WEST VIRGINIA LEGISLATURE

3rd EXTRAORDINARY SESSION, 1988

ENROLLED

Committee Substitute for
SENATE BILL NO. 10

(By Senator [Signature])

PASSED June 27, 1988
In Effect from Passage
AN ACT to amend and reenact sections two, twenty-two-c and fifty-three, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article ten by adding thereto a new section, designated section fifteen-a; to repeal article ten-d of said chapter five; to amend and reenact sections thirteen-b, thirty-five-b and thirty-six, article seven-a, chapter eighteen of said code; and to amend and reenact section four-a, article twenty-three of said chapter eighteen, all relating to the public employees retirement system (PERS), the public employees retirement system II (PERS II), and the state teachers retirement system (TRS); providing first, in respect of the public employees retirement system (PERS), for: clarifying and making changes in certain definitions, including revising the definition of "contributing service" to specifically permit the using and
combining of such contributing service in certain other
public retirement systems of the state with that earned after
one has become a member of PERS for determining certain
eligibility, including application of the "special rule of
eighty", with such revised definition being made applicable
and so usable, retroactively, to the first day of April, one
thousand nine hundred eighty-eight; revising the definition
for "employees" to permit temporary legislative employees
to be considered such eligible employees after eight years of
such temporary service rather than ten years; specifying the
method of computation to be applied in determining
additional credited service for retirement receivable by a
member through use of his accrued annual leave or sick leave
days, as an option, for such purpose; providing for the
temporary, early retirement incentives program, and in
respect of it, for: changes in the period for election and
exercise of such rights under such incentive program;
options; specifying those members eligible for such
incentives program and certain ineligible members; factors
of eligibility; conditions; exceptions; giving of certain notice
and time therefor; receipt of incentive retirement benefit
and certain other governmental employment prohibited,
with exceptions; prohibition of incentive retirees from
entering or reentering certain retirement systems, with
exception; funding and sources thereof; reports; retirement-
vacated positions and abolishment of certain of such
positions, with exceptions; budgetary savings; special
account established in state treasury; "special rule of
eighty" and "contributing service" and other qualifications
thereunder; dates for beginning, termination and giving of
certain notice under retirement incentives program and
requiring making of joint study of state retirement systems
with report to be submitted by specified date to joint
committee on government and finance of the Legislature;
providing second, in respect of the public employees
retirement system II (PERS II) for repeal and termination of
such retirement system of the state, prior to its beginning
operation on the first day of July, one thousand nine hundred
eighty-eight; providing third, in respect of the teachers
retirement system (TRS) for: acquisition of credited service
in certain instances with payment therefor by cooperative
extension service employees, and conditions thereof; the
temporary early retirement incentives program and in
respect of it for: changes in the period for election and exercise of rights under such incentives program; specifying members eligible for such program and certain ineligible members; options; factors of eligibility; conditions; exceptions; giving of certain notice and date therefor; receipt of incentive-based retirement benefit and certain other governmental employment prohibited, with exceptions; incentive retirants prohibited from entering or reentering certain retirement systems, with exception; funding and sources thereof; reports; retirement-vacated positions and abolition of certain of such positions, with exceptions; budgetary savings; special account established in state treasury "special rule of eighty" and "contributing service" and other qualifications thereunder; dates for beginning, termination and giving of certain notice under retirement incentives program; requiring cooperative joint study of state retirement systems, with report thereof to be submitted by specified date to joint committee on government and finance of the Legislature; and specifying by legislative declaration that certain language inadvertently remaining in a certain specified section of Enrolled Committee Substitute for H.B. 4672, enacted at regular session, one thousand nine hundred eighty-eight, after intended legislative deletion, and contrary to legislative intent, be retroactively expunged and deleted to time of the effective date of said enrolled bill as curative and technical error corrective action by Legislature and that such ambiguous and deficient language shall be given no force and effect in any litigation involving such language.

