

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1440

92ND GENERAL ASSEMBLY

Reported from the Committee on Pensions and General Laws, April 14, 2004, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

4526S.04C

TERRY L. SPIELER, Secretary.

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A. Sections 104.020, 104.050, 104.080, 104.090, 104.103, 104.110, 104.170, 104.180, 104.255, and 251.440, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 104.020, 104.050, 104.080, 104.081, 104.090, 104.103, 104.110, 104.170, 104.180,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

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

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

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

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

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

5 2. In addition, a uniformed member of the highway patrol who is retiring with
6 a normal annuity after attaining normal retirement age shall receive an additional sum
7 of ninety dollars per month as a contribution by the system until such member attains
8 the age of sixty-five years, when such contribution shall cease. To qualify for the
9 contribution provided in this subsection by the system, the retired uniformed member
10 of the highway patrol is made, constituted, appointed and employed by the board as a

11 special consultant on the problems of retirement, aging and other state matters. Such
12 additional contribution shall be reduced each month by such amount earned by the
13 retired uniformed member of the highway patrol in gainful employment. In order to
14 qualify for the additional contribution provided in this subsection, the retired uniformed
15 member of the highway patrol shall have been:

- 16 (1) Hired by the Missouri state highway patrol prior to January 1, 1995; and
- 17 (2) Employed by the Missouri state highway patrol or receiving long-term
18 disability or work-related disability benefits on the day before the effective date of the
19 member's retirement.

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

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

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

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

41 Option 4. An actuarial reduction approved by the board of the member's normal
42 annuity in reduced monthly payments for the member's life with the provision that if the
43 member dies prior to the member having received sixty monthly payments of the
44 member's reduced annuity, the member's reduced allowance to which the member would
45 have been entitled had the member lived shall be paid for the remainder of the
46 sixty-month period to such person as the member shall have nominated by written

47 designation duly executed and filed with the board. If there is no beneficiary surviving
48 the [retirant] **retiree**, the reserve for such allowance for the remainder of such
49 sixty-month period shall be paid to the [retirant's] **retiree's** estate.

50 4. The election may be made only in the application for retirement, and such
51 application shall be filed at least thirty days but not more than ninety days prior to the
52 date on which the retirement of the member is to be effective, provided that if either the
53 member or the spouse nominated to receive the survivorship payment dies before the
54 effective date of retirement, the election shall not be effective. If after the reduced
55 annuity commences, the spouse predeceases the retired member, the reduced annuity
56 continues to the retired member during the member's lifetime.

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

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

63 (2) The member's annuity reverted to a normal annuity pursuant to subsection
64 8 of section 104.103 and the member remarried; or

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

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

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

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

104.103. 1. Each member who was employed prior to August 28, 1997, and
2 retires on or after May 12, 1981, shall receive each year a percentage increase in the
3 amount of benefits received by the member during the preceding year of eighty percent
4 of the increase in the consumer price index determined in the manner hereinafter

5 provided. Any such annual benefit increase, however, shall not exceed five percent, nor
6 be less than four percent, and the total increase in the amount of benefits received
7 pursuant to the provisions of this section shall not exceed sixty-five percent of the initial
8 monthly benefit which the member received upon retirement or the benefit received
9 immediately prior to October 1, 1986, whichever is later.

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

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

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

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

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

35 7. For members who retire on or after July 1, 2000, in the event such member
36 has chosen a joint and survivor option under the provisions of section 104.090 and the
37 member's eligible spouse **or former spouse** precedes the member in death, the
38 member's benefit shall revert, effective the first of the month following the death of the
39 spouse **or former spouse** regardless of when the board receives the member's written
40 application for the benefit provided in this subsection, to an amount equal to the

41 member's normal annuity, as adjusted for early retirement if applicable; such benefit
42 shall include any increases the member would have received since the date of retirement
43 had the member elected a normal annuity. [In no event shall retroactive benefits be
44 paid.]

