

# WEST VIRGINIA LEGISLATURE

SECOND EXTRAORDINARY SESSION, 1990

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## ENROLLED

SENATE BILL NO. 5

(By Senators *Burdette, Mr. President and Harmon*)  
(By Request of the Executive)

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PASSED June 27, 1990

In Effect July 1, 1990 ~~Passage~~

**ENROLLED**

**Senate Bill No. 5**

(BY SENATORS BURDETTE, MR. PRESIDENT, AND HARMAN)  
(BY REQUEST OF THE EXECUTIVE)

[Passed June 27, 1990; to take effect July 1, 1990.]

AN ACT to amend and reenact sections nineteen and twenty-two-c, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fifty-four, all relating to retirement; requiring certain information to be filed by employers; providing legislative findings; defining the term "contract"; prohibiting retirants under the early retirement incentive program from accepting work on a contract basis with the state or any of its political subdivisions; providing for exceptions; allowing persons who are elected or appointed to government positions and who do not receive any income from such positions to continue to receive incentive annuities under the public employees retirement system; authorizing the promulgation of rules; and establishing a procedure for termination of benefits.

*Be it enacted by the Legislature of West Virginia:*

That sections nineteen and 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; and that said article be further amended by adding thereto a new section, designated section fifty-four, all to read as follows:

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.****§5-10-19. Employers to file information as to employees' service.**

1 Each participating public employer shall file with  
2 the board of trustees, in such form as the board shall  
3 from time to time prescribe, a detailed statement of all  
4 service rendered to participating public employers by  
5 each of its employees and by any retirant who retired  
6 under section twenty-two-c of this article and who is  
7 working for the employer on a contract basis, as  
8 defined in section twenty-two-c of this article, and  
9 such other information as the board shall require in  
10 the operation of the retirement system.

**§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.**

1 The Legislature hereby finds and declares that a  
2 compelling state interest exists in providing a tempo-  
3 rary early retirement incentives program for encour-  
4 aging the early, voluntary retirement of those public  
5 employees who were current, active contributing  
6 members of this retirement system on the first day of  
7 April, one thousand nine hundred eighty-eight, in the  
8 reduction of the number of such employees and in  
9 reduction of governmental costs therefor; that such  
10 program constitutes a public purpose; and that the  
11 special classifications and differentiations provided in  
12 respect of such program are reasonable and equitable  
13 ones for the accomplishment of such purpose and  
14 program as enacted in Enrolled Committee Substitute  
15 for H. B. No. 4672, regular session, one thousand nine  
16 hundred eighty-eight, and as clarified and supple-  
17 mented herein, retroactive to such beginning date,  
18 aforesaid. The Legislature further finds that maintain-

19 ing an actuarially sound retirement fund is a necessity  
20 and that the reemployment of persons who retire  
21 under this section in any manner, including reemploy-  
22 ment on a contract basis, is contrary to the intent of  
23 the early retirement program and severely threatens  
24 the fiscal integrity of the retirement fund.

25 (a) For the purposes of this section, the term  
26 "contract" means any personal service agreement, not  
27 involving the sale of commodities, that cannot be  
28 performed within sixty days or that exceeds two  
29 thousand five hundred dollars in any twelve month  
30 period. The term "contract" does not include any  
31 agreement obtained by a retirant through a bidding  
32 process and which is for the furnishing of any com-  
33 modity to a government agency.

34 (b) Beginning on the first day of April, one thousand  
35 nine hundred eighty-eight, and continuing through the  
36 thirty-first day of December, one thousand nine  
37 hundred eighty-eight, (or as extended by eligibility  
38 qualification requirement, as hereinafter specified)e-  
39 ligible members, being those active, contributing  
40 members actually and currently employed on such  
41 beginning date, retiring pursuant to this section, and  
42 from any state, county or municipal position, covered  
43 under the two divisions of this retirement system (the  
44 state division and the public employer, nonstate  
45 division) including those so employed on said begin-  
46 ning date and leaving the system during the incentive  
47 period and who are eligible for taking deferred  
48 retirement (but not disability retirees) may elect to  
49 participate in this incentives program and may elect  
50 any one of the three following incentive options:

51 (1) Retirement incentive option one:

52 For the purpose of computing the member's annu-  
53 ity, the normal final average salary shall be computed  
54 and one-eighth thereof shall be added thereto in  
55 arriving at the true final average salary for use in  
56 actual computation of retirement benefit.

57 (2) Retirement incentive option two:

58 A member may elect a lump sum payment, in  
59 addition to his regular retirement annuity, equal to  
60 ten percent of his final average salary not to exceed  
61 five thousand dollars, and in the case of a deferred  
62 retirement electing this option, such lump sum pay-  
63 ment shall be receivable and deferred to the time of  
64 receipt of such deferred retirement annuity.

