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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

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ENROLLED

Com. Sub. For
HOUSE BILL No. 2124

(By Delegate *Browning*.....)

— ● —

Passed *April 10,*..... 1993

In Effect *Ninety Days from*..... Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2124
(By DELEGATE BROWNING)

[Passed April 10, 1993; in effect ninety days from passage.]

AN ACT to amend and reenact section thirty-five-b, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state teachers retirement system; and allowing members who have taken advantage of early retirement incentive program to teach up to twelve semester hours at free-standing community colleges if board of directors determines that such employment is in accordance with adjunct faculty policy.

Be it enacted by the Legislature of West Virginia:

That section thirty-five-b, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§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 tempor-
3 ary, early retirement incentives program for encourag-
4 ing the early, voluntary retirement of those public
5 employees who were current, active, contributing
6 members of this retirement system on the first day of
7 April, one thousand nine hundred eighty-eight, in the
8 reduction of the number of such employees and in
9 reduction of governmental costs therefor; that such
10 program constitutes a public purpose; and that the
11 special classifications and differentiations provided in
12 respect of such program are reasonable and equitable
13 ones for the accomplishment of such purpose and
14 program as enacted in Enrolled Committee Substitute
15 for H.B. No. 4672, regular session, one thousand nine
16 hundred eighty-eight, and as clarified and supple-
17 mented herein, retroactive to such beginning date,
18 aforesaid. The Legislature further finds that maintain-
19 ing an actuarially sound retirement fund is essential and
20 that the reemployment in any manner, including
21 reemployment on a contract basis, by the state of any
22 person who retires under this section is contrary to the
23 intent of the early retirement program and severely
24 threatens the fiscal integrity of the retirement fund.

25 (a) For the purposes of this section: (1) "Contract"
26 means any personal service agreement, not involving the
27 sale of commodities, that cannot be performed within
28 sixty days or for which the total compensation exceeds
29 two thousand five hundred dollars in any twelve-month
30 period. The term "contract" does not include any
31 agreement obtained by a retirant through a bidding
32 process and which is for the furnishing of any commod-
33 ity to a government agency; (2) "governmental entity"
34 means the state of West Virginia; a constitutional
35 branch or office of the state government, or any
36 subdivision thereof; a county, city or town in the state;
37 a county board of education; a separate corporation or
38 instrumentality established pursuant to a state statute;
39 any other entity currently permitted to participate in
40 any state public retirement system or the public
41 employees insurance agency; or any officer or official of
42 any entity listed above who is acting in his or her official

43 capacity; (3) "substitute teacher" means a teacher,
44 public school librarian, registered professional nurse
45 employed by the county board of education or any other
46 person employed for counselling or instructional pur-
47 poses in a public school in this state who is temporarily
48 fulfilling the duties of an existing real person employed
49 in a specific position who is temporarily absent from
50 that specific position; (4) "part-time elected or appointed
51 office" means any elected or appointed office that
52 compensates its members in an amount less than two
53 thousand five hundred dollars or requires less than sixty
54 days of service in any twelve-month period.

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

69 (1) Retirement incentive option one:

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

75 (2) Retirement incentive option two:

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

83 (3) Retirement incentive option three:

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

89 (c) Eligible, active, contributing members, aforesaid,
90 employed under agreement and rendering services
91 during school year one thousand nine hundred eighty-
92 eight—eighty-nine shall, if retiring pursuant to the
93 provisions of this section and the early retirement
94 incentive program set forth herein, make application for
95 retirement, including choice of their respective option,
96 and give notice to their respective county boards of
97 education by the thirty-first day of December, one
98 thousand nine hundred eighty-eight, but shall be
99 permitted to postpone actual retirement until imme-
100 diately after the close of such agreement period and said
101 school year; with proper credit to be granted for such
102 extended period.

103 Also, eligible, active, contributing members employed,
104 not under agreement, who desire to retire under this
105 section but who are unable to retire by the thirty-first
106 day of December, one thousand nine hundred eighty-
107 eight, because an element of eligibility for retirement,
108 such as age or other element, will not be met until a date
109 after the thirty-first day of December, one thousand nine
110 hundred eighty-eight, and before the first day of July,
111 one thousand nine hundred eighty-nine, shall be permit-
112 ted to postpone actual retirement until the date of
113 fulfilling such element of eligibility and shall retire on
114 such date, before the temporary retirement incentive
115 program ends on the thirtieth day of June, one thousand
116 nine hundred eighty-nine; with proper credit to be
117 granted for such extended period: *Provided*, That
118 members eligible under the preceding paragraph and
119 this paragraph shall have made application for retire-
120 ment, including choice of their respective option, and
121 given notice to their respective employer by the thirty-
122 first day of December, one thousand nine hundred
123 eighty-eight, although postponing actual retirement, as

