

No. 10

WEST VIRGINIA LEGISLATURE

3RD EXTRAORDINARY SESSION, 1988



ENROLLED

Committee Substitute for
SENATE BILL NO. 10

(By Senator Tom David, Mr. President)



PASSED June 27 1988

In Effect from Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 10

(SENATORS TONKOVICH, MR. PRESIDENT (BY REQUEST) AND HARMAN,
original sponsors)

[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 retirants 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 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; 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.

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

4 (1) "State" means the state of West Virginia;

5 (2) "Retirement system" or "system" means the West
6 Virginia public employees retirement system created and
7 established by this article;

8 (3) "Board of trustees" or "board" means the board of
9 trustees of the West Virginia public employees retirement
10 system;

11 (4) "Political subdivision" means the state of West
12 Virginia, a county, city or town in the state; a school
13 corporation or corporate unit; any separate corporation or
14 instrumentality established by one or more counties, cities
15 or towns, as permitted by law; any corporation or
16 instrumentality supported in most part by counties, cities
17 or towns; any public corporation charged by law with the
18 performance of a governmental function and whose
19 jurisdiction is coextensive with one or more counties, cities
20 or towns, any agency or organization established by, or
21 approved by the department of mental health for the
22 provision of community health or mental retardation
23 services, and which is supported in part by state, county or
24 municipal funds;

25 (5) "Participating public employer" means the state of
26 West Virginia, any board, commission, department,
27 institution or spending unit, and shall include any agency
28 created by rule of the supreme court of appeals having
29 full-time employees, which for the purposes of this article
30 shall be deemed a department of state government; and any
31 political subdivision in the state which has elected to cover
32 its employees, as defined in this article, under the West
33 Virginia public employees retirement system;

34 (6) "Employee" means any person who serves regularly
35 as an officer or employee, full time, on a salary basis, whose
36 tenure is not restricted as to temporary or provisional

37 appointment, in the service of, and whose compensation is
38 payable, in whole or in part, by any political subdivision, or
39 an officer or employee whose compensation is calculated on
40 a daily basis and paid monthly or on completion of
41 assignment, including technicians and other personnel
42 employed by the West Virginia national guard whose
43 compensation, in whole or in part, is paid by the federal
44 government: *Provided*, That members of the state
45 Legislature, the clerk of the House of Delegates, the clerk of
46 the state Senate, employees of the state Legislature whose
47 term of employment is otherwise classified as temporary
48 and who are employed to perform services required by the
49 Legislature for its regular sessions or during the interim
50 between regular sessions and who have been or are so
51 employed during regular sessions or during the interim
52 between regular sessions for eight or more years, members
53 of the legislative body of any political subdivision and
54 judges of the state court of claims shall be considered to be
55 employees, anything contained herein to the contrary
56 notwithstanding. In any case of doubt as to who is an
57 employee within the meaning of this article the board of
58 trustees shall decide the question;

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

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

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

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

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

72 (12) "Contributing service" means service rendered by a
73 member within this state and for which such member made
74 contributions to a public retirement system account of this
75 state, to the extent credited him as provided by this article,
76 such revised definition being retroactive and applicable to
77 the first day of April, one thousand nine hundred eighty-
78 eight and thereafter;

79 (13) "Credited service" means the sum of a member's
80 prior service credit and contributing service credit standing
81 to his credit as provided in this article;

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

89 (15) "Final average salary" means either (a) the average
90 of the highest annual compensation received by a member
91 (including a member of the Legislature who participates in
92 the retirement system in the year one thousand nine
93 hundred seventy-one or thereafter) during any period of
94 three consecutive years of his credited service contained
95 within his ten years of credited service immediately
96 preceding the date his employment with a participating
97 public employer last terminated, or (b) if he has less than
98 five years of credited service, the average of the annual rate
99 of compensation received by him during his total years of
100 credited service; and in determining the annual
101 compensation, under either (a) or (b) of this subdivision
102 (15), of a member of the Legislature who participates in the
103 retirement system as a member of the Legislature in the
104 year one thousand nine hundred seventy-one or in any year
105 thereafter, his actual legislative compensation (the total of
106 all compensation paid under sections two, three, four and
107 five, article two-a, chapter four of this code) in the year one
108 thousand nine hundred seventy-one or in any year
109 thereafter, plus any other compensation he receives in any
110 such year from any other participating public employer
111 including the state of West Virginia, without any multiple
112 in excess of one times his actual legislative compensation as
113 aforesaid and other compensation, shall be used: *Provided*,
114 That "final average salary" for any former member of the
115 Legislature or for any member of the Legislature in the year
116 one thousand nine hundred seventy-one who, in either
117 event, was a member of the Legislature on November thirty,
118 one thousand nine hundred sixty-eight, or November
119 thirty, one thousand nine hundred sixty-nine, or November
120 thirty, one thousand nine hundred seventy, or on November
121 thirty in any one or more of said three years, and who

