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2001 MAY -1 P 2: 18

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

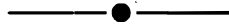
FIRST REGULAR SESSION, 2001



ENROLLED

House Bill No. 2607

(By Delegates Staton, Varner and Pino)



Passed April 14, 2001

In Effect Ninety Days from Passage

FILED

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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.

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1 The Legislature hereby finds and declares that a compelling
2 state interest exists in providing a temporary early retirement
3 incentives program for encouraging the early, voluntary
4 retirement of those public employees who were current, active
5 contributing members of this retirement system on the first day
6 of April, one thousand nine hundred eighty-eight, in the
7 reduction of the number of such employees and in reduction of
8 governmental costs therefor; that such program constitutes a
9 public purpose; and that the special classifications and differen-
10 tiations provided in respect of such program are reasonable and
11 equitable ones for the accomplishment of such purpose and
12 program as enacted in Enrolled Committee Substitute for H. B.
13 No. 4672, regular session, one thousand nine hundred
14 eighty-eight, and as clarified and supplemented herein, retroac-
15 tive to such beginning date, aforesaid. The Legislature further
16 finds that maintaining an actuarially sound retirement fund is a
17 necessity and that the reemployment of persons who retire
18 under this section in any manner, including reemployment on
19 a contract basis, is contrary to the intent of the early retirement
20 program and severely threatens the fiscal integrity of the
21 retirement fund.

22 (a) For the purposes of this section: (1) "Contract" means
23 any personal service agreement, not involving the sale of
24 commodities, that cannot be performed within sixty days or that
25 exceeds two thousand five hundred dollars in any twelve-month
26 period. The term "contract" does not include any agreement
27 obtained by a retirant through a bidding process and which is
28 for the furnishing of any commodity to a government agency
29 and that term does not include any person who retired under
30 this section who works as a contract employee for the Legisla-
31 ture when such employment commences after the thirty-first
32 day of December, one thousand nine hundred ninety-nine; (2)
33 "governmental entity" means the state of West Virginia; a
34 constitutional branch or office of the state government, or any
35 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 retirant 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 abolishment 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 retirant'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 abolishment 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 abolishment 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-

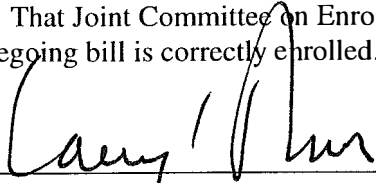
240 ment and finance in such recommendation, after the chairmen
241 thereof shall cause such committee to meet.

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.



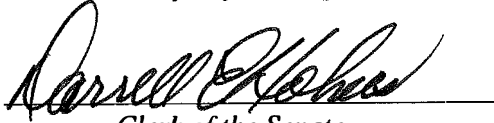
Chairman Senate Committee



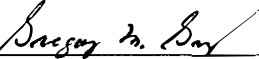
Chairman House Committee

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 as approved this the 30
day of April, 2001.



Governor

PRESENTED TO THE

GOVERNOR

Date 4/26/01

Time 5:20 pm