

**FILED**

2001 MAY - 1 P 2:18

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# **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

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**H. B. 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

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

52 (b) Beginning on the first day of April, one thousand nine  
53 hundred eighty-eight, and continuing through the thirty-first day  
54 of December, one thousand nine hundred eighty-eight (or as  
55 extended by eligibility qualification requirement, as hereinafter  
56 specified), eligible members, being those active, contributing  
57 members actually and currently employed on such beginning  
58 date, retiring pursuant to this section, and from any state,  
59 county or municipal position, covered under the two divisions  
60 of this retirement system (the state division and the public  
61 employer, nonstate division) including those so employed on  
62 said beginning date and leaving the system during the incentive  
63 period and who are eligible for taking deferred retirement (but  
64 not disability retirees) may elect to participate in this incentive  
65 program and may elect any one of the three following incentive  
66 options:

67 (1) Retirement incentive option one:

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

70 thereof shall be added thereto in arriving at the true final  
71 average salary for use in actual computation of retirement  
72 benefit.

73 (2) Retirement incentive option two:

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

80 (3) Retirement incentive option three:

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

85 Active, contributing members who desire to retire under  
86 this section but who are unable to retire by the thirty-first day  
87 of December, one thousand nine hundred eighty-eight, and  
88 make use of the incentive retirement program because an  
89 element of eligibility for retirement, such as age or other  
90 element, will not be met until a date after the thirty-first day of  
91 December, one thousand nine hundred eighty-eight, and before  
92 the first day of July, one thousand nine hundred eighty-nine,  
93 shall be permitted to postpone actual retirement until the date  
94 of fulfilling such element of eligibility and shall retire on such  
95 date, before the temporary retirement incentive program ends  
96 on the thirtieth day of June, one thousand nine hundred  
97 eighty-nine, with proper credit to be granted for such extended  
98 period: *Provided*, That they shall have made application for  
99 retirement, including choice of their respective option, and  
100 given notice to their respective employer by the thirty-first day  
101 of December, one thousand nine hundred eighty-eight, although  
102 postponing actual retirement, as aforesaid.

103       (c) Any member participating in this retirement incentive  
104 program is not eligible to accept further employment or accept,  
105 directly or indirectly, work on a contract basis from any  
106 governmental entity: *Provided*, That nothing in this section  
107 shall affect any contract entered into prior to the effective date  
108 of this section: *Provided, however*, That the executive director  
109 may approve, upon written request and for good cause shown,  
110 an exception allowing a retitant to perform work on a contract  
111 basis. The executive director shall report all approved excep-  
112 tions to the board of trustees: *Provided further*, That a person  
113 may retire under this section and thereafter serve in an elective  
114 office: *And provided further*, That he shall not receive an  
115 incentive option under this section during the term of service in  
116 said office, but shall receive his or her annuity calculated on  
117 regular basis, as if originally taken not under this section but on  
118 such regular basis. At the end of such term and cessation of  
119 service in such office during which the member shall rejoin and  
120 reenter the retirement system and pay contributions therefor,  
121 such regular annuity shall be recalculated and an increased  
122 annuity due to such additional employment shall be granted and  
123 computed on regular basis and in similar manner as under  
124 section forty-eight of this article. In respect of an appointive  
125 office, as distinguished from an elective office, any person  
126 retiring under this section and thereafter serving in such  
127 appointive office shall not receive an incentive option under  
128 this section during the term of service in said office, but the  
129 same shall be suspended during such period: *And provided*  
130 *further*, That at the end of such term and cessation of service in  
131 such appointive office the incentive option provided for under  
132 this section shall be resumed: *And provided further*, That any  
133 person elected or appointed to office by the state or any of its  
134 political subdivisions who waives whatever salary, wage or per  
135 diem compensation he may be entitled to by virtue of service in  
136 such office and who does not receive any income therefrom  
137 except such reimbursement of out-of-pocket costs and expenses  
138 as may be permitted by the statutes governing such office shall

139 continue to receive an incentive option under this section. Such  
140 service shall not be counted as contributed or credited service  
141 for purposes of computing retirement benefits.

142 If such elected or appointed office is a part-time elected or  
143 appointed office, a person electing retirement under this section  
144 may serve in such elected or appointed office without a loss of  
145 the benefits provided under this section.

146 Prior to the initiation or renewal of any contract entered  
147 into pursuant to the provisions of this section or the acceptance  
148 of any elective or appointive office by a person who has elected  
149 to retire under the early retirement provisions of this article,  
150 such person shall complete a disclosure and waiver statement  
151 executed under oath and acknowledged by a notary public. The  
152 board shall promulgate rules, pursuant to chapter twenty-nine-a,  
153 of this code regarding the form and contents of the disclosure  
154 and waiver statement. The disclosure and waiver statement  
155 shall be forwarded to the appropriate state public retirement  
156 system administrator who shall take action to ensure that the  
157 early retirement incentive benefits are reduced in accordance  
158 with the provisions of this section. The administrator shall then  
159 certify such action in writing to the appropriate governmental  
160 entity.

161 In any event, an eligible member may retire under this  
162 section and thereafter continue to receive his incentive annuity  
163 and be employed as a substitute teacher or as adjunct faculty.

164 Any such incentive retirants, under this section, may not  
165 thereafter receive such annuity and enter or reenter any govern-  
166 mental retirement system established or authorized to be  
167 established by the state, notwithstanding any provision of the  
168 code to the contrary, unless required by constitutional provision  
169 or as hereby specifically permitted to those retiring and  
170 thereafter serving in elective office, as aforesaid.