122 participated in the retirement system as a member of the
123 Legislature in any one or more of such years of one thousand
124 nine hundred sixty-eight, one thousand nine hundred sixty-
125 nine or one thousand nine hundred seventy, means (i) either
126 (notwithstanding the provisions of this subdivision (15)
127 preceding this proviso) one thousand five hundred dollars
128 multiplied by eight, plus the highest other compensation
129 such former member or member received in any one of said
130 three years from any other participating public employer
131 including the state of West Virginia, or (ii) "final average
132 salary" determined in accordance with (a) or (b) of this
133 subdivision (15), whichever computation shall produce the
134 higher final average salary (and in determining the annual
135 compensation under (ii) of this proviso, the legislative
136 compensation of any such former member shall be
137 computed on the basis of one thousand five hundred dollars
138 multiplied by eight, and the legislative compensation of any
139 such member shall be computed on the basis set forth in the
140 provisions of this subdivision (15) immediately preceding
141 this proviso or on the basis of one thousand five hundred
142 dollars multiplied by eight, whichever computation as to
143 such member shall produce the higher annual
144 compensation);

145 (16) "Accumulated contributions" means the sum of all
146 amounts deducted from the compensations of a member
147 and credited to his individual account in the members'
148 deposit fund, together with regular interest thereon;

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

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

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

162 (20) "Retirement" means a member's withdrawal from
163 the employ of a participating public employer with an
164 annuity payable by the retirement system;

165 (21) "Actuarial equivalent" means a benefit of equal
166 value computed upon the basis of such mortality table and
167 regular interest as the board of trustees shall from time to
168 time adopt; and

169 (22) The masculine gender shall include the feminine
170 gender, and words of the singular number with respect to
171 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.**

1 Any member accruing annual leave or sick leave days
2 may, after the effective date of this section, elect to use such
3 days at the time of retirement to acquire additional credited
4 service in this retirement system. Such days shall be applied
5 on the basis of two work days credit granted for each one
6 day of such accrued annual or sick leave days, with each
7 month of retirement service credit to equal twenty work
8 days and with any remainder of ten work days or more to
9 constitute a full month of additional credit and any
10 remainder of less than ten work days to be dropped and not
11 used, notwithstanding any provisions of the code to the
12 contrary, including section twelve, article sixteen of this
13 chapter. Such credited service shall be allowed and not
14 deemed to controvert the requirement of no more than
15 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.**

1 The Legislature hereby finds and declares that a
2 compelling state interest exists in providing a temporary
3 early retirement incentives program for encouraging the
4 early, voluntary retirement of those public employees who
5 were current, active contributing members of this
6 retirement system on the first day of April, one thousand
7 nine hundred eighty-eight, in the reduction of the number
8 of such employees and in reduction of governmental costs
9 therefor; that such program constitutes a public purpose;
10 and that the special classifications and differentiations

11 provided in respect of such program are reasonable and
12 equitable ones for the accomplishment of such purpose and
13 program as enacted in Enrolled Committee Substitute for
14 H. B. 4672, regular session, one thousand nine hundred
15 eighty-eight, and as clarified and supplemented herein,
16 retroactive to such beginning date, aforesaid.