Be it enacted by the Legislature of West Virginia:

That sections two, twenty-two-c and fifty-three, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article ten be further amended by adding thereto a new section, designated section fifteen-a; that article ten-d of said chapter five be repealed; that sections thirteen-b, thirty-five-b and thirty-six, article seven-a, chapter eighteen of said code be amended and reenacted; and that section four-a, article twenty-three of said chapter eighteen be amended and reenacted, all to read as follows:
CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, shall have the following meanings:

1. "State" means the state of West Virginia;
2. "Retirement system" or "system" means the West Virginia public employees retirement system created and established by this article;
3. "Board of trustees" or "board" means the board of trustees of the West Virginia public employees retirement system;
4. "Political subdivision" means the state of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns, any agency or organization established by, or approved by the department of mental health for the provision of community health or mental retardation services, and which is supported in part by state, county or municipal funds;
5. "Participating public employer" means the state of West Virginia, any board, commission, department, institution or spending unit, and shall include any agency created by rule of the supreme court of appeals having full-time employees, which for the purposes of this article shall be deemed a department of state government; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia public employees retirement system;
6. "Employee" means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional
appointment, in the service of, and whose compensation is payable, in whole or in part, by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia national guard whose compensation, in whole or in part, is paid by the federal government: Provided, That members of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate, employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between regular sessions for eight or more years, members of the legislative body of any political subdivision and judges of the state court of claims shall be considered to be employees, anything contained herein to the contrary notwithstanding. In any case of doubt as to who is an employee within the meaning of this article the board of trustees shall decide the question;

(7) "Member" means any person who is included in the membership of the retirement system;

(8) "Retirant" means any member who retires with an annuity payable by the retirement system;

(9) "Beneficiary" means any person, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

(10) "Service" means personal service rendered to a participating public employer by an employee, as defined in this article, of a participating public employer;

(11) "Prior service" means service rendered prior to July one, one thousand nine hundred sixty-one, to the extent credited a member as provided in this article;

(12) "Contributing service" means service rendered by a member within this state and for which such member made contributions to a public retirement system account of this state, to the extent credited him as provided by this article, such revised definition being retroactive and applicable to the first day of April, one thousand nine hundred eighty-eight and thereafter;
(13) "Credited service" means the sum of a member's prior service credit and contributing service credit standing to his credit as provided in this article;

(14) "Compensation" means the remuneration paid a member by a participating public employer for personal services rendered by him to the participating public employer. In the event a member's remuneration is not all paid in money, his participating public employer shall fix the value of the portion of his remuneration which is not paid in money;

(15) "Final average salary" means either (a) the average of the highest annual compensation received by a member (including a member of the Legislature who participates in the retirement system in the year one thousand nine hundred seventy-one or thereafter) during any period of three consecutive years of his credited service contained within his ten years of credited service immediately preceding the date his employment with a participating public employer last terminated, or (b) if he has less than five years of credited service, the average of the annual rate of compensation received by him during his total years of credited service; and in determining the annual compensation, under either (a) or (b) of this subdivision (15), of a member of the Legislature who participates in the retirement system as a member of the Legislature in the year one thousand nine hundred seventy-one or in any year thereafter, his actual legislative compensation (the total of all compensation paid under sections two, three, four and five, article two-a, chapter four of this code) in the year one thousand nine hundred seventy-one or in any year thereafter, plus any other compensation he receives in any such year from any other participating public employer including the state of West Virginia, without any multiple in excess of one times his actual legislative compensation as aforesaid and other compensation, shall be used: Provided, That "final average salary" for any former member of the Legislature or for any member of the Legislature in the year one thousand nine hundred seventy-one who, in either event, was a member of the Legislature on November thirty, one thousand nine hundred sixty-eight, or November thirty, one thousand nine hundred sixty-nine, or November thirty, one thousand nine hundred seventy, or on November thirty in any one or more of said three years, and who
participated in the retirement system as a member of the Legislature in any one or more of such years of one thousand nine hundred sixty-eight, one thousand nine hundred sixty-nine or one thousand nine hundred seventy, means (i) either (notwithstanding the provisions of this subdivision (15) preceding this proviso) one thousand five hundred dollars multiplied by eight, plus the highest other compensation such former member or member received in any one of said three years from any other participating public employer including the state of West Virginia, or (ii) “final average salary” determined in accordance with (a) or (b) of this subdivision (15), whichever computation shall produce the higher final average salary (and in determining the annual compensation under (ii) of this proviso, the legislative compensation of any such former member shall be computed on the basis of one thousand five hundred dollars multiplied by eight, and the legislative compensation of any such member shall be computed on the basis set forth in the provisions of this subdivision (15) immediately preceding this proviso or on the basis of one thousand five hundred dollars multiplied by eight, whichever computation as to such member shall produce the higher annual compensation);

(16) “Accumulated contributions” means the sum of all amounts deducted from the compensations of a member and credited to his individual account in the members’ deposit fund, together with regular interest thereon;

(17) “Regular interest” means such rate or rates of interest per annum, compounded annually, as the board of trustees shall from time to time adopt;

(18) “Annuity” means an annual amount payable by the retirement system throughout the life of a person. All annuities shall be paid in equal monthly installments, using the upper cent for any fraction of a cent;

(19) “Annuity reserve” means the present value of all payments to be made to a retirant or beneficiary of a retirant on account of any annuity, computed upon the basis of such mortality and other tables of experience, and regular interest, as the board of trustees shall from time to time adopt;

(20) “Retirement” means a member’s withdrawal from the employ of a participating public employer with an annuity payable by the retirement system;
(21) "Actuarial equivalent" means a benefit of equal value computed upon the basis of such mortality table and regular interest as the board of trustees shall from time to time adopt; and

(22) The masculine gender shall include the feminine gender, and words of the singular number with respect to persons shall include the plural number, and vice versa.

§5-10-15a. Retirement credited service through member's use, as option, of accrued annual or sick leave days.

Any member accruing annual leave or sick leave days may, after the effective date of this section, elect to use such days at the time of retirement to acquire additional credited service in this retirement system. Such days shall be applied on the basis of two work days credit granted for each one day of such accrued annual or sick leave days, with each month of retirement service credit to equal twenty work days and with any remainder of ten work days or more to constitute a full month of additional credit and any remainder of less than ten work days to be dropped and not used, notwithstanding any provisions of the code to the contrary, including section twelve, article sixteen of this chapter. Such credited service shall be allowed and not deemed to controvert the requirement of no more than twelve months credited service in any year's period.

§5-10-22c. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

The Legislature hereby finds and declares that a compelling state interest exists 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 the first day of April, one thousand nine hundred eighty-eight, in the reduction of the number of such employees and in reduction of governmental costs therefore; that such program constitutes a public purpose; and that the special classifications and differentiations
provided in respect of such program are reasonable and equitable ones for the accomplishment of such purpose and program as enacted in Enrolled Committee Substitute for H. B. 4672, regular session, one thousand nine hundred eighty-eight, and as clarified and supplemented herein, retroactive to such beginning date, aforesaid.

(a) Beginning on the first day of April, one thousand nine hundred eighty-eight, and continuing through the thirty-first day of December, one thousand nine hundred eighty-eight, (or as extended by eligibility qualification requirement, as hereinafter specified) eligible members, being those active, contributing members actually and currently employed on such beginning date, retiring pursuant to this section, and from any state, county or municipal position, covered under the two divisions of this retirement system (the state division and the public employer, nonstate division) including those so employed on said beginning date and leaving the system during the incentive period and who are eligible for taking deferred retirement (but not disability retirees) may elect to participate in this incentives program and may elect any one of the three following incentive options:

(1) Retirement incentive option one:

For the purpose of computing the member's annuity, the normal final average salary shall be computed and one-eighth thereof shall be added thereto in arriving at the true final average salary for use in actual computation of retirement benefit.

(2) Retirement incentive option two:

A member may elect a lump sum payment, in addition to his regular retirement annuity, equal to ten percent of his final average salary not to exceed five thousand dollars, and in the case of a deferred retirement electing this option, such lump sum payment shall be receivable and deferred to the time of receipt of such deferred retirement annuity.