171       The additional annuity allowed for temporary early  
172 retirement under these options, in respect of state division  
173 retirants of this system, is intended to be paid from the retire-  
174 ment incentive account hereby created as a special account in  
175 the state treasury and from the funds therein established with  
176 moneys required to be transferred by heads of spending units  
177 from the unused portion of salary and fringe benefits in their  
178 budgets accruing in respect of such positions vacated and  
179 subsequently canceled under this temporary early retirement  
180 program. Salary and fringe benefit moneys actually saved in a  
181 particular fiscal year shall constitute the fund source for  
182 payment of such additional annuity, the funds of the retirement  
183 system to be used for payment of the base annuity under the  
184 early retirement incentive program: *Provided*, That such  
185 additional annuity shall be paid from the unused portion of both  
186 salary and fringe benefits and with any remainder of any fringe  
187 benefit moneys, as such, to remain with the spending unit and  
188 any remainder of salary, as such, to be directed as additional  
189 funding to the teachers retirement system and as a part of the  
190 assets thereof. No such additional annuity shall be disallowed  
191 even though initial receipts may not be sufficient, with funds of  
192 the system to be applied for such purpose, as for the base  
193 annuity. With respect to public employer division retirants  
194 (nonstate division retirants of the system), such incentive  
195 annuity shall be paid from the nonstate division funds of the  
196 system.

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

200       The executive secretary of the retirement system shall file  
201 a report to the Legislature no later than the fifteenth day of  
202 February, one thousand nine hundred eighty-nine, and quarterly  
203 thereafter, detailing the number of retirees who have elected to  
204 accept early retirement incentive options, the dollar cost to date

205 by option selected, and the projected annual cost through the  
206 year two thousand.

207 (e) Within every spending unit, department, board, corpora-  
208 tion, commission, or any other agency or entity wherein two or  
209 multiples of two members elect to retire either under the  
210 temporary early retirement incentives set forth above, or under  
211 regular, voluntary retirement, and countable on an agency-wide  
212 or entity-wide basis, no more than one of such vacated positions  
213 may be filled, with the second position being abolished upon  
214 the effective day of the member's retirement. The vacant  
215 position abolition requirement shall not apply to elective  
216 positions or appointed public officers whose positions are  
217 established by state constitutional or statutory provision. The  
218 retirent's employing entity shall decide as to which of the  
219 vacated positions made available through special early retire-  
220 ment or through regular, voluntary retirement are to be abol-  
221 ished and the head of such spending unit shall immediately  
222 notify the state auditor, the legislative auditor, and the commis-  
223 sioner of the department of finance and administration of the  
224 decisions and shall then apply and/or transfer the remaining  
225 salary and fringe benefits as aforesaid: *Provided*, That this  
226 vacant position abolition provision shall not apply to any  
227 county or municipal position except those under the authority  
228 of a county board of education, nor to any position or positions,  
229 whether designated by spending unit, department, agency,  
230 commission, entity or otherwise, which the governor in respect  
231 of the executive branch, or the chief justice of the supreme  
232 court of appeals in respect of the judicial branch, or the presi-  
233 dent of the Senate or speaker of the House of Delegates, in  
234 respect of the legislative branch, may exempt or amend, under  
235 such abolition provision, upon his respective recommenda-  
236 tion that such exemption or amendment is necessary to provide  
237 for continuity of governmental operation or to preserve the  
238 health, welfare or safety of the people of West Virginia, and  
239 with the prior concurrence of the joint committee on govern-

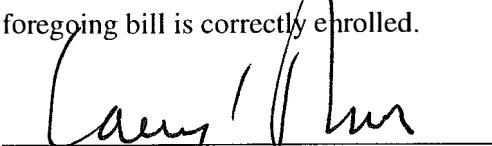
240   ment and finance in such recommendation, after the chairmen  
241   thereof shall cause such committee to meet.

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

253   (g) *Termination of temporary retirement incentives pro-*  
254   *gram.* — The right to elect, choose, select or use any of the  
255   options, special rule of eighty, or other benefits set forth in this  
256   section shall terminate on the thirtieth day of June, one thou-  
257   sand nine hundred eighty-nine.

258   (h) The board shall promulgate rules and regulations in  
259   accordance with the provisions of article three, chapter twenty-  
260   nine of this code regarding the calculation of the amount of  
261   incentive option that may be forfeited pursuant to the provisions  
262   of subsection (b) of this section.

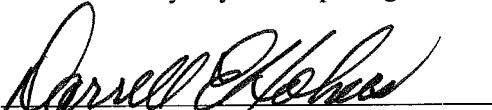
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

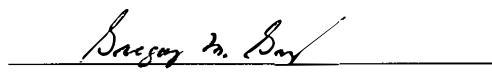
  
Chairman Senate Committee

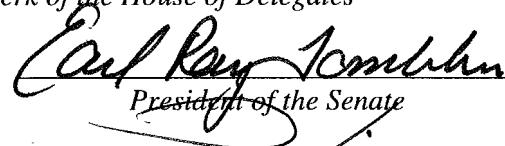
  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

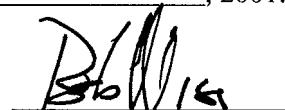
  
Clerk of the Senate

  
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

PRESSENTED TO THE

GOVERNOR

Date 7/26/01  
Time 5:20 pm