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

33 (1) Retirement incentive option one:

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

39 (2) Retirement incentive option two:

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

46 (3) Retirement incentive option three:

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

51 Active, contributing members who desire to retire under
52 this section but who are unable to retire by the thirty-first
53 day of December, one thousand nine hundred eighty-eight

54 and make use of the incentive retirement program because
55 an element of eligibility for retirement, such as age or other
56 element, will not be met until a date after the thirty-first
57 day of December, one thousand nine hundred eighty-eight
58 and before the the first day of July, one thousand nine
59 hundred eighty-nine, shall be permitted to postpone actual
60 retirement until the date of fulfilling such element of
61 eligibility and shall retire on such date, before the
62 temporary retirement incentive program ends on the
63 thirtieth day of June, one thousand nine hundred eighty-
64 nine; with proper credit to be granted for such extended
65 period: *Provided*, That they shall have made application for
66 retirement, including choice of their respective option, and
67 given notice to their respective employer by the thirty-first
68 day of December, one thousand nine hundred eighty-eight,
69 although postponing actual retirement, as aforesaid.

70 (b) Any member participating in this retirement
71 incentive program is not eligible to accept further
72 employment from the state or any of its political
73 subdivisions: *Provided*, That a person may retire under this
74 section and thereafter serve in an elective office: *Provided*,
75 *however*, That he shall not receive an incentive annuity
76 under this section during the term of service in said office,
77 but shall receive his or her annuity calculated on regular
78 basis, as if originally taken not under this section but on
79 such regular basis. At the end of such term and cessation of
80 service in such office during which the member shall rejoin
81 and reenter the retirement system and pay contributions
82 therefor, such regular annuity shall be recalculated and an
83 increased annuity due to such additional employment shall
84 be granted and computed on regular basis and in similar
85 manner as under section forty-eight of this article. In
86 respect of an appointive office, as distinguished from an
87 elective office, any person retiring under this section and
88 thereafter serving in such appointive office shall not receive
89 an incentive annuity under this section during the term of
90 service in said office, but the same shall be suspended
91 during such period: *Provided further*, That at the end of
92 such term and cessation of service in such appointive office
93 the incentive annuity provided for under this section shall
94 be resumed.

95 In any event, an eligible member may retire under this

96 section and thereafter continue to receive his incentive
97 annuity and be employed as a substitute teacher or as
98 adjunct faculty.

99 Any such incentive retirants, under this section, may not
100 thereafter receive such annuity and enter or reenter any
101 governmental retirement system established or authorized
102 to be established by the state, notwithstanding any
103 provision of the code to the contrary, unless required by
104 constitutional provision or as hereby specifically permitted
105 to those retiring and thereafter serving in elective office, as
106 aforesaid.

107 The additional annuity allowed for temporary early
108 retirement under these options, in respect of state division
109 retirants of this system, is intended to be paid from the
110 retirement incentive account hereby created as a special
111 account in the state treasury and from the funds therein
112 established with moneys required to be transferred by
113 heads of spending units from the unused portion of salary
114 and fringe benefits in their budgets accruing in respect of
115 such positions vacated and subsequently canceled under
116 this temporary early retirement program. Salary and fringe
117 benefit moneys actually saved in a particular fiscal year,
118 shall constitute the fund source for payment of such
119 additional annuity, the funds of the retirement system to be
120 used for payment of the base annuity under the early
121 retirement incentive program: *Provided*, That such
122 additional annuity shall be paid from the unused portion of
123 both salary and fringe benefits and with any remainder of
124 any fringe benefit moneys, as such, to remain with the
125 spending unit and any remainder of salary as such, to be
126 directed as additional funding to the teacher's retirement
127 system and as a part of the assets thereof. No such
128 additional annuity shall be disallowed even though initial
129 receipts may not be sufficient, with funds of the system to be
130 applied for such purpose, as for the base annuity. With
131 respect to public employer division retirants (nonstate
132 division retirants of the system), such incentive annuity
133 shall be paid from the nonstate division funds of the system.

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

137 The executive secretary of the retirement system shall file
138 a report to the Legislature no later than the fifteenth day of

139 February, one thousand nine hundred eighty-nine, and
140 quarterly thereafter, detailing the number of retirees who
141 have elected to accept early retirement incentive options,
142 the dollar cost to date by option selected, and the projected
143 annual cost through the year two thousand.