65 (3) Retirement incentive option three:

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

71 Active, contributing members who desire to retire  
72 under this section but who are unable to retire by the  
73 thirty-first day of December, one thousand nine  
74 hundred eighty-eight and make use of the incentive  
75 retirement program because an element of eligibility  
76 for retirement, such as age or other element, will not  
77 be met until a date after the thirty-first day of  
78 December, one thousand nine hundred eighty-eight  
79 and before the first day of July, one thousand nine  
80 hundred eighty-nine, shall be permitted to postpone  
81 actual retirement until the date of fulfilling such  
82 element of eligibility and shall retire on such date,  
83 before the temporary retirement incentive program  
84 ends on the thirtieth day of June, one thousand nine  
85 hundred eighty-nine; with proper credit to be granted  
86 for such extended period: *Provided*, That they shall  
87 have made application for retirement, including choice  
88 of their respective option, and given notice to their  
89 respective employer by the thirty-first day of Decem-  
90 ber, one thousand nine hundred eighty-eight, although  
91 postponing actual retirement, as aforesaid.

92 (c) Any member participating in this retirement  
93 incentive program is not eligible to accept further  
94 employment or accept, directly or indirectly, work on  
95 a contract basis from the state or any of its political  
96 subdivisions: *Provided*, That the executive director  
97 may approve, upon written request and for good cause

98 shown, an exception allowing a retirant to perform  
99 work on a contract basis. The executive director shall  
100 report all approved exceptions to the board of trustees:  
101 *Provided, however,* That a person may retire under  
102 this section and thereafter serve in an elective office:  
103 *Provided further,* That he shall not receive an incen-  
104 tive option under this section during the term of  
105 service in said office, but shall receive his or her  
106 annuity calculated on regular basis, as if originally  
107 taken not under this section but on such regular basis.  
108 At the end of such term and cessation of service in  
109 such office during which the member shall rejoin and  
110 reenter the retirement system and pay contributions  
111 therefor, such regular annuity shall be recalculated  
112 and an increased annuity due to such additional  
113 employment shall be granted and computed on regular  
114 basis and in similar manner as under section forty-  
115 eight of this article. In respect of an appointive office,  
116 as distinguished from an elective office, any person  
117 retiring under this section and thereafter serving in  
118 such appointive office shall not receive an incentive  
119 option under this section during the term of service in  
120 said office, but the same shall be suspended during  
121 such period: *And provided further,* That at the end of  
122 such term and cessation of service in such appointive  
123 office the incentive option provided for under this  
124 section shall be resumed: *And provided further,* That  
125 any person elected or appointed to office by the state  
126 or any of its political subdivisions who waives what-  
127 ever salary, wage or per diem compensation he may  
128 be entitled to by virtue of service in such office and  
129 who does not receive any income therefrom except  
130 such reimbursement of out-of-pocket costs and  
131 expenses as may be permitted by the statutes govern-  
132 ing such office shall continue to receive an incentive  
133 option under this section. Such service shall not be  
134 counted as contributed or credited service for purposes  
135 of computing retirement benefits.

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

140 Any such incentive retirants, under this section,  
141 may not thereafter receive such annuity and enter or  
142 reenter any governmental retirement system estab-  
143 lished or authorized to be established by the state,  
144 notwithstanding any provision of the code to the  
145 contrary, unless required by constitutional provision  
146 or as hereby specifically permitted to those retiring  
147 and thereafter serving in elective office, as aforesaid.

148 The additional annuity allowed for temporary early  
149 retirement under these options, in respect of state  
150 division retirants of this system, is intended to be paid  
151 from the retirement incentive account hereby created  
152 as a special account in the state treasury and from the  
153 funds therein established with moneys required to be  
154 transferred by heads of spending units from the  
155 unused portion of salary and fringe benefits in their  
156 budgets accruing in respect of such positions vacated  
157 and subsequently canceled under this temporary early  
158 retirement program. Salary and fringe benefit moneys  
159 actually saved in a particular fiscal year, shall consti-  
160 tute the fund source for payment of such additional  
161 annuity, the funds of the retirement system to be used  
162 for payment of the base annuity under the early  
163 retirement incentive program: *Provided*, That such  
164 additional annuity shall be paid from the unused  
165 portion of both salary and fringe benefits and with any  
166 remainder of any fringe benefit moneys, as such, to  
167 remain with the spending unit and any remainder of  
168 salary as such, to be directed as additional funding to  
169 the teachers retirement system and as a part of the  
170 assets thereof. No such additional annuity shall be  
171 disallowed even though initial receipts may not be  
172 sufficient, with funds of the system to be applied for  
173 such purpose, as for the base annuity. With respect to  
174 public employer division retirants (nonstate division  
175 retirants of the system), such incentive annuity shall  
176 be paid from the nonstate division funds of the system.