(3) Retirement incentive option three:

A person shall be credited with an additional two years of contributing service and an additional two years of age. The years credited under this option shall in no way add to a member's final average salary factor of computation.

Active, contributing members who desire to retire under this section but who are unable to retire by the thirty-first day of December, one thousand nine hundred eighty-eight
and make use of the incentive retirement program because an element of eligibility for retirement, such as age or other element, will not be met until a date after the thirty-first day of December, one thousand nine hundred eighty-eight and before the first day of July, one thousand nine hundred eighty-nine, shall be permitted to postpone actual retirement until the date of fulfilling such element of eligibility and shall retire on such date, before the temporary retirement incentive program ends on the thirtieth day of June, one thousand nine hundred eighty-nine; with proper credit to be granted for such extended period: Provided, That they shall have made application for retirement, including choice of their respective option, and given notice to their respective employer by the thirty-first day of December, one thousand nine hundred eighty-eight, although postponing actual retirement, as aforesaid.

(b) Any member participating in this retirement incentive program is not eligible to accept further employment from the state or any of its political subdivisions: Provided, That a person may retire under this section and thereafter serve in an elective office: Provided, however, That he shall not receive an incentive annuity under this section during the term of service in said office, but shall receive his or her annuity calculated on regular basis, as if originally taken not under this section but on such regular basis. At the end of such term and cessation of service in such office during which the member shall rejoin and reenter the retirement system and pay contributions therefor, such regular annuity shall be recalculated and an increased annuity due to such additional employment shall be granted and computed on regular basis and in similar manner as under section forty-eight of this article. In respect of an appointive office, as distinguished from an elective office, any person retiring under this section and thereafter serving in such appointive office shall not receive an incentive annuity under this section during the term of service in said office, but the same shall be suspended during such period: Provided further, That at the end of such term and cessation of service in such appointive office the incentive annuity provided for under this section shall be resumed.

In any event, an eligible member may retire under this...
section and thereafter continue to receive his incentive
annuity and be employed as a substitute teacher or as
adjunct faculty.

Any such incentive retirants, under this section, may not
thereafter receive such 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 or as hereby specifically permitted
to those retiring and thereafter serving in elective office, as
aforesaid.

The additional annuity allowed for temporary early
retirement under these options, in respect of state division
retirants of this system, is intended to be paid from the
retirement incentive account hereby created as a special
account in the state treasury and from the funds therein
established with moneys required to be transferred by
heads of spending units from the unused portion of salary
and fringe benefits in their budgets accruing in respect of
such positions vacated and subsequently canceled under
this temporary early retirement program. Salary and fringe
benefit moneys actually saved in a particular fiscal year,
shall constitute the fund source for payment of such
additional annuity, the funds of the retirement system to be
used for payment of the base annuity under the early
retirement incentive program: Provided, That such
additional annuity shall be paid from the unused portion of
both salary and fringe benefits and with any remainder of
any fringe benefit moneys, as such, to remain with the
spending unit and any remainder of salary as such, to be
directed as additional funding to the teacher's retirement
system and as a part of the assets thereof. No such
additional annuity shall be disallowed even though initial
receipts may not be sufficient, with funds of the system to be
applied for such purpose, as for the base annuity. With
respect to public employer division retirants (nonstate
division retirants of the system), such incentive annuity
shall be paid from the nonstate division funds of the system.

(c) The executive secretary of the retirement system
shall provide forms for applicants. Such forms shall include
a detailed description of the incentive plan options.

The executive secretary of the retirement system shall file
a report to the Legislature no later than the fifteenth day of
February, one thousand nine hundred eighty-nine, and quarterly thereafter, 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 two thousand.

(d) Within every spending unit, department, board, corporation, commission, or any other agency or entity wherein two or multiples of two members elect to retire either under the temporary early retirement incentives set forth above, or under regular, voluntary retirement, and countable on an agency-wide or entity-wide basis, no more than one of such vacated positions may be filled, with the second position being abolished upon the effective day of the member's retirement. The vacant position abolishment requirement shall not apply to elective positions or appointed public officers whose positions are established by state constitutional or statutory provision. The retirant's employing entity shall decide as to which of the vacated positions made available through special early retirement or through regular, voluntary retirement are to be abolished and the head of such spending unit shall immediately notify the state auditor, the legislative auditor, and the commissioner of the department of finance and administration of the decisions and shall then apply and/or transfer the remaining salary and fringe benefits as aforesaid: Provided, That this vacant position abolishment provision shall not apply to any county or municipal position except those under the authority of a county board of education, nor to any position or positions, whether designated by spending unit, department, agency, commission, entity or otherwise, which the Governor in respect of the executive branch, or the chief justice of the supreme court of appeals in respect of the judicial branch, or the president of the senate or speaker of the house of delegates, in respect of the legislative branch, may exempt or amend, under such abolishment provision, upon his respective recommendation that such exemption or amendment is necessary to provide for continuity of governmental operation or to preserve the health, welfare or safety of the people of West Virginia, and with the prior concurrence of the joint committee on government and finance in such recommendation, after the chairman thereof shall cause such committee to meet.
Special rule of eighty. — Any active, contributing member of the retirement system as of the first day of April, one thousand nine hundred eighty-eight who selects one of the incentive options in this section, may retire under the special early retirement provisions with full pension rights, without reduction of benefits if the sum of such member's age plus years of contributing service equals or exceeds eighty: Provided, That such person has at least twenty years of contributing service; up to two years of which may be military service, or prior service, or any combination thereof not exceeding an aggregate of two years.

(f) Termination of temporary retirement incentives program. — The right to elect, choose, select or use any of the options, special rule of eighty, or other benefits set forth in this section shall terminate on the thirtieth day of June, one thousand nine hundred eighty-nine.

§5-10-53. Joint study of state retirement systems; report to Joint Committee on Government and Finance by specified date of study conclusions.

In light of the determination to repeal the public employees retirement system II (PERS II) before its proposed date of initial operation, a study shall be undertaken through the cooperative efforts of the board of the public employees retirement system, the board of the teachers retirement system and the legislative commission on pensions and retirement toward determining the best method by which to address the fiscal problems of the teachers retirement system together with any combining of retirement systems of the state that might be indicated, with report to be made to the joint committee on government and finance of the Legislature by the thirtieth day of June, one thousand nine hundred eighty-nine.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-13b. Option of certain present members to elect between state and federal retirement systems; payment of contributions to federal system.

Notwithstanding any other provision of this article to the contrary, any present member of the retirement system who
as an employee of the board of governors in the cooperative extension service of West Virginia University holds a federal appointment, making him eligible for membership in the federal civil service retirement system, shall have an option to terminate his membership in the state teachers retirement system at any time within twelve months after the effective date hereof, or to continue his membership if he so desires. If he elects to terminate his membership, he shall be entitled to withdrawal benefits similar to those that are provided in section twenty-three of this article for members who withdraw from service prior to retirement, and he shall be required to join the federal civil service retirement system. Any future employee in the cooperative extension service who is eligible for membership in the federal civil service retirement system shall be required to join that system, and shall be ineligible for membership in the state teachers retirement system during such period of employment. Should employment cease with the cooperative extension service of West Virginia University and the employee assumes a position that subjects him to membership in the teachers retirement system, he shall receive service credit for each year served in the cooperative extension service and within this state providing: (1) that the member pays to the system a contribution equal to the amount he contributed during his first full year of current employment, times the number of years for which credit is granted, plus interest at a rate equal to that established by the retirement board for the purchase of service as a teacher in the employment of the federal government, and (2) that such years of service for which he receives credit hereunder have not and will not, in the future, be used to obtain or enhance a retirement benefit from any other retirement system whatsoever, including the federal civil service retirement system.