144 (d) Within every spending unit, department, board,
145 corporation, commission, or any other agency or entity
146 wherein two or multiples of two members elect to retire
147 either under the temporary early retirement incentives set
148 forth above, or under regular, voluntary retirement, and
149 countable on an agency-wide or entity-wide basis, no more
150 than one of such vacated positions may be filled, with the
151 second position being abolished upon the effective day of
152 the member's retirement. The vacant position abolishment
153 requirement shall not apply to elective positions or
154 appointed public officers whose positions are established
155 by state constitutional or statutory provision. The retirant's
156 employing entity shall decide as to which of the vacated
157 positions made available through special early retirement
158 or through regular, voluntary retirement are to be abolished
159 and the head of such spending unit shall immediately notify
160 the state auditor, the legislative auditor, and the
161 commissioner of the department of finance and
162 administration of the decisions and shall then apply and/or
163 transfer the remaining salary and fringe benefits as
164 aforesaid: *Provided*, That this vacant position abolishment
165 provision shall not apply to any county or municipal
166 position except those under the authority of a county board
167 of education, nor to any position or positions, whether
168 designated by spending unit, department, agency,
169 commission, entity or otherwise, which the Governor in
170 respect of the executive branch, or the chief justice of the
171 supreme court of appeals in respect of the judicial branch,
172 or the president of the senate or speaker of the house of
173 delegates, in respect of the legislative branch, may exempt
174 or amend, under such abolishment provision, upon his
175 respective recommendation that such exemption or
176 amendment is necessary to provide for continuity of
177 governmental operation or to preserve the health, welfare
178 or safety of the people of West Virginia, and with the prior
179 concurrence of the joint committee on government and
180 finance in such recommendation, after the chairmen
181 thereof shall cause such committee to meet.

182 (e) *Special rule of eighty.* — Any active, contributing
 183 member of the retirement system as of the first day of April,
 184 one thousand nine hundred eighty-eight who selects one of
 185 the incentive options in this section, may retire under the
 186 special early retirement provisions with full pension rights,
 187 without reduction of benefits if the sum of such member's
 188 age plus years of contributing service equals or exceeds
 189 eighty: *Provided*, That such person has at least twenty
 190 years of contributing service; up to two years of which may
 191 be military service, or prior service, or any combination
 192 thereof not exceeding an aggregate of two years.

193 (f) *Termination of temporary retirement incentives*
 194 *program.* — The right to elect, choose, select or use any of
 195 the options, special rule of eighty, or other benefits set forth
 196 in this section shall terminate on the thirtieth day of June,
 197 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.**

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.

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.**

1 Notwithstanding any other provision of this article to the
 2 contrary, any present member of the retirement system who

3 as an employee of the board of governors in the cooperative
4 extension service of West Virginia University holds a
5 federal appointment, making him eligible for membership
6 in the federal civil service retirement system, shall have an
7 option to terminate his membership in the state teachers
8 retirement system at any time within twelve months after
9 the effective date hereof, or to continue his membership if
10 he so desires. If he elects to terminate his membership, he
11 shall be entitled to withdrawal benefits similar to those that
12 are provided in section twenty-three of this article for
13 members who withdraw from service prior to retirement,
14 and he shall be required to join the federal civil service
15 retirement system. Any future employee in the cooperative
16 extension service who is eligible for membership in the
17 federal civil service retirement system shall be required to
18 join that system, and shall be ineligible for membership in
19 the state teachers retirement system during such period of
20 employment. Should employment cease with the
21 cooperative extension service of West Virginia University
22 and the employee assumes a position that subjects him to
23 membership in the teachers retirement system, he shall
24 receive service credit for each year served in the cooperative
25 extension service and within this state providing: (1) that
26 the member pays to the system a contribution equal to the
27 amount he contributed during his first full year of current
28 employment, times the number of years for which credit is
29 granted, plus interest at a rate equal to that established by
30 the retirement board for the purchase of service as a teacher
31 in the employment of the federal government, and (2) that
32 such years of service for which he receives credit hereunder
33 have not and will not, in the future, be used to obtain or
34 enhance a retirement benefit from any other retirement
35 system whatsoever, including the federal civil service
36 retirement system.

37 The board of governors shall have the authority and shall
38 be required to withhold from each salary payment due any
39 employee in the cooperative extension service, who is a
40 member of the federal civil service retirement system, the
41 amount of the contribution he is required to make to the
42 federal treasury for such membership. Upon proper
43 requisition of the board, the auditor shall periodically issue
44 a warrant payable to the treasurer of the United States for
45 the total membership contributions so withheld from the

46 salaries of all employees in the cooperative extension
47 service.

§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.

