

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1976



ENROLLED

HOUSE BILL No. 1590

(By Mr. Burke.....)



PASSED March 13,..... 1976

In Effect from..... Passage



FILED IN THE OFFICE
JAMES R. MCCARTNEY
SECRETARY OF STATE

THIS DATE 5/12/76

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H. B. 1590

(By MR. BURKE)

(Originating in the House Committee on Finance)

[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 ^{the} joint committee on government and finance; providing penalties for violations, including criminal penalty; and providing for severability.

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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.

1 This article shall be known as the "State Employees Cost-
2 of-Living Salary Increase Act."

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

1 The Legislature hereby finds and declares:

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

8 (b) That the granting of salary increases to certain state
9 employees on a merit basis is sound practice and conducive to
10 the encouragement of state employees in upgrading their skills
11 and performing their duties well; that while such practice should
12 continue, it is nevertheless not an adequate basis on which the
13 state can or should attempt to respond to the problem of the
14 erosion of state employees' salaries, because the greatest num-
15 ber of state employees are not covered by the merit, civil
16 service system of this state;

17 (c) That the state clearly has a duty and it is its policy
18 to respond to the fundamental needs of its employees and ought

19 to do so through the granting of a cost-of-living, across-the-
20 board, salary increase to eligible state employees.

21 The provisions of this article are to be liberally construed
22 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
3 employee of the state or any spending unit thereof who is
4 eligible for membership in any state retirement system of the
5 state of West Virginia or other retirement plan authorized by
6 the state: *Provided*, That an eligible employee shall also meet
7 the requirement set forth in section four of this article relative
8 to previous period of employment: *Provided, however*, That
9 the mandatory salary increase required by this article shall not
10 apply to employees of the Legislature and the judiciary, or to
11 any employee of the state whose compensation is fixed by
12 statute or by statutory schedule, nor shall this article be con-
13 strued to mandate an increase in the salary of any elected
14 or appointed officer of ^{the} ~~the~~ state.

15 (2) "Spending unit" shall include any state office, depart-
16 ment, agency, board, commission, institution, bureau or other
17 designated body authorized to hire employees.

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

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

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14 mandated increase in rate of compensation to all eligible em-
15 ployees prior to the consideration of any increases based on
16 merit, seniority, promotion or other reason.

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

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

1 On or before the thirty-first day of August, one thousand
2 nine hundred seventy-six, every executive head of a spending
3 unit shall file in duplicate with the state auditor and legislative
4 auditor a sworn statement, on a form to be prescribed by the
5 attorney general, certifying that the expenditure schedule sub-
6 mitted by such executive head to the commissioner of finance
7 and administration provides for the increases mandated by
8 this article, and that the rate of compensation for each eligible
9 employee has in fact been increased by at least such amount.
10 The attorney general shall prepare and distribute such form
11 to the affected spending units on or before the first day of July,
12 one thousand nine hundred seventy-six.

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

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

1 In any case of doubt as to who is an eligible employee within
2 the meaning of this article, the state auditor shall resolve and
3 decide the question. For such purpose, he is hereby authorized
4 and it shall be his duty to promulgate and enforce all rules and
5 regulations necessary for determining the eligibility of em-
6 ployees. Such rules and regulations may provide for a hearing
7 on the question. The state auditor is further empowered to

8 obtain from any state officer or employee any and all informa-
 9 tion which he shall deem necessary for making such deter-
 10 minations. Rules and regulations promulgated hereunder shall
 11 take effect immediately, notwithstanding any provisions of this
 12 code to the contrary.

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

§5-5-7. Penalties for violations.

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

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

§5-5-8. Severability.

1 If any provision or application of this article is held invalid,
 2 the invalidity shall not affect other provisions or applications
 3 of the article which can be given effect without the invalid
 4 provision or application, and to this end the provisions of this
 5 article are severable.

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

James L. Davis

Chairman Senate Committee

Chauncey Christian

Chairman House Committee

Originated in the House.

Takes effect from passage.

J. C. Dillon, Jr.

Clerk of the Senate

C. Blankenship

Clerk of the House of Delegates

W. B. Rothman, Jr.

President of the Senate

Lewis F. W. News

Speaker House of Delegates

The within *disapproved* this the *29th*
day of *March*, 1976.

Arch A. Phares, Jr.

Governor

PRESENTED TO THE
GOVERNOR

Date 3/24/76

Time 3:45 p.m.