WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1976

ENROLLED

HOUSE BILL No. 1590

(By Mr. Burke)

PASSED March 13, 1976

In Effect from Passage
AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five, relating to the granting of a cost-of-living, across-the-board salary increase for state employees; providing a short title; declaring legislative findings and policy; providing definitions; effective date; specifying that other increases are not prohibited; requiring executive heads of state spending units to file sworn statement of compliance; requiring attorney general to prepare and distribute forms for such statements; providing for written complaint to state auditor; requiring state auditor to decide questions as to eligibility to receive such salary increase; requiring state auditor to promulgate rules and regulations and to make reports to joint committee on government and finance; providing penalties for violations, including criminal penalty; and providing for severability.

Be it enacted by the Legislature of West Virginia:

That chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five, to read as follows:

CHAPTER 5.

GENERAL POWERS AND DUTIES OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; STATE
BUILDING COMMISSION; SOCIAL SECURITY AGENCY; PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT; DEPARTMENT OF COMMERCE; WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT; HUMAN RIGHTS COMMISSION; WEST VIRGINIA ANTIQUITIES COMMISSION; PUBLIC EMPLOYEES' AND TEACHERS' RECIPROCAL SERVICE CREDIT ACT; WHITE CANE LAW; WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT; WEST VIRGINIA COMMISSION ON ENERGY, ECONOMY AND ENVIRONMENT; COST-OF-LIVING SALARY INCREASE FOR STATE EMPLOYEES.

ARTICLE 5. STATE EMPLOYEES COST-OF-LIVING SALARY INCREASE ACT.

§5-5-1. Short title.

This article shall be known as the “State Employees Cost-of-Living Salary Increase Act.”

§5-5-2. Declaration of legislative findings and policy.

The Legislature hereby finds and declares:

(a) That due to the long continuing effects of inflation, the salaries of state employees have been seriously eroded to the detriment of such employees, their families, their morale and ultimately to the detriment of the rendition of good service to the citizens of this state by vital governmental agencies of the state;

(b) That the granting of salary increases to certain state employees on a merit basis is sound practice and conducive to the encouragement of state employees in upgrading their skills and performing their duties well; that while such practice should continue, it is nevertheless not an adequate basis on which the state can or should attempt to respond to the problem of the erosion of state employees’ salaries, because the greatest number of state employees are not covered by the merit, civil service system of this state;

(c) That the state clearly has a duty and it is its policy to respond to the fundamental needs of its employees and ought
to do so through the granting of a cost-of-living, across-the-board, salary increase to eligible state employees.

The provisions of this article are to be liberally construed to accomplish this manifest purpose.

§5-6-3. Definitions.

1 As used in this article:

2 (1) "Eligible employee" shall include any regular full-time employee of the state or any spending unit thereof who is eligible for membership in any state retirement system of the state of West Virginia or other retirement plan authorized by the state: Provided, That an eligible employee shall also meet the requirement set forth in section four of this article relative to previous period of employment: Provided, however, That the mandatory salary increase required by this article shall not apply to employees of the Legislature and the judiciary, or to any employee of the state whose compensation is fixed by statute or by statutory schedule, nor shall this article be construed to mandate an increase in the salary of any elected or appointed officer of the state.

3 (2) "Spending unit" shall include any state office, department, agency, board, commission, institution, bureau or other designated body authorized to hire employees.

§5-5-4. Granting of cost-of-living, across-the-board, salary increases; amount of increase; effective date.

1 Effective for the fiscal year beginning the first day of July, one thousand nine hundred seventy-six, every eligible employee who was an employee of the state on the first day of January, one thousand nine hundred seventy-six, and who has been continuously employed thereafter, shall receive a cost-of-living increase of one thousand dollars in the annual rate of compensation which he was receiving as of the thirtieth day of June, one thousand nine hundred seventy-six, such increase to be prorated over the employee's normal pay period. This article shall not be construed to prohibit other pay increases based on merit, seniority, promotion or other reason, if funds are available for such other pay increases: Provided, That the executive head of each spending unit shall first grant the herein
mandated increase in rate of compensation to all eligible employees prior to the consideration of any increases based on merit, seniority, promotion or other reason.

The executive head of every spending unit shall cause the rate of compensation for each eligible employee to be increased, effective as of the earliest applicable pay period in such fiscal year, by at least the amount required by this section. Such increases shall be reflected in the expenditure schedule submitted to the commissioner of finance and administration by each such spending unit for such fiscal year.

§5-5-5. Sworn statement by department heads; complaint by eligible employee.

On or before the thirty-first day of August, one thousand nine hundred seventy-six, every executive head of a spending unit shall file in duplicate with the state auditor and legislative auditor a sworn statement, on a form to be prescribed by the attorney general, certifying that the expenditure schedule submitted by such executive head to the commissioner of finance and administration provides for the increases mandated by this article, and that the rate of compensation for each eligible employee has in fact been increased by at least such amount.

The attorney general shall prepare and distribute such form to the affected spending units on or before the first day of July, one thousand nine hundred seventy-six.

Any eligible employee who has not received the herein mandated increase in his rate of compensation after his first pay period has elapsed shall make written complaint of such fact to the state auditor who shall transmit a copy thereof to the joint committee on government and finance of the legislature.

§5-5-6. Duties of state auditor; rules and regulations as to eligibility.

In any case of doubt as to who is an eligible employee within the meaning of this article, the state auditor shall resolve and decide the question. For such purpose, he is hereby authorized and it shall be his duty to promulgate and enforce all rules and regulations necessary for determining the eligibility of employees. Such rules and regulations may provide for a hearing on the question. The state auditor is further empowered to
obtain from any state officer or employee any and all information which he shall deem necessary for making such determinations. Rules and regulations promulgated hereunder shall take effect immediately, notwithstanding any provisions of this code to the contrary.

In any case where the state auditor finds that an eligible employee has failed to receive the increase mandated by this article, he shall make written report of the particulars of the case to the joint committee on government and finance.

§5-5-7. Penalties for violations.

Any executive head of a spending unit other than a constitutional officer, who shall fail or refuse to file a sworn statement as required by section five of this article, shall by operation of law have his pay suspended until such statement is filed.

In addition, any person, including a constitutional officer, who shall willfully fail or refuse to perform the duties and obligations placed upon him by the provisions of this article, or who shall willfully hinder, delay or prevent the carrying out of the purposes as set forth in this article and the receipt of the salary increase by eligible employees hereunder, shall be guilty of a misdemeanor, and shall be fined not less than one thousand dollars nor more than five thousand dollars and shall forfeit the office, position or employment he holds at the time of such offense. The foregoing penalties shall not be deemed exclusive but shall be in addition to other penalties and remedies provided by law.

§5-5-8. Severability.

If any provision or application of this article is held invalid, the invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.
Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within bill was passed this the 39th day of January, 1976.

Governor
PRESENTED TO THE GOVERNOR

Date 3/24/76
Time 3:45 p.m.