1 The Legislature hereby finds and declares that a
2 compelling state interest exists in providing a temporary,
3 early retirement incentives program for encouraging the
4 early, voluntary retirement of those public employees who
5 were current, active contributing members of this
6 retirement system on the first day of April, one thousand
7 nine hundred eighty-eight, in the reduction of the number
8 of such employees and in reduction of governmental costs
9 therefor; that such program constitutes a public purpose;
10 and that the special classifications and differentiations
11 provided in respect of such program are reasonable and
12 equitable ones for the accomplishment of such purpose and
13 program as enacted in Enrolled Committee Substitute for
14 H. B. 4672, regular session, one thousand nine hundred
15 eighty-eight, and as clarified and supplemented herein,
16 retroactive to such beginning date, aforesaid.

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

30 (1) Retirement incentive option one:

31 For the purpose of computing the member's annuity, the
32 normal final average salary shall be computed and one-

33 eighth thereof shall be added thereto in arriving at the true
34 final average salary for use in actual computation of
35 retirement benefit.

36 (2) Retirement incentive option two:

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

43 (3) Retirement incentive option three:

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

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

61 Also, eligible, active contributing members employed,
62 not under contract, who desire to retire under this section
63 but who are unable to retire by the thirty-first day of
64 December, one thousand nine hundred eighty-eight
65 because an element of eligibility for retirement, such as age
66 or other element, will not be met until a date after the
67 thirty-first day of December, one thousand nine hundred
68 eighty-eight and before the first day of July, one thousand
69 nine hundred eighty-nine, shall be permitted to postpone
70 actual retirement until the date of fulfilling such element of
71 eligibility and shall retire on such date, before the
72 temporary retirement incentive program ends on the
73 thirtieth day of June, one thousand nine hundred eighty-
74 nine; with proper credit to be granted for such extended
75 period: *Provided*, That members eligible under the

76 preceding paragraph and this paragraph shall have made
77 application for retirement, including choice of their
78 respective option, and given notice to their respective
79 employer by the thirty-first day of December, one thousand
80 nine hundred eighty-eight, although postponing actual
81 retirement, as aforesaid. Nothing in this section shall
82 prohibit any eligible, active, contributing member who has
83 theretofore notified the retirement system and the local
84 board of education or other educational agency of his or her
85 intention of retiring to reverse such decision and elect not to
86 retire at any time.

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

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

102 (c) Any member participating in this retirement
103 incentive program is not eligible to accept further
104 employment from the state or any of its political
105 subdivisions: *Provided*, That a person may retire under this
106 section and thereafter serve in an elective office: *Provided*,
107 *however*, That he shall not receive an incentive annuity
108 under this section during the term of service in said office,
109 but shall receive his or her annuity calculated on regular
110 basis, as if originally taken not under this section but on
111 such regular basis. At the end of such term and cessation of
112 service in such office, such incentive annuity shall resume.
113 In respect of an appointive office, as distinguished from an
114 elective office, any person retiring under this section and
115 thereafter serving in such appointive office shall not receive
116 an incentive annuity under this section during the term of
117 service in said office, but the same shall be suspended
118 during such period: *Provided further*, That at the end of

119 such term and cessation of service in such appointive office
120 the incentive annuity provided for under this section shall
121 be resumed.

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

126 Any such incentive retirants, under this section, may not
127 thereafter receive such annuity and enter or reenter any
128 governmental retirement system established or authorized
129 to be established by the state, notwithstanding any
130 provision of the code to the contrary, unless required by
131 constitutional provision.

132 The additional annuity allowed for temporary early
133 retirement under these options is intended to be paid from
134 the retirement incentive account hereby created as a special
135 account in the state treasury and from the funds therein
136 established with moneys required to be applied or
137 transferred by heads of spending units from the unused
138 portion of salary and fringe benefits in their budgets
139 accruing in respect of such positions vacated and
140 subsequently canceled under this temporary early
141 retirement program. Salary and fringe benefit moneys
142 actually saved in a particular fiscal year shall constitute the
143 fund source. No such additional annuity shall be disallowed
144 even though initial receipts may not be sufficient, with
145 funds of the system to be applied for such purpose, as for the
146 base annuity.

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

150 The executive secretary of the retirement system shall file
151 a report to the Legislature no later than the fifteenth day of
152 February, one thousand nine hundred eighty-nine, and
153 quarterly thereafter, detailing the number of retirees who
154 have elected to accept early retirement incentive options,
155 the dollar cost to date by option selected, and the projected
156 annual cost through the year two thousand.

