WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2001

ENROLLED

House Bill No. 2607
(By Delegates Staton, Varner and Pino)

Passed April 14, 2001
In Effect Ninety Days from Passage
AN ACT to amend and reenact section twenty-two-c, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public employees retirement; deleting certain restrictions on persons who exercised early retirement options and setting forth an effective date.

Be it enacted by the Legislature of West Virginia:

That section twenty-two-c, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-22c. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.
The Legislature hereby finds and declares that a compelling state interest exists in providing a temporary early retirement incentives program for encouraging the early, voluntary retirement of those public employees who were current, active contributing members of this retirement system on the first day of April, one thousand nine hundred eighty-eight, in the reduction of the number of such employees and in reduction of governmental costs 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 actuarially sound retirement fund is a necessity and that the reemployment of persons who retire under this section in any manner, including reemployment on a contract basis, 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 that 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 and that term does not include any person who retired under this section who works as a contract employee for the Legislature when such employment commences after the thirty-first day of December, one thousand nine hundred ninety-nine; (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) “part-time elected or appointed office” means any elected or appointed office that pays annual compensation of less than two thousand five hundred dollars or requires less than sixty days of service in any twelve-month period; (4) “substitute teacher” means a teacher, public school librarian, registered professional nurse employed by the county board of education or any other person employed for counseling or instructional purposes 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 specified position.

(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 eligibility qualification requirement, as hereinafter specified), eligible members, being those active, contributing members actually and currently employed on such beginning date, retiring pursuant to this section, and from any state, county or municipal position, covered under the two divisions of this retirement system (the state division and the public employer, nonstate division) including those so employed on said beginning date and leaving the system during the incentive period and who are eligible for taking deferred retirement (but not disability retirees) may elect to participate in this 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 computation of retirement benefit.

(2) Retirement incentive option two:

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

(3) Retirement incentive option three:

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

Active, contributing members who desire to retire under this section but who are unable to retire by the thirty-first day of December, one thousand nine hundred eighty-eight, and make use of the incentive retirement program because an element of eligibility for retirement, such as age or other element, will not be met until a date after the thirty-first day of December, one thousand nine hundred eighty-eight, and before the first day of July, one thousand nine hundred eighty-nine, shall be permitted to postpone actual retirement until the date of fulfilling such element of eligibility and shall retire on such date, before the temporary retirement incentive program ends on the thirtieth day of June, one thousand nine hundred eighty-nine, with proper credit to be granted for such extended period: Provided, That they shall have made application for retirement, including choice of their respective option, and given notice to their respective employer by the thirty-first day of December, one thousand nine hundred eighty-eight, although postponing actual retirement, as aforesaid.
(c) 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 any governmental entity: Provided, That nothing in this section shall affect any contract entered into prior to the effective date of this section: Provided, however, That the executive director may approve, upon written request and for good cause shown, an exception allowing a retirant to perform work on a contract basis. The executive director shall report all approved exceptions to the board of trustees: Provided further, That a person may retire under this section and thereafter serve in an elective office: And provided further, That he 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 during which the member shall rejoin and reenter the retirement system and pay contributions therefor, such regular annuity shall be recalculated and an increased annuity due to such additional employment shall be granted and computed on regular basis and in similar manner as under section forty-eight of this article. In respect of an appointive office, as distinguished from an elective office, any person retiring under this section and thereafter serving in such appointive office shall not receive an incentive 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 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 elected or appointed office without a loss of the benefits provided under this section.

Prior to the initiation or renewal of any contract entered into pursuant to the provisions of this section or the acceptance of any elective or appointive office by a person who has elected to retire under the early retirement provisions of this article, such person 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 disclosure and waiver 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 benefits are 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 or as adjunct faculty.

Any such incentive retirants, under this section, may not thereafter receive such annuity and enter or reenter any governmental retirement system established or authorized to be established by the state, notwithstanding any provision of the code to the contrary, unless required by constitutional provision or as hereby specifically permitted to those retiring and thereafter serving in elective office, as aforesaid.
The additional annuity allowed for temporary early retirement under these options, in respect of state division retirants of this system, is intended to be paid from the retirement incentive account hereby created as a special account in the state treasury and from the funds therein established with moneys required to be transferred by heads of spending units from the unused portion of salary and fringe benefits in their budgets accruing in respect of such positions vacated and subsequently canceled under this temporary early retirement program. Salary and fringe benefit moneys actually saved in a particular fiscal year shall constitute the fund source for payment of such additional annuity, the funds of the retirement system to be used for payment of the base annuity under the early retirement incentive program: Provided, That such additional annuity shall be paid from the unused portion of both salary and fringe benefits and with any remainder of any fringe benefit moneys, as such, to remain with the spending unit and any remainder of salary, as such, to be directed as additional funding to the teachers retirement system and as a part of the assets thereof. No such additional annuity shall be disallowed even though initial receipts may not be sufficient, with funds of the system to be applied for such purpose, as for the base annuity. With respect to public employer division retirants (nonstate division retirants of the system), such incentive annuity shall be paid from the nonstate division funds of the system.

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

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

(e) Within every spending unit, department, board, corpora-
tion, commission, or any other agency or entity wherein two or
multiples of two members elect to retire either under the
temporary early retirement incentives set forth above, or under
regular, voluntary retirement, and countable on an agency-wide
or entity-wide basis, no more than one of such vacated positions
may be filled, with the second position being abolished upon
the effective day of the member’s retirement. The vacant
position abolishment requirement shall not apply to elective
positions or appointed public officers whose positions are
established by state constitutional or statutory provision. The
retirant’s employing entity shall decide as to which of the
vacated positions made available through special early retire-
ment or through regular, voluntary retirement are to be abol-
ished and the head of such spending unit shall immediately
notify the state auditor, the legislative auditor, and the commis-
sioner of the department of finance and administration of the
decisions and shall then apply and/or transfer the remaining
salary and fringe benefits as aforesaid: Provided, That this
vacant position abolishment provision shall not apply to any
county or municipal position except those under the authority
of a county board of education, nor to any position or positions,
whether designated by spending unit, department, agency,
commission, entity or otherwise, which the governor in respect
of the executive branch, or the chief justice of the supreme
court of appeals in respect of the judicial branch, or the presi-
dent of the Senate or speaker of the House of Delegates, in
respect of the legislative branch, may exempt or amend, under
such abolishment provision, upon his respective recommenda-
tion that such exemption or amendment is necessary to provide
for continuity of governmental operation or to preserve the
health, welfare or safety of the people of West Virginia, and
with the prior concurrence of the joint committee on govern-
ment and finance in such recommendation, after the chairmen thereof shall cause such committee to meet.

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

(g) 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.

(h) The board shall promulgate rules and regulations in accordance with the provisions of article three, chapter twenty-nine of this code regarding the calculation of the amount of incentive option that may be forfeited pursuant to the provisions of subsection (b) of this section.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In 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 30 day of April, 2001.

Governor
PRESENTED TO THE
GOVERNOR
Date: 4/26/01
Time: 5:00 pm