

SECOND REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED]

SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1440

92ND GENERAL ASSEMBLY

4526S.04T

2004

AN ACT

To repeal sections 104.020, 104.050, 104.080, 104.090, 104.103, 104.110, 104.170, 104.180, 104.255, and 251.440, RSMo, and to enact in lieu thereof twelve new sections relating to retirement.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 104.020, 104.050, 104.080, 104.090, 104.103, 104.110, 104.170, 104.180, 104.255, and 251.440, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 104.020, 104.050, 104.080, 104.081, 104.090, 104.103, 104.110, 104.170, 104.180, 104.255, 251.255, and 251.440, to read as follows:

104.020. There is hereby created the "**Missouri Department of** Transportation [Department Employees'] and Highway Patrol **Employees'** Retirement System", which shall be a body corporate and an instrumentality of the state. In such system shall be vested the powers and duties specified in sections 104.010 to 104.270 and such other powers as may be necessary or proper to enable it, its officers, employees, and agents to carry out fully and effectively all the purposes of sections 104.010 to 104.270.

104.050. 1. Years of service and twelfths of a year are to be used in calculating any annuity. Absences taken by an employee without compensation for sickness or injury of the employee of [less than] **up to but not more than** twelve months [may] **or for leave taken by such employee without compensation pursuant to the provisions of the Family and Medical Leave Act of 1993 shall** be counted as [continuous] **membership** service. [Absences for more than twelve months' continuous duration cancel all prior service credits unless the board of trustees grants special leave to the employee affected prior to the termination of a twelve-month absence. This subsection shall not apply to injury sustained while in the line of duty.]

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

9 2. Any member who withdraws from service before he is entitled to deferred benefits
10 under section 104.035 forfeits, waives, and relinquishes all accrued rights in the fund, including
11 all accrued creditable service.

12 3. If a former employee has forfeited creditable service for any period he shall have the
13 period of creditable service restored only upon the completion of one continuous year of service
14 after he again becomes an employee.

104.080. Each member may retire [at] the [end] **first** of the month **following the month**
2 during which such member shall reach normal retirement age with a normal annuity [except that
3 any patrolman may retire at age fifty-five with a normal annuity and shall retire at age sixty].
4 Notwithstanding any other provisions to the contrary, [any member who continues his
5 employment with the transportation department or as a civilian member of the highway patrol
6 after attaining seventy and one-half years of age shall receive service retirement benefits during
7 the continuation of his employment if and to the extent that payment of such service retirement
8 benefits is required by the Internal Revenue Code of 1986, as amended, and Treasury regulations
9 promulgated thereunder; and such service retirement benefits shall be adjusted annually for
10 additional benefits which shall accrue by reason of such continued employment in accordance
11 with the rules and regulations of the board of trustees] **a person receiving an annuity may**
12 **waive monthly annuity payments or a cost-of-living adjustment (COLA) for periods of**
13 **time, provided no waiver may be contrary to applicable federal law. A waiver shall be**
14 **final as to any payment or COLA waived.**

104.081. Notwithstanding any other provision of law to the contrary, any
2 **uniformed member of the highway patrol may retire at age fifty-five with four years of**
3 **creditable service with a normal annuity and shall retire at age sixty.**

104.090. 1. The normal annuity of a member shall equal one and six-tenths percent of
2 the average compensation of the member multiplied by the number of years of creditable service
3 of such member. In addition, the normal annuity of a uniformed member of the patrol shall be
4 increased by thirty-three and one-third percent.

5 2. In addition, a uniformed member of the highway patrol who is retiring with a normal
6 annuity after attaining normal retirement age shall receive an additional sum of ninety dollars per
7 month as a contribution by the system until such member attains the age of sixty-five years, when
8 such contribution shall cease. To qualify for the contribution provided in this subsection by the
9 system, the retired uniformed member of the highway patrol is made, constituted, appointed and
10 employed by the board as a special consultant on the problems of retirement, aging and other
11 state matters. Such additional contribution shall be reduced each month by such amount earned
12 by the retired uniformed member of the highway patrol in gainful employment. In order to

13 qualify for the additional contribution provided in this subsection, the retired uniformed member
14 of the highway patrol shall have been:

15 (1) Hired by the Missouri state highway patrol prior to January 1, 1995; and

16 (2) Employed by the Missouri state highway patrol or receiving long-term disability or
17 work-related disability benefits on the day before the effective date of the member's retirement.

