WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

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 20, 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.
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. No. 4672, regular session, one thousand nine hundred eighty-eight, and as clarified and supplemented herein, retroactive to such beginning date, aforesaid. The Legislature further finds that maintaining an actuarily sound retirement fund is essential and that the reemployment in any manner, including reemployment on a contract basis, by the state of any person who retires under this section is contrary to the intent of the early retirement program and severely threatens the fiscal integrity of the retirement fund.

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

(b) 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 incentive 
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 compu-
tation 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.

(c) Eligible, active, contributing members, aforesaid, employed under agreement and rendering services during school year one thousand nine hundred eighty-eight—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 agreement period and said school year; with proper credit to be granted for such extended period.

Also, eligible, active, contributing members employed, not under agreement, 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 thirtieth day of June, one thousand nine hundred eighty-nine; 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
Provided, however, That an application for retirement under the provisions of the preceding paragraph and this paragraph shall be binding upon a member unless the member provides the retirement system and the local board of education or other educational agency with written notification of his or her decision not to retire by the first day of April, one thousand nine hundred eighty-nine: Provided further, That an eligible member under this paragraph or the preceding paragraph who has a grievance or court proceeding which is pending on the passage date of this bill, shall be required to give final notice of decision not to retire by the thirtieth day of June, one thousand nine hundred eighty-nine: And provided further, That the state teachers retirement board on or before the twenty-fourth day of March, one thousand nine hundred eighty-nine, shall provide calculations of anticipated retirement benefits to those members who intend to retire pursuant to the provisions of this section.

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.

(d) Any member participating in this retirement incentive program is not eligible to accept further employment or accept, directly or indirectly, work on a contract basis from a governmental entity: Provided, That nothing in this section shall effect any contract entered into prior to the effective date of this section:
Provided, however, That the executive director may approve, upon written request for good cause shown, an exception allowing a retirant to perform work on a contract basis: Provided further, That a person may retire under this section and thereafter serve in an elective office: And provided further, That he or she shall not receive an incentive option 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 option 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 option under this section during the term of service in said office, but the same shall be suspended during such period: And provided further, That at the end of such term and cessation of service in such appointive office the incentive option provided for under this section shall be resumed: And provided further, That any person elected or appointed to office by the state or any of its political subdivisions who waives whatever salary, wage or per diem compensation he or she may be entitled to by virtue of service in such office and who does not receive any income therefrom except such reimbursement of out-of-pocket costs and expenses as may be permitted by the statutes governing such office shall continue to receive an incentive option under this section. Such service shall not be counted as contributed or credited service for purposes of computing retirement benefits.

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

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

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, as adjunct faculty, as a school service personnel substitute, or as a part-time member of the faculty of Southern West Virginia Community College or West Virginia Northern Community College: Provided, That the board of directors determines that the part-time employment is in accordance with policies to be adopted by the board regarding adjunct faculty. For purposes of this section, a “part-time member of the faculty” means an individual employed solely to provide instruction for not more than twelve college credits per semester.

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.

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 to 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.

(e) 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.

(f) 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 retirant's employing entity shall decide as to which of the vacated positions made available through special
early retirement or through regular, voluntary retire-
ment 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 depart-
ment 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.

(g) 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 already paid and credited out-of-state
service (if so paid and credited by the first day of April,
one thousand nine hundred eighty-eight) or any combi-
nation thereof not exceeding an aggregate of two years.

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

Chairman Senate Committee

Ernest E. Moore
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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

Governor