157 (e) Within every spending unit, department, board,
158 corporation, commission, or any other agency or entity
159 wherein two or multiples of two members elect to retire
160 either under the temporary early retirement incentives set
161 forth above, or under regular, voluntary retirement, and

162 countable on an agency-wide or entity-wide basis, no more
163 than one of such vacated positions may be filled, with the
164 second position being abolished upon the effective day of
165 the member's retirement: *Provided*, That county boards of
166 education in replacing employees leaving under this
167 temporary early retirement incentive program shall be
168 eligible to replace in that number as authorized by the basic
169 school aid formula and pursuant to those guidelines in
170 respect of number of positions lost or projected to be lost
171 due to declining enrollment, changes in statutes, changes in
172 state appropriations and the other guidelines set forth and
173 contained within said basic school aid formula. The vacant
174 position abolishment requirement shall not apply to
175 elective positions or appointed public officers whose
176 positions are established by state constitutional or
177 statutory provision. The retirant's employing entity shall
178 decide as to which of the vacated positions made available
179 through special early retirement or through regular,
180 voluntary retirement are to be abolished and the head of
181 such spending unit shall immediately notify the state
182 auditor, the legislative auditor, and the commissioner of the
183 department of finance and administration of the decisions
184 and shall then apply and/or transfer, as aforesaid, the
185 remaining salary and fringe benefit appropriations:
186 *Provided, however*, That this vacant position abolishment
187 provision shall not apply to any county position, other than
188 those under the authority of county boards of education,
189 nor to any position or positions, whether designated by
190 spending unit, department, agency, commission, entity or
191 otherwise, which the Governor may exempt or amend under
192 such abolishment provision upon his recommendation that
193 such exemption or amendment is necessary to preserve the
194 health, welfare or safety of the people of West Virginia, and
195 with the prior concurrence of the joint committee on
196 government and finance in such recommendation, after the
197 chairmen thereof shall cause such committee to meet.

198 (f) *Special rule of eighty*. — Any active, contributing
199 member of the retirement system as of the first day of April,
200 one thousand nine hundred eighty-eight who selects one of
201 the incentive options in this section, may retire under the
202 special early retirement provisions with full pension rights,
203 without reduction of benefits if the sum of such member's
204 age plus years of contributing service equals or exceeds

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 (g) *Termination of temporary retirement incentives*
213 *program.* — The right to elect, choose, select or use any of
214 the options, special rule of eighty, or other benefits set forth
215 in this section shall terminate on the thirtieth day of June,
216 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

6 additional periodic deductions from the salary payments
7 due such employees in the amount they are required to
8 contribute for the supplemental retirement plan selected by
9 the board. The additional deductions shall not exceed five
10 percent of the salary of employees under thirty-five years of
11 age, six percent of the salary of those thirty-five through
12 forty-four years of age, and seven and one-half percent of
13 the salary of those forty-five years of age and above, and
14 shall not cover any portion of an employee's salary which is
15 covered by the state teachers retirement system.

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

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

41 Pursuant to the provisions contained in article seven-a
42 and article twenty-three of this chapter, once a member has
43 elected one of the options contained in section fourteen-a of
44 article seven-a of this chapter and section four-a of article
45 twenty-three of this chapter, he cannot thereafter change
46 such election. The Legislature declares that the amendment
47 of this section in Enrolled Committee Substitute for House
48 Bill No. 4672, enacted at the regular session, one thousand

49 nine hundred eighty-eight was inadvertent and remained in
50 said bill contrary to legislative intent that the same be
51 deleted; therefore, such language is hereby retroactively
52 deleted and expunged as of the effective date of said
53 Enrolled Committee Substitute for House Bill No. 4672 as
54 curative and technical corrective action. The Legislature
55 further declares that such ambiguous and deficient
56 language inadvertently enacted in said bill shall be given no
57 force and effect whatsoever in any litigation involving such
58 language.

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

Bruce O. Whittam
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Irwin C. Nichols
.....
Clerk of the Senate

Donald K. Hoop
.....
Clerk of the House of Delegates

Don Tomlin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *appeared* this the *14th*
day of *July* 1988.

Arch A. Pearce, Jr.
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 6/30/88

Time 10:02 a.m.

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