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

181 The executive secretary of the retirement system  
182 shall file a report to the Legislature no later than the  
183 fifteenth day of February, one thousand nine hundred  
184 eighty-nine, and quarterly thereafter, detailing the  
185 number of retirees who have elected to accept early  
186 retirement incentive options, the dollar cost to date by  
187 option selected, and the projected annual cost through  
188 the year two thousand.

189 (e) Within every spending unit, department, board,  
190 corporation, commission, or any other agency or entity  
191 wherein two or multiples of two members elect to  
192 retire either under the temporary early retirement  
193 incentives set forth above, or under regular, voluntary  
194 retirement, and countable on an agency-wide or  
195 entity-wide basis, no more than one of such vacated  
196 positions may be filled, with the second position being  
197 abolished upon the effective day of the member's  
198 retirement. The vacant position abolishment require-  
199 ment shall not apply to elective positions or appointed  
200 public officers whose positions are established by state  
201 constitutional or statutory provision. The retirant's  
202 employing entity shall decide as to which of the  
203 vacated positions made available through special early  
204 retirement or through regular, voluntary retirement  
205 are to be abolished and the head of such spending unit  
206 shall immediately notify the state auditor, the legisla-  
207 tive auditor, and the commissioner of the department  
208 of finance and administration of the decisions and  
209 shall then apply and/or transfer the remaining salary  
210 and fringe benefits as aforesaid: *Provided*, That this  
211 vacant position abolishment provision shall not apply  
212 to any county or municipal position except those  
213 under the authority of a county board of education,  
214 nor to any position or positions, whether designated by  
215 spending unit, department, agency, commission, entity  
216 or otherwise, which the governor in respect of the  
217 executive branch, or the chief justice of the supreme  
218 court of appeals in respect of the judicial branch, or  
219 the president of the senate or speaker of the house of  
220 delegates, in respect of the legislative branch, may  
221 exempt or amend, under such abolishment provision,  
222 upon his respective recommendation that such exemp-



223 tion or amendment is necessary to provide for conti-  
224 nuity of governmental operation or to preserve the  
225 health, welfare or safety of the people of West Vir-  
226 ginia, and with the prior concurrence of the joint  
227 committee on government and finance in such recom-  
228 mendation, after the chairmen thereof shall cause  
229 such committee to meet.

230 (f) *Special rule of eighty.*—Any active, contributing  
231 member of the retirement system as of the first day of  
232 April, one thousand nine hundred eighty-eight, who  
233 selects one of the incentive options in this section, may  
234 retire under the special early retirement provisions  
235 with full pension rights, without reduction of benefits  
236 if the sum of such member's age plus years of contri-  
237 buting service equals or exceeds eighty: *Provided,*  
238 That such person has at least twenty years of contri-  
239 buting service; up to two years of which may be  
240 military service, or prior service, or any combination  
241 thereof not exceeding an aggregate of two years.

242 (g) *Termination of temporary retirement incentives*  
243 *program.*—The right to elect, choose, select or use any  
244 of the options, special rule of eighty, or other benefits  
245 set forth in this section shall terminate on the thirtieth  
246 day of June, one thousand nine hundred eighty-nine.

247 (h) The board shall promulgate rules and regulations  
248 in accordance with the provisions of article three,  
249 chapter twenty-nine of this code regarding the calcu-  
250 lation of the amount of incentive option that may be  
251 forfeited pursuant to the provisions of subsection (b) of  
252 this section.

**§5-10-54. Termination of benefits; procedure.**

1 Whenever the board determines that any person has  
2 knowingly made any false statement or falsified or  
3 permitted to be falsified any record or records of the  
4 retirement system in an attempt to defraud the  
5 system, the board shall terminate any benefit that  
6 person has received, is receiving and is entitled to  
7 receive under this article. Any termination of benefits  
8 may be appealed pursuant to the state administrative  
9 procedures act in chapter twenty-nine-a of this code.

10 The board shall promulgate rules and regulations  
11 regarding the procedure for termination of benefits in  
12 accordance with the provisions of article three, chap-  
13 ter twenty-nine-a of this code.

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

*Fredrick L. Perry*  
.....  
Chairman Senate Committee

*Bernard V. Kelly*  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1990.

*Harrell E. Brown*  
.....  
Clerk of the Senate

*Donald L. Stopp*  
.....  
Clerk of the House of Delegates

*Keith Sundette*  
.....  
President of the Senate

*Bill Stoll*  
.....  
Speaker House of Delegates

The within ~~captioned~~.....this the *11<sup>th</sup>*.....  
day of *July*....., 1990.

*Gaston Caperton*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 6-29-90

Time 3:16 pm  
GC

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE