on April 1, 1988, in the reduction of the number of the employees and in reduction of governmental costs for the employees. The Legislature further found that maintaining an actuarially sound retirement fund is essential and that the reemployment in any manner, including reemployment on a contract basis, by the state of any person who retired under this section is contrary to the intent of the early retirement program and severely threatens the fiscal integrity of the retirement fund. The early retirement program under the prior enactment of this section, offered employees three retirement incentive options. Any person who retired under the provisions of the prior enactment of this section are subject to the restrictions contained in this section.

(a) For the purposes of this section: (1) "Contract" means any personal service agreement, not involving the sale of commodities, that cannot be performed within sixty days or for which the total compensation exceeds \$7,500 in any twelve-month period. The term "contract" does not include any agreement obtained by a retirant through a bidding process and which is for the furnishing of any commodity to a government agency; (2) "governmental entity" means the State of West Virginia; a Constitutional branch or office of the state government, or any subdivision of state government; a county, city or town in the state; a county board of education; a separate corporation or instrumentality established pursuant to a state statute; any other entity currently permitted to participate in any state public retirement system or the Public Employees Insurance Agency; or any officer or official of any entity listed in this subsection who is acting in his or her official capacity; (3) "substitute teacher" means a teacher, public school librarian, registered professional nurse employed by the county board of education or any other person employed for counselling or instructional purposes in a public school in this state who is temporarily fulfilling the duties of an existing person employed in a specific position who is temporarily absent from that specific position; and (4) "part-time elected or appointed office" means any elected or appointed office that compensates its members in an amount less than \$2,500 or requires less than sixty days of service in any twelve-month period.

(b) Any member who participated in the retirement incentive program under the prior enactment of this section is not eligible to accept further employment or accept, directly or indirectly, work on a contract basis from a governmental entity: Provided, That the executive director may approve, upon written request for good cause shown, an exception allowing a retirant to perform work on a contract basis: Provided, however, That a person may retire

under this section and thereafter serve in an elective office: Provided further, That he or she shall not receive the incentive option he or she elected under the prior enactment of this section during the term of service in that office for which the total compensation exceeds \$7,500, but shall receive his or her annuity calculated on regular basis, as if originally taken not under the prior enactment of this section but on a regular basis. At the end of the term and cessation of service in the office, the incentive option resumes. In respect of an appointive office, as distinguished from an elective office, any person retiring under this section and thereafter serving in the appointive office for which the total compensation exceeds \$7,500 shall not receive the incentive option he or she elected under the prior enactment of this section during the term of service in that office, but the incentive option resumes during that period: And provided further, That at the end of the term and cessation of service in the appointive office the incentive option provided for under the prior enactment of this section resumes: And provided further, That any person elected or appointed to office by the state or any of its political subdivisions who waives whatever salary, wage or per diem compensation he or she may be entitled to by virtue of service in that office and who does not receive any income from service in that office except the reimbursement of out-of-pocket costs and expenses that are permitted by the statutes governing the office shall continue to receive the incentive option he or she elected under this section. The service may not be counted as contributed or credited service for purposes of computing retirement benefits.

(c) If the elected or appointed office is a part-time elected or appointed office, a person electing retirement under this section may serve in the elective or appointive office with no loss of the benefits provided under the prior enactment of this section.

(d) Prior to the initiation or renewal of any contract for which the total compensation exceeds \$7,500 and entered into pursuant to this section or the acceptance of any elective or appointive office for which the total compensation exceeds \$7,500, a person who has elected to retire under the early retirement provisions of the prior enactment of this section shall complete a disclosure and waiver statement executed under oath and acknowledged by a notary public. The board shall propose rules for promulgation, pursuant to article three, chapter twenty-nine-a of this code, regarding the form and contents of the waiver and disclosure statement. The disclosure and waiver statement shall be forwarded to the appropriate state public retirement system administrator who shall take action to ensure that the early retirement incentive option benefit is reduced in accordance with the provisions of this section. The administrator shall then certify that action in writing to the appropriate governmental entity.

(e) In any event, an eligible member who retired under the prior enactment of this section may continue to receive his or her incentive annuity and be employed as a substitute teacher, as adjunct faculty, as a school service personnel substitute, or as a part-time member of the faculty of southern West Virginia community college or West Virginia northern community college: Provided, That the board of directors determines that the part-time employment is in accordance with policies to be adopted by the board regarding adjunct faculty. For purposes of this section, a "part-time member of the faculty" means an

individual employed solely to provide instruction for not more than twelve college credits per semester.

(f) Any incentive retirants, under the prior enactment of this section, may not receive an annuity and enter or reenter any governmental retirement system established or authorized to be established by the state, notwithstanding any provision of the code to the contrary, unless required by Constitutional provision.

(g) The additional annuity allowed for temporary early retirement is intended to be paid from the retirement incentive account created as a special account in the State Treasury and from the funds in the special account established with moneys required to be applied or transferred by heads of spending units from the unused portion of salary and fringe benefits in their budgets accruing in respect to the positions vacated and subsequently canceled under this temporary early retirement program. Salary and fringe benefit moneys actually saved in a particular fiscal year constitute the fund source. No additional annuity shall be disallowed even though initial receipts may not be sufficient, with funds of the system to be applied for the purpose, as for the base annuity.

(h) The executive secretary of the retirement system shall file a quarterly report to the Legislature detailing the number of retirees who have elected to accept early retirement incentive options, the dollar cost to date by option selected, and the projected annual cost through the year 2000.

(i) Termination of temporary retirement incentives program. -- The right to retire under this section terminated on June 30, 1989.