18 3. In lieu of the annuity payable to the member pursuant to section 104.100, a member
19 whose age at retirement is [fifty] **forty-eight** or more may elect in the member's application for
20 retirement to receive either:

21 Option 1. An actuarial reduction approved by the board of the member's annuity in
22 reduced monthly payments for life during retirement with the provision that upon the member's
23 death the reduced annuity at date of death shall be continued throughout the life of, and be paid
24 to, the member's spouse; or

25 Option 2. The member's normal annuity in regular monthly payments for life during
26 retirement with the provision that upon the member's death a survivor's benefit equal to one-half
27 the member's normal annuity at date of death shall be paid to the member's spouse in regular
28 monthly payments for life; or

29 Option 3. An actuarial reduction approved by the board of **member's** normal annuity in
30 reduced monthly payments for the member's life with the provision that if the member dies prior
31 to the member's having received one hundred twenty monthly payments of the member's reduced
32 annuity, the member's reduced allowance to which the member would have been entitled had the
33 member lived shall be paid for the remainder of the one hundred twenty-month period to such
34 person as the member shall have nominated by written designation duly executed and filed with
35 the board. If there is no beneficiary surviving the [retirant] **retiree**, the reserve for such
36 allowance for the remainder of such one hundred twenty-month period shall be paid to the
37 [retirant's] **retiree's** estate; or

38 Option 4. An actuarial reduction approved by the board of the member's normal annuity
39 in reduced monthly payments for the member's life with the provision that if the member dies
40 prior to the member having received sixty monthly payments of the member's reduced annuity,
41 the member's reduced allowance to which the member would have been entitled had the member
42 lived shall be paid for the remainder of the sixty-month period to such person as the member
43 shall have nominated by written designation duly executed and filed with the board. If there is
44 no beneficiary surviving the [retirant] **retiree**, the reserve for such allowance for the remainder
45 of such sixty-month period shall be paid to the [retirant's] **retiree's** estate.

46 4. The election may be made only in the application for retirement, and such application
47 shall be filed at least thirty days but not more than ninety days prior to the date on which the
48 retirement of the member is to be effective, provided that if either the member or the spouse

49 nominated to receive the survivorship payment dies before the effective date of retirement, the
50 election shall not be effective. If after the reduced annuity commences, the spouse predeceases
51 the retired member, the reduced annuity continues to the retired member during the member's
52 lifetime.

53 5. Effective July 1, 2000, a member may make an election under option 1 or 2 after the
54 date retirement benefits are initiated if the member makes the election within one year from the
55 date of marriage or July 1, 2000, whichever is later, under any of the following circumstances:

56 (1) The member elected to receive a normal annuity and was not eligible to elect option
57 1 or 2 on the date retirement benefits were initiated; or

58 (2) The member's annuity reverted to a normal annuity pursuant to subsection 8 of
59 section 104.103 and the member remarried; or

60 (3) The member elected option 1 or 2 but the member's spouse at the time of retirement
61 has died and the member has remarried.

62 6. Any person who terminates employment or retires prior to July 1, 2000, shall be made,
63 constituted, appointed and employed by the board as a special consultant on the problems of
64 retirement, aging and other state matters, and for such services shall be eligible to elect to receive
65 the benefits described in subsection 5 of this section.

66 **7. For retirement applications filed on or after August 28, 2004, the beneficiary for**
67 **either Option 1 or Option 2 of subsection 3 of this section shall be the member's spouse at**
68 **the time of retirement. If the member's marriage ends after retirement as a result of a**
69 **dissolution of marriage, such dissolution shall not affect the option election and the former**
70 **spouse shall continue to be eligible to receive survivor benefits upon death of the member.**

71 **8. Any application for retirement shall only become effective on the first day of the**
72 **month.**

104.103. 1. Each member who was employed prior to August 28, 1997, and retires on
2 or after May 12, 1981, shall receive each year a percentage increase in the amount of benefits
3 received by the member during the preceding year of eighty percent of the increase in the
4 consumer price index determined in the manner hereinafter provided. Any such annual benefit
5 increase, however, shall not exceed five percent, nor be less than four percent, and the total
6 increase in the amount of benefits received pursuant to the provisions of this section shall not
7 exceed sixty-five percent of the initial monthly benefit which the member received upon
8 retirement or the benefit received immediately prior to October 1, 1986, whichever is later.

9 2. Each member who is employed for the first time on or after August 28, 1997, and
10 retires shall be entitled annually to a percentage increase in the retirement benefit payable equal
11 to eighty percent of the increase in the consumer price index. Such benefit increase, however,
12 shall not exceed five percent of the retirement benefit payable prior to the increase.