The board of governors shall have the authority and shall be required to withhold from each salary payment due any employee in the cooperative extension service, who is a member of the federal civil service retirement system, the amount of the contribution he is required to make to the federal treasury for such membership. Upon proper requisition of the board, the auditor shall periodically issue a warrant payable to the treasurer of the United States for the total membership contributions so withheld from the
§18-7A-35b. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

The Legislature hereby finds and declares that a compelling state interest exists 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 the first day of April, one thousand nine hundred eighty-eight, in the reduction of the number of such employees and in reduction of governmental costs therefor; that such program constitutes a public purpose; and that the special classifications and differentiations provided in respect of such program are reasonable and equitable ones for the accomplishment of such purpose and program as enacted in Enrolled Committee Substitute for H. B. 4672, regular session, one thousand nine hundred eighty-eight, and as clarified and supplemented herein, retroactive to such beginning date, aforesaid.

(a) Beginning on the first day of April, one thousand nine hundred eighty-eight, and continuing through the thirty-first day of December, one thousand nine hundred eighty-eight, (or as extended by contract or by eligibility qualification requirement, as hereinafter specified) eligible members, being those active, contributing members actually and currently employed on such beginning date, retiring pursuant to this section, (except disability retirees, but including those so employed on said beginning date and leaving the system during the incentive period and who are eligible for deferred benefits), may elect to participate in this incentives program and may elect any one of the three following incentive options:

(1) Retirement incentive option one:
   For the purpose of computing the member’s annuity, the normal final average salary shall be computed and one-
eighth thereof shall be added thereto in arriving at the true
final average salary for use in actual computation of
retirement benefit.

(2) Retirement incentive option two:
A member may elect a lump sum payment, in addition to
his regular retirement annuity, equal to ten percent of his
final average salary not to exceed five thousand dollars, and
in the case of a deferred retirement electing this option,
such lump sum payment shall be receivable and deferred to
the time of receipt of such deferred retirement annuity.

(3) Retirement incentive option three:
A person shall be credited with an additional two years of
contributing service and an additional two years of age. The
years credited under this option shall in no way add to a
member's final average salary factor of computation.

(b) Eligible, active, contributing members, aforesaid,
employed under contract and rendering services during
school year one thousand nine hundred eighty-eight — one
thousand nine hundred eighty-nine shall, if retiring
pursuant to the provisions of this section and the early
retirement incentive program set forth herein, make
application for retirement, including choice of their
respective option, and give notice to their respective county
boards of education by the thirty-first day of December, one
thousand nine hundred eighty-eight, but shall be permitted
to postpone actual retirement until immediately after the
close of such contract period and said school year; with
proper credit to be granted for such extended period.

Also, eligible, active contributing members employed,
not under contract, who desire to retire under this section
but who are unable to retire by the thirty-first day of
December, one thousand nine hundred eighty-eight
because an element of eligibility for retirement, such as age
or other element, will not be met until a date after the
thirty-first day of December, one thousand nine hundred
eighty-eight and before the first day of July, one thousand
nine hundred eighty-nine, shall be permitted to postpone
actual retirement until the date of fulfilling such element of
eligibility and shall retire on such date, before the
temporary retirement incentive program ends on the
thirty-sixth day of June, one thousand nine hundred eighty-
ine; with proper credit to be granted for such extended
period: Provided, That members eligible under the
preceding paragraph and this paragraph shall have made
application for retirement, including choice of their
respective option, and given notice to their respective
employer by the thirty-first day of December, one thousand
nine hundred eighty-eight, although postponing actual
retirement, as aforesaid. Nothing in this section shall
prohibit any eligible, active, contributing member who has
theretofore notified the retirement system and the local
board of education or other educational agency of his or her
intention of retiring to reverse such decision and elect not to
retire at any time.

Eligible members other than those covered under the
provisions of the two preceding paragraphs, desiring to
retire under this incentive program shall make their option
election prior to and take their respective retirement by the
close of the thirty-first day of December, one thousand nine
hundred eighty-eight.

