

SB 94

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SENATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



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FOR SENATE BILL NO. 94

(By Senators BOWMAN & SNYDER)



PASSED MARCH 14, 1998

In Effect NINETY DAYS FROM Passage

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Senate Bill No. 94

(SENATORS BOWMAN AND SNYDER, *original sponsors*)

[Passed March 14, 1998; 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 raising the earnings cap from two thousand five hundred dollars to seven thousand five hundred dollars per year for appointed or elected officials receiving incentive retirement benefits; and removing obsolete provisions.

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 declarations and findings; termination date.

1 Under the prior enactment of this section, the Legisla-
2 ture found and declared that a compelling state interest
3 existed in providing a temporary, early retirement incen-
4 tives program for encouraging the early, voluntary
5 retirement of those public employees who were current,
6 active, contributing members of this retirement system on
7 the first day of April, one thousand nine hundred
8 eighty-eight, in the reduction of the number of the em-
9 ployees and in reduction of governmental costs for the
10 employees. The Legislature further found that maintain-
11 ing an actuarially sound retirement fund is essential and
12 that the reemployment in any manner, including
13 reemployment on a contract basis, by the state of any
14 person who retired under this section is contrary to the
15 intent of the early retirement program and severely
16 threatens the fiscal integrity of the retirement fund. The
17 early retirement program under the prior enactment of
18 this section, offered employees three retirement incentive
19 options. Any person who retired under the provisions of
20 the prior enactment of this section are subject to the
21 restrictions contained in this section.

22 (a) For the purposes of this section: (1) "Contract"
23 means any personal service agreement, not involving the
24 sale of commodities, that cannot be performed within
25 sixty days or for which the total compensation exceeds
26 seven thousand five hundred dollars in any twelve-month
27 period. The term "contract" does not include any agree-
28 ment obtained by a retirant through a bidding process and
29 which is for the furnishing of any commodity to a govern-
30 ment agency; (2) "governmental entity" means the state of
31 West Virginia; a constitutional branch or office of the
32 state government, or any subdivision of state government;
33 a county, city or town in the state; a county board of

34 education; a separate corporation or instrumentality
35 established pursuant to a state statute; any other entity
36 currently permitted to participate in any state public
37 retirement system or the public employees insurance
38 agency; or any officer or official of any entity listed in this
39 subsection who is acting in his or her official capacity; (3)
40 “substitute teacher” means a teacher, public school
41 librarian, registered professional nurse employed by the
42 county board of education or any other person employed
43 for counselling or instructional purposes in a public school
44 in this state who is temporarily fulfilling the duties of an
45 existing person employed in a specific position who is
46 temporarily absent from that specific position; and (4)
47 “part-time elected or appointed office” means any elected
48 or appointed office that compensates its members in an
49 amount less than two thousand five hundred dollars or
50 requires less than sixty days of service in any
51 twelve-month period.

52 (b) Any member who participated in the retirement
53 incentive program under the prior enactment of this
54 section is not eligible to accept further employment or
55 accept, directly or indirectly, work on a contract basis
56 from a governmental entity: *Provided*, That the executive
57 director may approve, upon written request for good cause
58 shown, an exception allowing a retirant to perform work
59 on a contract basis: *Provided, however*, That a person
60 may retire under this section and thereafter serve in an
61 elective office: *Provided further*, That he or she shall not
62 receive the incentive option he or she elected under the
63 prior enactment of this section during the term of service
64 in that office for which the total compensation exceeds
65 seven thousand five hundred dollars, but shall receive his
66 or her annuity calculated on regular basis, as if originally
67 taken not under the prior enactment of this section but on
68 a regular basis. At the end of the term and cessation of
69 service in the office, the incentive option resumes. In
70 respect of an appointive office, as distinguished from an

71 elective office, any person retiring under this section and
72 thereafter serving in the appointive office for which the
73 total compensation exceeds seven thousand five hundred
74 dollars shall not receive the incentive option he or she
75 elected under the prior enactment of this section during
76 the term of service in that office, but the incentive option
77 resumes during that period: *And provided further*, That at
78 the end of the term and cessation of service in the appoint-
79 ive office the incentive option provided for under the prior
80 enactment of this section resumes: *And provided further*,
81 That any person elected or appointed to office by the state
82 or any of its political subdivisions who waives whatever
83 salary, wage or per diem compensation he or she may be
84 entitled to by virtue of service in that office and who does
85 not receive any income from service in that office except
86 the reimbursement of out-of-pocket costs and expenses
87 that are permitted by the statutes governing the office
88 shall continue to receive the incentive option he or she
89 elected under this section. The service may not be counted
90 as contributed or credited service for purposes of comput-
91 ing retirement benefits.