13 3. Each member who is employed before August 28, 1997, and terminates employment
14 or retires after that date shall be entitled to the annual benefit increase described in subsection
15 1 of this section. For such members, the annual benefit increase described in subsection 2 of this
16 section shall not be effective until the year in which the member reaches the limit on total annual
17 benefit increases provided by subsection 1 of this section. After that year, the member shall
18 receive the annual benefit increase described in subsection 2 of this section.

19 4. Survivors of members described in subsection 2 of this section shall be entitled to the
20 annual benefit increase described in that subsection.

21 5. For the purposes of this section, any increase in the consumer price index shall be
22 determined in January of each year, based upon the percentage increase of (a) the consumer price
23 index for the preceding calendar year over (b) the consumer price index for the calendar year
24 immediately prior thereto. Any increase so determined shall be applied in calculating any benefit
25 increases that become payable under this section during the calendar year in which the
26 determination is made and in no case shall the percentage be less than zero.

27 6. An annual increase, if any is due under either this section or section 104.612 for
28 special consultants with the [highways and] **Missouri department of** transportation [employees']
29 and highway patrol **employees'** retirement system, shall be payable monthly beginning on a date
30 specified by the board.

31 7. For members who retire on or after July 1, 2000, in the event such member has chosen
32 a joint and survivor option under the provisions of section 104.090 and the member's eligible
33 spouse **or former spouse** precedes the member in death, the member's benefit shall revert,
34 effective the first of the month following the death of the spouse **or former spouse** regardless
35 of when the board receives the member's written application for the benefit provided in this
36 subsection, to an amount equal to the member's normal annuity, as adjusted for early retirement
37 if applicable; such benefit shall include any increases the member would have received since the
38 date of retirement had the member elected a normal annuity. [In no event shall retroactive
39 benefits be paid.]

40 8. Effective on or after July 1, 2000, any retired member who had elected a joint and
41 survivor payment option and whose **eligible spouse or former spouse** precedes or preceded the
42 member in death shall upon application to the board be made, constituted, appointed and
43 employed by the board as a special consultant on the problems of retirement, aging and other
44 state matters. As a special consultant under the provisions of this subsection, the member's
45 reduced benefit will revert to a normal annuity as adjusted for early retirement if applicable,
46 effective the first of the month following the death of the spouse **or former spouse** regardless
47 of when the board receives the member's written application; such benefit shall include any

48 increases the retired member would have received since the date of retirement had the member
49 elected a normal annuity. [In no event shall retroactive benefits be paid.]

104.110. 1. Any employee, regardless of the length of time of creditable service, who
2 is affirmatively found by the board to be wholly incapable of performing the duties of the
3 employee's or any other position in the employee's department for which the employee is suited,
4 shall be entitled to receive disability benefits. The disability benefit provided by this subsection
5 shall equal one and six-tenths percent of the employee's average compensation multiplied by the
6 number of years of creditable service of the member. Effective September 1, 2003, no employee
7 is eligible for or shall request or apply for the disability benefit provided pursuant to this
8 subsection.

9 2. Any uniformed member of the highway patrol, highway patrol employee or
10 department of transportation employee, regardless of the length of time of creditable service, who
11 is found by the board to be disabled as a result of injuries incurred in the performance of the
12 employee's duties, shall be entitled to receive an initial disability benefit in an amount equal to
13 seventy percent of the compensation that the employee was receiving on the date preceding the
14 date of disability; provided, however, that the amount of the disability benefit, plus any primary
15 Social Security disability benefits received by such member shall not exceed ninety percent of
16 the monthly compensation such member was receiving on the date preceding the date of
17 disability.

18 3. Any disability benefits payable pursuant to this section shall be decreased by any
19 amount paid to such member for periodic disability benefits by reason of the workers'
20 compensation laws of this state. After termination of payment under workers' compensation,
21 however, disability benefits shall be paid in the amount required by subsections 1, 2, 7, and 9 of
22 this section.

23 4. The board of trustees may require a medical examination of a disabled member at any
24 time by a designated physician, and benefits shall be discontinued if the board finds that such
25 member is able to perform the duties of the member's former position or if such member refuses
26 to submit to a medical examination. Any employee who applies for disability benefits provided
27 pursuant to this section shall provide medical certification acceptable to the board which shall
28 include the date the disability commenced and the expected duration of the disability.

29 5. Any employee who applies for disability benefits pursuant to subsections 2 and 7 of
30 this section shall provide proof of application for Social Security disability benefits. If Social
31 Security disability benefits are denied, the employee shall also provide proof that the employee
32 has requested reconsideration, and upon denial of the reconsideration, that an appeal process is
33 prosecuted.