124 aforesaid: *Provided, however,* That an application for
125 retirement under the provisions of the preceding
126 paragraph and this paragraph shall be binding upon a
127 member unless the member provides the retirement
128 system and the local board of education or other
129 educational agency with written notification of his or
130 her decision not to retire by the first day of April, one
131 thousand nine hundred eighty-nine: *Provided further,*
132 That an eligible member under this paragraph or the
133 preceding paragraph who has a grievance or court
134 proceeding which is pending on the passage date of this
135 bill, shall be required to give final notice of decision not
136 to retire by the thirtieth day of June, one thousand nine
137 hundred eighty-nine: *And provided further,* That the
138 state teachers retirement board on or before the twenty-
139 fourth day of March, one thousand nine hundred eighty-
140 nine, shall provide calculations of anticipated retirement
141 benefits to those members who intend to retire pursuant
142 to the provisions of this section.

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

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

159 (d) Any member participating in this retirement
160 incentive program is not eligible to accept further
161 employment or accept, directly or indirectly, work on a
162 contract basis from a governmental entity: *Provided,*
163 That nothing in this section shall effect any contract
164 entered into prior to the effective date of this section:

165 *Provided, however,* That the executive director may
166 approve, upon written request for good cause shown, an
167 exception allowing a retirant to perform work on a
168 contract basis: *Provided further,* That a person may
169 retire under this section and thereafter serve in an
170 elective office: *And provided further,* That he or she shall
171 not receive an incentive option under this section during
172 the term of service in said office, but shall receive his
173 or her annuity calculated on regular basis, as if
174 originally taken not under this section but on such
175 regular basis. At the end of such term and cessation of
176 service in such office, such incentive option shall
177 resume. In respect of an appointive office, as distin-
178 guished from an elective office, any person retiring
179 under this section and thereafter serving in such
180 appointive office shall not receive an incentive option
181 under this section during the term of service in said
182 office, but the same shall be suspended during such
183 period: *And provided further,* That at the end of such
184 term and cessation of service in such appointive office
185 the incentive option provided for under this section shall
186 be resumed: *And provided further,* That any person
187 elected or appointed to office by the state or any of its
188 political subdivisions who waives whatever salary, wage
189 or per diem compensation he or she may be entitled to
190 by virtue of service in such office and who does not
191 receive any income therefrom except such reimburse-
192 ment of out-of-pocket costs and expenses as may be
193 permitted by the statutes governing such office shall
194 continue to receive an incentive option under this
195 section. Such service shall not be counted as contributed
196 or credited service for purposes of computing retirement
197 benefits.

198 If such elected or appointed office is a part-time
199 elected or appointed office, a person electing retirement
200 under this section may serve in such elective or
201 appointive office with no loss of the benefits provided
202 under this section.

203 Prior to the initiation or renewal of any contract
204 entered into pursuant to this section or the acceptance
205 of any elective or appointive office, a person who has

206 elected to retire under the early retirement provisions
207 of this article shall complete a disclosure and waiver
208 statement executed under oath and acknowledged by a
209 notary public. The board shall promulgate rules,
210 pursuant to chapter twenty-nine-a of this code, regard-
211 ing the form and contents of the waiver and disclosure
212 statement. The disclosure and waiver statement shall be
213 forwarded to the appropriate state public retirement
214 system administrator who shall take action to ensure
215 that the early retirement incentive option benefit is
216 reduced in accordance with the provisions of this
217 section. The administrator shall then certify such action
218 in writing to the appropriate governmental entity.

219 In any event, an eligible member may retire under
220 this section and thereafter continue to receive his
221 incentive annuity and be employed as a substitute
222 teacher, as adjunct faculty, as a school service personnel
223 substitute, or as a part-time member of the faculty of
224 Southern West Virginia Community College or West
225 Virginia Northern Community College: *Provided*, That
226 the board of directors determines that the part-time
227 employment is in accordance with policies to be adopted
228 by the board regarding adjunct faculty. For purposes of
229 this section, a "part-time member of the faculty" means
230 an individual employed solely to provide instruction for
231 not more than twelve college credits per semester.

232 Any such incentive retirants, under this section, may
233 not thereafter receive such annuity and enter or reenter
234 any governmental retirement system established or
235 authorized to be established by the state, notwithstand-
236 ing any provision of the code to the contrary, unless
237 required by constitutional provision.

238 The additional annuity allowed for temporary early
239 retirement under these options is intended to be paid
240 from the retirement incentive account hereby created as
241 a special account in the state treasury and from the
242 funds therein established with moneys required to be
243 applied or transferred by heads of spending units from
244 the unused portion of salary and fringe benefits in their
245 budgets accruing in respect to such positions vacated
246 and subsequently canceled under this temporary early

247 retirement program. Salary and fringe benefit moneys
248 actually saved in a particular fiscal year shall constitute
249 the fund source. No such additional annuity shall be
250 disallowed even though initial receipts may not be
251 sufficient, with funds of the system to be applied for
252 such purpose, as for the base annuity.

