

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5389

By Delegates Sheedy, Willis, Foggin, Stephens,
Barnhart, and Anderson

[Introduced January 31, 2024; Referred to the
Committee on Pensions and Retirement then
Finance]

1 A BILL to amend and reenact §5-10-22c of the Code of West Virginia, 1931, as amended, relating
 2 to the West Virginia Public Employees Retirement Act; and restoring the special rule of 80
 3 for a member's retirement when a member's age plus years of contributing service equals
 4 or exceeds 80.

Be it enacted by the Legislature of West Virginia:

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 80 restored; effective, termination, and notice dates.

1 The Legislature hereby finds and declares that a compelling state interest exists in
 2 providing a temporary early retirement incentives program for encouraging the early, voluntary
 3 retirement of those public employees who were current, active contributing members of this
 4 retirement system on April 1, 1988, in the reduction of the number of such employees and in
 5 reduction of governmental costs therefor; that such program constitutes a public purpose; and that
 6 the special classifications and differentiations provided in respect of such program are reasonable
 7 and equitable ones for the accomplishment of such purpose and program as enacted in Enrolled
 8 Committee Substitute for H.B. No. 4672, regular session, 1988, and as clarified and supplemented
 9 herein, retroactive to such beginning date, aforesaid. The Legislature further finds that maintaining
 10 an actuarially sound retirement fund is a necessity and that the reemployment of persons who
 11 retire under this section in any manner, including reemployment on a contract basis, is contrary to
 12 the intent of the early retirement program and severely threatens the fiscal integrity of the
 13 retirement fund.

14 (a) For the purposes of this section: (1) "Contract" means any personal service agreement,
 15 not involving the sale of commodities, that cannot be performed within 60 days or that exceeds

16 \$2,500 in any 12-month period. The term "contract" does not include any agreement obtained by a
17 retirant through a bidding process and which is for the furnishing of any commodity to a
18 government agency and that term does not include any person who retired under this section who
19 works as a contract employee for the Legislature when such employment commences after
20 December 31, 1999: *Provided*, That such employment may not exceed 110 days; (2)
21 "governmental entity" means the State of West Virginia; a Constitutional branch or office of the
22 state government, or any subdivision thereof; a county, city or town in the state; a county board of
23 education; a separate corporation or instrumentality established pursuant to a state statute; any
24 other entity currently permitted to participate in any state public retirement system or the Public
25 Employees Insurance Agency; or any officer or official of any entity listed above who is acting in his
26 or her official capacity; (3) "part-time elected or appointed office" means any elected or appointed
27 office that pays annual compensation of less than \$2,500 or requires less than 60 days of service
28 in any 12-month period; (4) "substitute teacher" means a teacher, public school librarian,
29 registered professional nurse employed by the county board of education or any other person
30 employed for counseling or instructional purposes in a public school in this state who is temporarily
31 fulfilling the duties of an existing real person employed in a specific position who is temporarily
32 absent from that specified position.

33 (b) Beginning on April 1, 1988, and continuing through December 31, 1988 (or as extended
34 by eligibility qualification requirement, as hereinafter specified), eligible members, being those
35 active, contributing members actually and currently employed on such beginning date, retiring
36 pursuant to this section, and from any state, county or municipal position, covered under the two
37 divisions of this retirement system (the state division and the public employer, nonstate division)
38 including those so employed on said beginning date and leaving the system during the incentive
39 period and who are eligible for taking deferred retirement (but not disability retirees) may elect to
40 participate in this incentive program and may elect any one of the three following incentive options:

41 (1) Retirement incentive option one:

42 For the purpose of computing the member's annuity, the normal final average salary shall
43 be computed and one-eighth thereof shall be added thereto in arriving at the true final average
44 salary for use in actual computation of retirement benefit.

45 (2) Retirement incentive option two:

46 A member may elect a lump sum payment, in addition to his or her regular retirement
47 annuity, equal to 10 percent of his or her final average salary not to exceed \$5,000, and in the case
48 of a deferred retirement electing this option, such lump sum payment shall be receivable and
49 deferred to the time of receipt of such deferred retirement annuity.