34 6. The disability benefits provided in this section shall not be paid to any member who
35 retains or regains earning capacity as determined by the board. If a member who has been
36 receiving disability benefits again becomes an employee, the member's disability benefits shall
37 be discontinued.

38 7. The board shall also provide or contract for long-term disability benefits for those
39 members whose disability exists or is diagnosed as being of such nature as to exist for more than
40 one year. The benefits provided or contracted for pursuant to this subsection shall be in lieu of
41 any other benefit provided in this section. The eligibility requirements, benefit period and
42 amount of the disability benefits provided pursuant to this subsection shall be established by the
43 board.

44 8. Definitions of disability and other rules and procedures necessary for administration
45 of the disability benefits provided pursuant to this section shall be established by the board.

46 9. Any member receiving disability benefits pursuant to subsections 1 and 2 of this
47 section shall receive the same cost-of-living increases as granted to retired members pursuant to
48 section 104.103.

49 10. The state highways and transportation commission shall contribute the same amount
50 as provided for all state employees for any person receiving disability benefits pursuant to
51 subsection 2 of this section for medical insurance provided pursuant to section 104.270.

52 11. Any member who qualified for disability benefits pursuant to subsection 2 or
53 subsection 7 of this section shall continue to accrue normal annuity benefits based on the
54 member's rate of pay immediately prior to the date the member became disabled in accordance
55 with sections 104.090 and 104.615 as in effect on the earlier of the date the member reaches
56 normal retirement age or the date normal annuity payments commence.

57 12. A member who continues to be disabled as provided in subsection 2 or subsection
58 7 of this section shall continue to accrue creditable service until the member reaches normal
59 retirement age. The maximum benefits period for benefits pursuant to subsections 2 and 7 of this
60 section shall be established by the board. A member who is eligible to retire and does retire
61 while receiving disability benefits pursuant to subsections 2 and 7 of this section shall receive
62 the greater of the normal annuity or the minimum annuity determined pursuant to sections
63 104.090 and 104.615, as if the member had continued in the active employ of the employer until
64 the member's normal retirement age and the member's compensation for such period had been
65 the member's rate of pay immediately preceding the date the member became disabled.

66 13. Any member who was receiving disability benefits from the board prior to August
67 28, 1997, or any member who has submitted an application for disability benefits before August
68 28, 1997, and would have been eligible to receive benefits pursuant to the eligibility
69 requirements which were applicable at the time of application shall be eligible to receive or shall

70 continue to receive benefits in accordance with such prior eligibility requirements until the
71 member again becomes an employee.

72 14. Any member receiving disability benefits pursuant to subsection 1, subsection 2 or
73 subsection 7 of this section shall be eligible to receive death benefits pursuant to the provisions
74 of subsection 1 of section 104.140. The death benefits provided pursuant to this subsection shall
75 be in lieu of the death benefits available to the member pursuant to subsection 2 of section
76 104.140.

77 15. The board is authorized to contract for benefits in lieu of the benefits provided
78 pursuant to this section.

79 16. To the extent that the board enters or has entered into any contract with any insurer
80 or service organization to provide the disability benefits provided for pursuant to this section:

81 (1) The obligation to provide such disability benefits shall be primarily that of the insurer
82 or service organization and secondarily that of the board;

83 (2) Any employee who has been denied disability benefits by the insurer or service
84 organization and has exhausted all appeal procedures provided by the insurer or service
85 organization may appeal such decision by filing a petition against the insurer or service
86 organization in a court of law in the employee's county of residence; and

87 (3) The board and the system shall not be liable for the disability benefits provided by
88 an insurer or service organization pursuant to this section and shall not be subject to any cause
89 of action with regard to disability benefits or the denial of disability benefits by the insurer or
90 service organization unless the employee has obtained judgment against the insurer or service
91 organization for disability benefits and the insurer or service organization is unable to satisfy that
92 judgment.

93 17. An employee may elect to waive the receipt of any disability benefit provided for
94 pursuant to this section at any time.

95 **18. Any member receiving disability benefits pursuant to subsections 1 and 2 of this**
96 **section shall be eligible for a death benefit of five thousand dollars in addition to any**
97 **benefits under subsection 14 of this section.**

104.170. 1. The board shall elect by secret ballot one member as chair and one member
2 as vice chair [in January] **at the first board meeting** of each year. The chair may not serve more
3 than two consecutive terms beginning after August 13, 1988. The chair shall preside over
4 meetings of the board and perform such other duties as may be required by action of the board.
5 The vice chair shall perform the duties of the chair in the absence of the latter or upon the chair's
6 inability or refusal to act.