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

97 (d) Prior to the initiation or renewal of any contract for
98 which the total compensation exceeds seven thousand five
99 hundred dollars and entered into pursuant to this section
100 or the acceptance of any elective or appointive office for
101 which the total compensation exceeds seven thousand five
102 hundred dollars, a person who has elected to retire under
103 the early retirement provisions of the prior enactment of
104 this section shall complete a disclosure and waiver
105 statement executed under oath and acknowledged by a
106 notary public. The board shall propose rules for promul-
107 gation, pursuant to article three, chapter twenty-nine-a of

108 this code, regarding the form and contents of the waiver
109 and disclosure statement. The disclosure and waiver
110 statement shall be forwarded to the appropriate state
111 public retirement system administrator who shall take
112 action to ensure that the early retirement incentive option
113 benefit is reduced in accordance with the provisions of
114 this section. The administrator shall then certify that
115 action in writing to the appropriate governmental entity.

116 (e) In any event, an eligible member who retired under
117 the prior enactment of this section may continue to receive
118 his or her incentive annuity and be employed as a substi-
119 tute teacher, as adjunct faculty, as a school service
120 personnel substitute, or as a part-time member of the
121 faculty of southern West Virginia community college or
122 West Virginia northern community college: *Provided,*
123 That the board of directors determines that the part-time
124 employment is in accordance with policies to be adopted
125 by the board regarding adjunct faculty. For purposes of
126 this section, a "part-time member of the faculty" means an
127 individual employed solely to provide instruction for not
128 more than twelve college credits per semester.

129 (f) Any incentive retirants, under the prior enactment of
130 this section, may not receive an annuity and enter or
131 reenter any governmental retirement system established
132 or authorized to be established by the state, notwithstand-
133 ing any provision of the code to the contrary, unless
134 required by constitutional provision.

135 (g) The additional annuity allowed for temporary early
136 retirement is intended to be paid from the retirement
137 incentive account created as a special account in the state
138 treasury and from the funds in the special account estab-
139 lished with moneys required to be applied or transferred
140 by heads of spending units from the unused portion of
141 salary and fringe benefits in their budgets accruing in
142 respect to the positions vacated and subsequently canceled
143 under this temporary early retirement program. Salary

144 and fringe benefit moneys actually saved in a particular
145 fiscal year constitute the fund source. No additional
146 annuity shall be disallowed even though initial receipts
147 may not be sufficient, with funds of the system to be
148 applied for the purpose, as for the base annuity.

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

155 (i) *Termination of temporary retirement incentives*
156 *program.* — The right to retire under this section termi-
157 nated on the thirtieth day of June, one thousand nine
158 hundred eighty-nine.

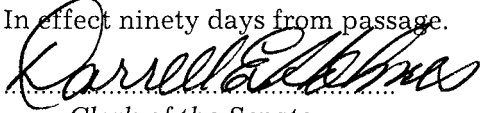
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


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Chairman Senate Committee

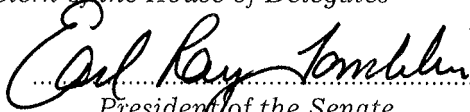

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Chairman House Committee

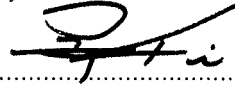
Originated in the Senate.

In effect ninety days from passage.

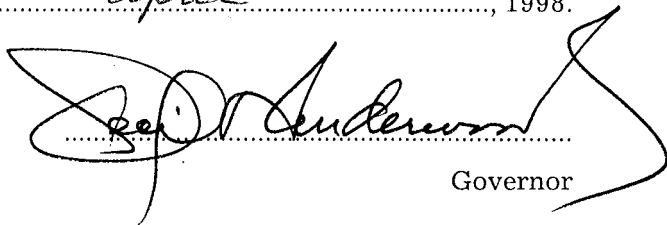

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within *approved* this the *2nd*
day of *April*, 1998.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/30/98

Time 9:20 am