50 (3) Retirement incentive option three:

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

54 Active, contributing members who desire to retire under this section but who are unable to
55 retire by December 31, 1988, and make use of the incentive retirement program because an
56 element of eligibility for retirement, such as age or other element, will not be met until a date after
57 December 31, 1988, and before July 1, 1989, shall be permitted to postpone actual retirement until
58 the date of fulfilling such element of eligibility and shall retire on such date, before the temporary
59 retirement incentive program ends on June 30, 1989, with proper credit to be granted for such
60 extended period: *Provided*, That they shall have made application for retirement, including choice
61 of their respective option, and given notice to their respective employer by December 31, 1988,
62 although postponing actual retirement, as aforesaid.

63 (c) Any member participating in this retirement incentive program is not eligible to accept
64 further employment or accept, directly or indirectly, work on a contract basis from any
65 governmental entity: *Provided*, That nothing in this section ~~shall~~ may affect any contract entered
66 into prior to the effective date of this section: *Provided, however*, That the executive director may
67 approve, upon written request and for good cause shown, an exception allowing a retirant to

68 perform work on a contract basis. The executive director shall report all approved exceptions to
69 the board of trustees: *Provided further*, That a person may retire under this section and thereafter
70 serve in an elective office: *And provided further*, That he or she shall may not receive an incentive
71 option under this section during the term of service in said office, but shall receive his or her
72 annuity calculated on regular basis, as if originally taken not under this section but on such regular
73 basis. At the end of such term and cessation of service in such office during which the member
74 shall rejoin and reenter the retirement system and pay contributions therefor, such regular annuity
75 shall be recalculated and an increased annuity due to such additional employment shall be
76 granted and computed on regular basis and in similar manner as under §5-10-48 of this code. In
77 respect of an appointive office, as distinguished from an elective office, any person retiring under
78 this section and thereafter serving in such appointive office shall may receive an incentive option
79 under this section during the term of service in said office, but the same shall be suspended during
80 such period: *And provided further*, That at the end of such term and cessation of service in such
81 appointive office the incentive option provided for under this section shall be resumed: *And*
82 *provided further*, That any person elected or appointed to office by the state or any of its political
83 subdivisions who waives whatever salary, wage or per diem compensation he or she may be
84 entitled to by virtue of service in such office and who does not receive any income therefrom
85 except such reimbursement of out-of-pocket costs and expenses as may be permitted by the
86 statutes governing such office shall continue to receive an incentive option under this section.
87 Such service shall not be counted as contributed or credited service for purposes of computing
88 retirement benefits.

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

92 Prior to the initiation or renewal of any contract entered into pursuant to the provisions of
93 this section or the acceptance of any elective or appointive office by a person who has elected to

94 retire under the early retirement provisions of this article, such person shall complete a disclosure
95 and waiver statement executed under oath and acknowledged by a notary public. The board shall
96 promulgate rules, pursuant to chapter 29A of this code regarding the form and contents of the
97 disclosure and waiver statement. The disclosure and waiver statement shall be forwarded to the
98 appropriate state public retirement system administrator who shall take action to ensure that the
99 early retirement incentive benefits are reduced in accordance with the provisions of this section.
100 The administrator shall then certify such action in writing to the appropriate governmental entity.

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

103 Any such incentive retirants, under this section, may not thereafter receive such annuity
104 and enter or reenter any governmental retirement system established or authorized to be
105 established by the state, notwithstanding any provision of the code to the contrary, unless required
106 by Constitutional provision or as hereby specifically permitted to those retiring and thereafter
107 serving in elective office, as aforesaid.