7 2. The board shall appoint a full-time executive director, who shall not be compensated
8 for any other duties under the state highways and transportation commission. The executive

9 director shall have charge of the offices and records and shall hire such employees that the
10 executive director deems necessary subject to the direction of the board. The executive director
11 and all other employees of the system shall be members of the system and the board shall make
12 contributions to provide the insurance benefits available pursuant to section 104.270 on the same
13 basis as provided for other state employees pursuant to the provisions of section 104.515, and
14 also shall make contributions to provide the retirement benefits on the same basis as provided
15 for other employees pursuant to the provisions of sections 104.090 to 104.260. **The executive**
16 **director is authorized to execute all documents including contracts necessary to carry out**
17 **any and all actions of the board.**

18 3. Any summons or other writ issued by the courts of the state shall be served upon the
19 executive director or, in the executive director's absence, on the assistant director.

104.180. 1. The board of trustees shall meet within the state of Missouri upon the
2 written call of the chairman or by agreement of any four members of the board. Notice of the
3 meeting shall be delivered to all other trustees in person, or by depositing notice in a United
4 States post office, in a properly stamped and addressed envelope, not less than six days prior to
5 the date fixed for the meeting, **unless authorized by the board.** The board may meet at any
6 time by unanimous mutual consent. There shall be at least one meeting in each quarter.

7 2. Six trustees shall constitute a quorum for the transaction of business, and any official
8 action of the board shall be based on the majority vote of the trustees present.

9 3. The trustees shall serve without compensation, but shall receive their necessary
10 expenses incurred in the performance of their duties for the system.

11 4. The executive director and other employees of the system shall receive such salaries
12 **or other compensation** as may be fixed by the board and their necessary travel expense within
13 and without the state as may be authorized by the board.

14 5. Duties performed for the system **as board members** by the director or any **elected**
15 employee of the state highways and transportation commission or by the superintendent of the
16 state highway patrol or any **elected** employee or member of the patrol shall be considered duties
17 in connection with the regular employment of such individual, and the employee shall suffer no
18 loss in regular compensation by reason of the performance of such duties.

104.255. 1. Any spouse of a deceased member who retired prior to August 28, 1989,
2 shall, upon application, be made, constituted, and appointed and employed by the board as a
3 special consultant on the problems of retirement, aging, and other matters relating to spouses of
4 deceased members of the system, and upon the request of the board shall give opinions, in
5 writing or orally, in response to such requests of the board. As compensation for the services
6 required by this section, spouses of deceased members of the system shall be compensated
7 monthly in an amount subject to either the option that the member chose at the time of retirement

8 or an amount equal to one-half of the member's benefit, whichever is greater. The above benefits
9 shall be based upon the benefit the member was receiving at the time of death.

10 2. The employment provided for by this section shall in no way affect any person's
11 eligibility for retirement or survivor benefits under the provisions of this chapter, or in any way
12 have the effect of reducing any retirement or survivor benefits, anything to the contrary
13 notwithstanding.

14 3. Other provisions of law notwithstanding, any surviving spouse not receiving a
15 continuing payment who would have been eligible for compensation under the provisions of
16 subsection 1 or 2 of this section on or after September 1, 1989, shall be entitled to receive
17 compensation in a sum equal to the amount the spouse would have received had subsections 1
18 and 2 been in effect on September 1, 1989. **In order for a surviving spouse to be eligible for**
19 **the benefits under this subsection, the retirement application of the deceased member must**
20 **be filed prior to August 28, 2004.**

251.255. Notwithstanding the provisions of section 70.600, RSMo, to the contrary,
2 **a regional planning commission shall be considered a political subdivision for the purposes**
3 **of sections 70.600 to 70.755, RSMo, and employees of a regional planning commission shall**
4 **be eligible for membership in the Missouri local government employees' retirement system**
5 **upon the regional planning commission becoming an "employer" as defined in subdivision**
6 **(11) of section 70.600, RSMo.**

251.440. Upon receipt of certified copies of resolutions recommending the dissolution
2 of a regional planning commission adopted by the governing bodies of a majority of the local
3 units in the region, including the county commission of any county, part or all of which is within
4 the region, and upon a finding that all outstanding indebtedness of the regional planning
5 commission has been paid, **including monies owed to any retirement plan or system in which**
6 **the commission participates and has pledged to pay for the unfunded accrued liability of**
7 **its past and current employees,** and all unexpended funds returned to the local units which
8 supplied them, or that adequate provision has been made therefor, the governor shall issue a
9 certificate of dissolution of the commission which shall thereupon cease to exist.