45 8. Effective on or after July 1, 2000, any retired member who had elected a joint
46 and survivor payment option and whose **eligible spouse or former spouse** precedes
47 or preceded the member in death shall upon application to the board be made,
48 constituted, appointed and employed by the board as a special consultant on the
49 problems of retirement, aging and other state matters. As a special consultant under the
50 provisions of this subsection, the member's reduced benefit will revert to a normal
51 annuity as adjusted for early retirement if applicable, effective the first of the month
52 following the death of the spouse **or former spouse** regardless of when the board
53 receives the member's written application; such benefit shall include any increases the
54 retired member would have received since the date of retirement had the member elected
55 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,
2 who is affirmatively found by the board to be wholly incapable of performing the duties
3 of the employee's or any other position in the employee's department for which the
4 employee is suited, shall be entitled to receive disability benefits. The disability benefit
5 provided by this subsection shall equal one and six-tenths percent of the employee's
6 average compensation multiplied by the number of years of creditable service of the
7 member. Effective September 1, 2003, no employee is eligible for or shall request or
8 apply for the disability benefit provided pursuant to this 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
11 service, who is found by the board to be disabled as a result of injuries incurred in the
12 performance of the employee's duties, shall be entitled to receive an initial disability
13 benefit in an amount equal to seventy percent of the compensation that the employee
14 was receiving on the date preceding the date of disability; provided, however, that the
15 amount of the disability benefit, plus any primary Social Security disability benefits
16 received by such member shall not exceed ninety percent of the monthly compensation
17 such member was receiving on the date preceding the date of disability.

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

22 subsections 1, 2, 7, and 9 of this section.

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

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

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

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

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

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

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

55 11. Any member who qualified for disability benefits pursuant to subsection 2 or
56 subsection 7 of this section shall continue to accrue normal annuity benefits based on the
57 member's rate of pay immediately prior to the date the member became disabled in

58 accordance with sections 104.090 and 104.615 as in effect on the earlier of the date the
59 member reaches normal retirement age or the date normal annuity payments commence.

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

70 13. Any member who was receiving disability benefits from the board prior to
71 August 28, 1997, or any member who has submitted an application for disability benefits
72 before August 28, 1997, and would have been eligible to receive benefits pursuant to the
73 eligibility requirements which were applicable at the time of application shall be eligible
74 to receive or shall continue to receive benefits in accordance with such prior eligibility
75 requirements until the member again becomes an employee.

76 14. Any member receiving disability benefits pursuant to subsection 1, subsection
77 2 or subsection 7 of this section shall be eligible to receive death benefits pursuant to the
78 provisions of subsection 1 of section 104.140. The death benefits provided pursuant to
79 this subsection shall be in lieu of the death benefits available to the member pursuant
80 to subsection 2 of section 104.140.

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

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

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

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

92 (3) The board and the system shall not be liable for the disability benefits
93 provided by an insurer or service organization pursuant to this section and shall not be

94 subject to any cause of action with regard to disability benefits or the denial of disability
95 benefits by the insurer or service organization unless the employee has obtained
96 judgment against the insurer or service organization for disability benefits and the
97 insurer or service organization is unable to satisfy that judgment.

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

100 **18. Any member receiving disability benefits pursuant to subsections**
101 **1 and 2 of this section shall be eligible for a death benefit of five thousand**
102 **dollars in addition to any benefits under subsection 14 of this section.**

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

7 2. The board shall appoint a full-time executive director, who shall not be
8 compensated for any other duties under the state highways and transportation
9 commission. The executive director shall have charge of the offices and records and shall
10 hire such employees that the executive director deems necessary subject to the direction
11 of the board. The executive director and all other employees of the system shall be
12 members of the system and the board shall make contributions to provide the insurance
13 benefits available pursuant to section 104.270 on the same basis as provided for other
14 state employees pursuant to the provisions of section 104.515, and also shall make
15 contributions to provide the retirement benefits on the same basis as provided for other
16 employees pursuant to the provisions of sections 104.090 to 104.260. **The executive**
17 **director is authorized to execute all documents including contracts necessary**
18 **to carry out any and all actions of the board.**

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

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

7 consent. There shall be at least one meeting in each quarter.

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

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

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

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

104.255. 1. Any spouse of a deceased member who retired prior to August 28,
2 1989, shall, upon application, be made, constituted, and appointed and employed by the
3 board as a special consultant on the problems of retirement, aging, and other matters
4 relating to spouses of deceased members of the system, and upon the request of the
5 board shall give opinions, in writing or orally, in response to such requests of the board.
6 As compensation for the services required by this section, spouses of deceased members of
7 the system shall be compensated monthly in an amount subject to either the option that
8 the member chose at the time of retirement or an amount equal to one-half of the
9 member's benefit, whichever is greater. The above benefits shall be based upon the
10 benefit the member was receiving at the time of death.

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

15 3. Other provisions of law notwithstanding, any surviving spouse not receiving
16 a continuing payment who would have been eligible for compensation under the
17 provisions of subsection 1 or 2 of this section on or after September 1, 1989, shall be
18 entitled to receive compensation in a sum equal to the amount the spouse would have
19 received had subsections 1 and 2 been in effect on September 1, 1989. **In order for a**
20 **surviving spouse to be eligible for the benefits under this subsection, the**
21 **retirement application of the deceased member must be filed prior to August**
22 **28, 2004.**

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

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

✓