108 The additional annuity allowed for temporary early retirement under these options, in
109 respect of state division retirants of this system, is intended to be paid from the retirement
110 incentive account hereby created as a special account in the State Treasury and from the funds
111 therein established with moneys required to be transferred by heads of spending units from the
112 unused portion of salary and fringe benefits in their budgets accruing in respect of such positions
113 vacated and subsequently canceled under this temporary early retirement program. Salary and
114 fringe benefit moneys actually saved in a particular fiscal year shall constitute the fund source for
115 payment of such additional annuity, the funds of the retirement system to be used for payment of
116 the base annuity under the early retirement incentive program: *Provided*, That such additional
117 annuity shall be paid from the unused portion of both salary and fringe benefits and with any
118 remainder of any fringe benefit moneys, as such, to remain with the spending unit and any
119 remainder of salary, as such, to be directed as additional funding to the Teachers Retirement

120 System and as a part of the assets thereof. No such additional annuity shall be disallowed even
121 though initial receipts may not be sufficient, with funds of the system to be applied for such
122 purpose, as for the base annuity. With respect to public employer division retirants (nonstate
123 division retirants of the system), such incentive annuity shall be paid from the nonstate division
124 funds of the system.

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

127 The executive secretary of the retirement system shall file a report to the Legislature no
128 later than February 15, 1989, and quarterly thereafter, detailing the number of retirees who have
129 elected to accept early retirement incentive options, the dollar cost to date by option selected, and
130 the projected annual cost through the year 2000.

131 (e) Within every spending unit, department, board, corporation, commission, or any other
132 agency or entity wherein two or multiples of two members elect to retire either under the temporary
133 early retirement incentives set forth above, or under regular, voluntary retirement, and countable
134 on an agency-wide or entity-wide basis, no more than one of such vacated positions may be filled,
135 with the second position being abolished upon the effective day of the member's retirement. The
136 vacant position abolishment requirement ~~shall~~ may not apply to elective positions or appointed
137 public officers whose positions are established by state Constitutional or statutory provision. The
138 retirant's employing entity shall decide as to which of the vacated positions made available
139 through special early retirement or through regular, voluntary retirement are to be abolished and
140 the head of such spending unit shall immediately notify the State Auditor, the Legislative Auditor,
141 and the commissioner of the department of finance and administration of the decisions and shall
142 then apply and/or transfer the remaining salary and fringe benefits as aforesaid: *Provided*, That
143 this vacant position abolishment provision ~~shall~~ may not apply to any county or municipal position
144 except those under the authority of a county board of education, nor to any position or positions,
145 whether designated by spending unit, department, agency, commission, entity or otherwise, which

146 the Governor in respect of the executive branch, or the chief justice of the Supreme Court of
147 Appeals in respect of the judicial branch, or the President of the Senate or Speaker of the House of
148 Delegates, in respect of the legislative branch, may exempt or amend, under such abolishment
149 provision, upon his or her respective recommendation that such exemption or amendment is
150 necessary to provide for continuity of governmental operation or to preserve the health, welfare or
151 safety of the people of West Virginia, and with the prior concurrence of the Joint Committee on
152 Government and Finance in such recommendation, after the chairmen thereof shall cause such
153 committee to meet.

154 (f) *Special rule of 80.* -- Any active, contributing member of the retirement system as of
155 April 1, 1988, who selects one of the incentive options in this section, may retire under the special
156 early retirement provisions with full pension rights, without reduction of benefits if the sum of such
157 member's age plus years of contributing service equals or exceeds 80: *Provided*, That such
158 person has at least 20 years of contributing service; up to two years of which may be military
159 service, or prior service, or any combination thereof not exceeding an aggregate of two years.

160 (g) *Termination of temporary retirement incentives program.* -- The right to elect, choose,
161 select or use any of the options, ~~special rule of eighty~~, or other benefits set forth in this section shall
162 terminate on June 30, 1989.

163 (h) The board shall promulgate rules and regulations in accordance with ~~the provisions of~~
164 §29-3-1 *seq.*, of this code regarding the calculation of the amount of incentive option that may be
165 forfeited pursuant to the provisions of subsection (b) of this section.

NOTE: The purpose of this bill is to restore the special rule of 80 for a member's retirement when a member's age plus years of contributing service equals or exceeds 80.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.