Any eligible member who retires hereunder during the
school year (after the first day of July, one thousand nine
hundred eighty-eight and on any date prior to the thirtieth
day of June, one thousand nine hundred eighty-nine) shall
have included such months of such school year and the
salary in respect thereof, if ones of higher salary, in place of
and for any like number of months in his or her five-year
period for computation of annuities as provided for in
section twenty-six of this article.

(c) Any member participating in this retirement
incentive program is not eligible to accept further
employment from the state or any of its political
subdivisions: Provided, That a person may retire under this
section and thereafter serve in an elective office: Provided,
however, That he shall not receive an incentive annuity
under this section during the term of service in said office,
but shall receive his or her annuity calculated on regular
basis, as if originally taken not under this section but on
such regular basis. At the end of such term and cessation of
service in such office, such incentive annuity shall resume.
In respect of an appointive office, as distinguished from an
elective office, any person retiring under this section and
thereafter serving in such appointive office shall not receive
an incentive annuity under this section during the term of
service in said office, but the same shall be suspended
during such period: Provided further, That at the end of
such term and cessation of service in such appointive office
the incentive annuity provided for under this section shall
be resumed.

In any event, an eligible member may retire under this
section and thereafter continue to receive his incentive
annuity and be employed as a substitute teacher or as
adjunct faculty, or as a school service personnel substitute.

Any such incentive retirants, under this section, may not
thereafter receive such 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
constititutional provision.

The additional annuity allowed for temporary early
retirement under these options is intended to be paid from
the retirement incentive account hereby created as a special
account in the state treasury and from the funds therein
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 of such positions vacated and
subsequently canceled under this temporary early
retirement program. Salary and fringe benefit moneys
actually saved in a particular fiscal year shall constitute the
fund source. No such additional annuity shall be disallowed
even though initial receipts may not be sufficient, with
funds of the system to be applied for such purpose, as for the
base annuity.

(d) The executive secretary of the retirement system
shall provide forms for applicants. Such forms shall include
a detailed description of the incentive plan options.

The executive secretary of the retirement system shall file
a report to the Legislature no later than the fifteenth day of
February, one thousand nine hundred eighty-nine, and
quarterly thereafter, 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 two thousand.

(e) Within every spending unit, department, board,
corporation, commission, or any other agency or entity
wherein two or multiples of two members elect to retire
either under the temporary early retirement incentives set
forth above, or under regular, voluntary retirement, and
countable on an agency-wide or entity-wide basis, no more than one of such vacated positions may be filled, with the second position being abolished upon the effective day of the member’s retirement: Provided, That county boards of education in replacing employees leaving under this temporary early retirement incentive program shall be eligible to replace in that number as authorized by the basic school aid formula and pursuant to those guidelines in respect of number of positions lost or projected to be lost due to declining enrollment, changes in statutes, changes in state appropriations and the other guidelines set forth and contained within said basic school aid formula. The vacant position abolishment requirement shall not apply to elective positions or appointed public officers whose positions are established by state constitutional or statutory provision. The retiree’s employing entity shall decide as to which of the vacated positions made available through special early retirement or through regular, voluntary retirement are to be abolished and the head of such spending unit shall immediately notify the state auditor, the legislative auditor, and the commissioner of the department of finance and administration of the decisions and shall then apply and/or transfer, as aforesaid, the remaining salary and fringe benefit appropriations: Provided, however, That this vacant position abolishment provision shall not apply to any county position, other than those under the authority of county boards of education, nor to any position or positions, whether designated by spending unit, department, agency, commission, entity or otherwise, which the Governor may exempt or amend under such abolishment provision upon his recommendation that such exemption or amendment is necessary to preserve the health, welfare or safety of the people of West Virginia, and with the prior concurrence of the joint committee on government and finance in such recommendation, after the chairmen thereof shall cause such committee to meet.