253 (e) The executive secretary of the retirement system
254 shall provide forms for applicants. Such forms shall
255 include a detailed description of the incentive plan
256 options.

257 The executive secretary of the retirement system shall
258 file a report to the Legislature no later than the fifteenth
259 day of February, one thousand nine hundred eighty-
260 nine, and quarterly thereafter, detailing the number of
261 retirees who have elected to accept early retirement
262 incentive options, the dollar cost to date by option
263 selected, and the projected annual cost through the year
264 two thousand.

265 (f) Within every spending unit, department, board,
266 corporation, commission, or any other agency or entity
267 wherein two or multiples of two members elect to retire
268 either under the temporary early retirement incentives
269 set forth above, or under regular, voluntary retirement,
270 and countable on an agency-wide or entity-wide basis,
271 no more than one of such vacated positions may be filled,
272 with the second position being abolished upon the
273 effective day of the member's retirement: *Provided,*
274 That county boards of education in replacing employees
275 leaving under this temporary early retirement incentive
276 program shall be eligible to replace in that number as
277 authorized by the basic school aid formula and pursuant
278 to those guidelines in respect of number of positions lost
279 or projected to be lost due to declining enrollment,
280 changes in statutes, changes in state appropriations and
281 the other guidelines set forth and contained within said
282 basic school aid formula. The vacant position abolish-
283 ment requirement shall not apply to elective positions
284 or appointed public officers whose positions are estab-
285 lished by state constitutional or statutory provision. The
286 retirant's employing entity shall decide as to which of
287 the vacated positions made available through special

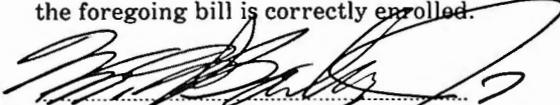
288 early retirement or through regular, voluntary retire-
289 ment are to be abolished and the head of such spending
290 unit shall immediately notify the state auditor, the
291 legislative auditor, and the commissioner of the depart-
292 ment of finance and administration of the decisions and
293 shall then apply and/or transfer, as aforesaid, the
294 remaining salary and fringe benefit appropriations:
295 *Provided, however,* That this vacant position abolishment
296 provision shall not apply to any county position, other
297 than those under the authority of county boards of
298 education, nor to any position or positions, whether
299 designated by spending unit, department, agency,
300 commission, entity or otherwise, which the governor
301 may exempt or amend under such abolishment provision
302 upon his recommendation that such exemption or
303 amendment is necessary to preserve the health, welfare
304 or safety of the people of West Virginia, and with the
305 prior concurrence of the joint committee on government
306 and finance in such recommendation, after the chairmen
307 thereof shall cause such committee to meet.

308 (g) *Special rule of eighty.* — Any active, contributing
309 member of the retirement system as of the first day of
310 April, one thousand nine hundred eighty-eight, who
311 selects one of the incentive options in this section, may
312 retire under the special early retirement provisions with
313 full pension rights, without reduction of benefits if the
314 sum of such member's age plus years of contributing
315 service equals or exceeds eighty: *Provided,* That such
316 person has at least twenty years of contributing service,
317 up to two years of which may be military service, or
318 prior service, or already paid and credited out-of-state
319 service (if so paid and credited by the first day of April,
320 one thousand nine hundred eighty-eight) or any combi-
321 nation thereof not exceeding an aggregate of two years.

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

Enr. Com. Sub. for H. B. 2124] 10

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

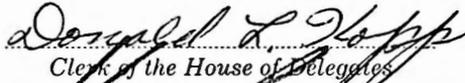

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Chairman Senate Committee

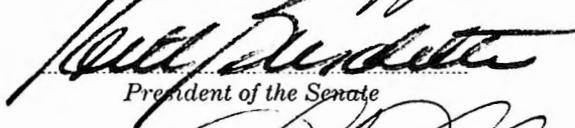

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Chairman House Committee

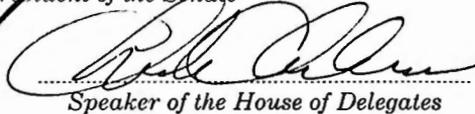
Originating in the House.

Takes effect ninety days from passage.

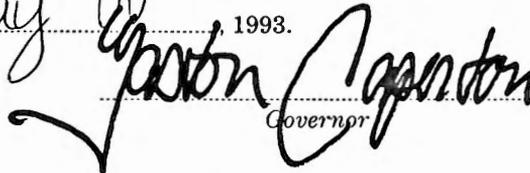

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker of the House of Delegates

The within is approved this the 12th
day of May, 1993.


.....
Governor

PRESENTED TO THE

Governor

Date 4/30/93

Time 3:25 pm