(f) Special rule of eighty. — Any active, contributing member of the retirement system as of the first day of April, one thousand nine hundred eighty-eight who selects one of the incentive options in this section, may retire under the special early retirement provisions with full pension rights, without reduction of benefits if the sum of such member's age plus years of contributing service equals or exceeds
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205 eighty: Provided, That such person has at least twenty
206 years of contributing service, up to two years of which may
207 be military service, or prior service, or already paid and
208 credited out-of-state service (if so paid and credited by the
209 first day of April, one thousand nine hundred eighty-eight)
210 or any combination thereof not exceeding an aggregate of
211 two years.
212
213 (g) Termination of temporary retirement incentives
214 program. — The right to elect, choose, select or use any of
215 the options, special rule of eighty, or other benefits set forth
216 in this section shall terminate on the thirtieth day of June,
217 one thousand nine hundred eighty-nine.

§18-7A-36. Joint study of state retirement systems; report to
Joint Committee on Government and Finance by
specified date of study conclusions.

1 In light of the determination to repeal the public
2 employees retirement system II (PERS II) before its
3 proposed date of initial operation, a study shall be
4 undertaken through the cooperative efforts of the board of
5 the public employees retirement system, the board of the
6 teachers retirement system and the legislative commission
7 on pensions and retirement toward determining the best
8 method by which to address the fiscal problems of the
9 teachers retirement system together with any combining of
10 retirement systems of the state that might be indicated,
11 with report to be made to the joint committee on
12 government and finance of the Legislature by the thirtieth
13 day of June, one thousand nine hundred eighty-nine.

ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES
OF GOVERNING BOARDS OF STATE INSTITUTIONS OF
HIGHER EDUCATION.

§18-23-4a. Supplemental and additional retirement plans for
employees; payroll deductions; authority to
match employee contributions; retroactive
curative and technical corrective action.

1 The governing boards shall have the authority to contract
2 for a supplemental retirement plan for any or all of its
3 employees to supplement the benefits such employees will
4 receive under the state teachers retirement system. The
5 governing boards shall have the authority to make
additional periodic deductions from the salary payments due such employees in the amount they are required to contribute for the supplemental retirement plan selected by the board. The additional deductions shall not exceed five percent of the salary of employees under thirty-five years of age, six percent of the salary of those thirty-five through forty-four years of age, and seven and one-half percent of the salary of those forty-five years of age and above, and shall not cover any portion of an employee’s salary which is covered by the state teachers retirement system.

The governing boards shall also have the authority to contract for an additional retirement plan for any of its employees who elect to participate solely in such a retirement plan selected by the governing boards without participating in the state retirement system. The governing boards shall have the authority to make periodic deductions from the salary payments due such employees in the amount they are required to contribute to the additional plan, which deductions shall be the same percentage of the participating employees’ salaries as that deducted from the salaries of members of the state retirement system.

The board is further authorized, by way of additional compensation to such employees, to pay an amount equal to the contributions of such employees into either the supplemental or additional retirement plan from funds appropriated to it for personal services. Each participating employee shall have a full and immediate vested interest in the retirement and death benefits accrued from all the moneys paid into such supplemental or additional retirement plan for his benefit. Upon proper requisition of the board, the auditor shall periodically issue a warrant, payable as specified in the requisition, for the total contributions so withheld from the salaries of all participating employees and for the governing board’s matching funds.

Pursuant to the provisions contained in article seven-a and article twenty-three of this chapter, once a member has elected one of the options contained in section fourteen-a of article seven-a of this chapter and section four-a of article twenty-three of this chapter, he cannot thereafter change such election. The Legislature declares that the amendment of this section in Enrolled Committee Substitute for House Bill No. 4672, enacted at the regular session, one thousand
nine hundred eighty-eight was inadvertent and remained in said bill contrary to legislative intent that the same be deleted; therefore, such language is hereby retroactively deleted and expunged as of the effective date of said Enrolled Committee Substitute for House Bill No. 4672 as curative and technical corrective action. The Legislature further declares that such ambiguous and deficient language inadvertently enacted in said bill shall be given no force and effect whatsoever in any litigation involving such language.
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 from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ..............this the .......... day of ....... 1988.

Governor
PRESENTED TO THE
GOVERNOR
Date 6/30/58
Time 10:02 a.m.