

No. 159

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

ENROLLED

SENATE BILL NO. 159

(Originating in the
(By Senator *Committee on Education*)

PASSED February 28, 1989
In Effect from Passage

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Senate Bill No. 159

(Originating in the Committee on Education.)

[Passed February 28, 1989; in effect from passage.]

AN ACT to amend and reenact section thirty-five-b, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, six and seven, article two, chapter eighteen-a of said code, all relating to requiring members of state teachers retirement system to provide written notification of decision not to retire; extending time for terminating continuing contracts of teachers and service personnel; and extending time for notifying school personnel of possible transfer.

Be it enacted by the Legislature of West Virginia:

That section thirty-five-b, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections two, six and seven, article two, chapter eighteen-a of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.**ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

§18-7A-35b. 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
17 supplemented herein, retroactive to such beginning
18 date, aforesaid.

19 (a) Beginning on the first day of April, one thousand
20 nine hundred eighty-eight, and continuing through the
21 thirty-first day of December, one thousand nine
22 hundred eighty-eight, (or as extended by contract or
23 by eligibility qualification requirement, as hereinafter
24 specified) eligible members, being those active,
25 contributing members actually and currently
26 employed on such beginning date, retiring pursuant to
27 this section, (except disability retirees, but including
28 those so employed on said beginning date and leaving
29 the system during the incentive period and who are
30 eligible for deferred benefits), may elect to participate

31 in this incentives program and may elect any one of
32 the three following incentive options:

33 **(1) Retirement incentive option one:**

34 For the purpose of computing the member's annu-
35 ity, the normal final average salary shall be computed
36 and one-eighth thereof shall be added thereto in
37 arriving at the true final average salary for use in
38 actual computation of retirement benefit.

39 **(2) Retirement incentive option two:**

40 A member may elect a lump sum payment, in
41 addition to his regular retirement annuity, equal to
42 ten percent of his final average salary not to exceed
43 five thousand dollars, and in the case of a deferred
44 retirement electing this option, such lump sum pay-
45 ment shall be receivable and deferred to the time of
46 receipt of such deferred retirement annuity.

47 **(3) Retirement incentive option three:**

48 A person shall be credited with an additional two
49 years of contributing service and an additional two
50 years of age. The years credited under this option shall
51 in no way add to a member's final average salary
52 factor of computation.

53 (b) Eligible, active, contributing members, aforesaid,
54 employed under contract and rendering services
55 during school year one thousand nine hundred eighty-
56 eight—eighty-nine shall, if retiring pursuant to the
57 provisions of this section and the early retirement
58 incentive program set forth herein, make application
59 for retirement, including choice of their respective
60 option, and give notice to their respective county
61 boards of education by the thirty-first day of Decem-
62 ber, one thousand nine hundred eighty-eight, but shall
63 be permitted to postpone actual retirement until
64 immediately after the close of such contract period
65 and said school year; with proper credit to be granted
66 for such extended period.

67 Also, eligible, active, contributing members
68 employed, not under contract, who desire to retire

69 under this section but who are unable to retire by the
70 thirty-first day of December, one thousand nine
71 hundred eighty-eight because an element of eligibility
72 for retirement, such as age or other element, will not
73 be met until a date after the thirty-first day of
74 December, one thousand nine hundred eighty-eight
75 and before the first day of July, one thousand nine
76 hundred eighty-nine, shall be permitted to postpone
77 actual retirement until the date of fulfilling such
78 element of eligibility and shall retire on such date,
79 before the temporary retirement incentive program
80 ends on the thirtieth day of June, one thousand nine
81 hundred eighty-nine; with proper credit to be granted
82 for such extended period: *Provided*, That members
83 eligible under the preceding paragraph and this
84 paragraph shall have made application for retirement,
85 including choice of their respective option, and given
86 notice to their respective employer by the thirty-first
87 day of December, one thousand nine hundred eighty-
88 eight, although postponing actual retirement, as
89 aforesaid: *Provided, however*, That an application for
90 retirement under the provisions of the preceding
91 paragraph and this paragraph shall be binding upon a
92 member unless the member provides the retirement
93 system and the local board of education or other
94 educational agency with written notification of his or
95 her decision not to retire by the first day of April, one
96 thousand nine hundred eighty-nine: *Provided further*,
97 That an eligible member under this paragraph or the
98 preceding paragraph who has a grievance filed on or
99 before the twenty-second day of February, one thou-
100 sand nine hundred eighty-nine, or court proceeding
101 which is pending as of the twenty-second day of
102 February, one thousand nine hundred eighty-nine,
103 shall be required to give final notice of decision not to
104 retire by the thirtieth day of June, one thousand nine
105 hundred eighty-nine: *And provided further*, That the
106 state teachers retirement board on or before the
107 seventeenth day of March, one thousand nine hundred
108 eighty-nine, shall provide calculations of anticipated
109 retirement benefits to those members who intend to
110 retire pursuant to the provisions of this section.

111 Eligible members other than those covered under
112 the provisions of the two preceding paragraphs,
113 desiring to retire under this incentive program shall
114 make their option election prior to and take their
115 respective retirement by the close of the thirty-first
116 day of December, one thousand nine hundred eighty-
117 eight.

118 Any eligible member who retires hereunder during
119 the school year (after the first day of July, one
120 thousand nine hundred eighty-eight and on any date
121 prior to the thirtieth day of June, one thousand nine
122 hundred eighty-nine) shall have included such months
123 of such school year and the salary in respect thereof,
124 if ones of higher salary, in place of and for any like
125 number of months in his or her five-year period for
126 computation of annuities as provided for in section
127 twenty-six of this article.

128 (c) Any member participating in this retirement
129 incentive program is not eligible to accept further
130 employment from the state or any of its political
131 subdivisions: *Provided*, That a person may retire
132 under this section and thereafter serve in an elective
133 office: *Provided, however*, That he shall not receive an
134 incentive annuity under this section during the term
135 of service in said office, but shall receive his or her
136 annuity calculated on regular basis, as if originally
137 taken not under this section but on such regular basis.
138 At the end of such term and cessation of service in
139 such office, such incentive annuity shall resume. In
140 respect of an appointive office, as distinguished from
141 an elective office, any person retiring under this
142 section and thereafter serving in such appointive office
143 shall not receive an incentive annuity under this
144 section during the term of service in said office, but
145 the same shall be suspended during such period:
146 *Provided further*, That at the end of such term and
147 cessation of service in such appointive office the
148 incentive annuity provided for under this section shall
149 be resumed.

150 In any event, an eligible member may retire under
151 this section and thereafter continue to receive his

152 incentive annuity and be employed as a substitute
153 teacher or as adjunct faculty, or as a school service
154 personnel substitute.

155 Any such incentive retirants, under this section,
156 may not thereafter receive such annuity and enter or
157 reenter any governmental retirement system
158 established or authorized to be established by the
159 state, notwithstanding any provision of the code to the
160 contrary, unless required by constitutional provision.

161 The additional annuity allowed for temporary early
162 retirement under these options is intended to be paid
163 from the retirement incentive account hereby created
164 as a special account in the state treasury and from the
165 funds therein established with moneys required to be
166 applied or transferred by heads of spending units from
167 the unused portion of salary and fringe benefits in
168 their budgets accruing in respect to such positions
169 vacated and subsequently canceled under this tempo-
170 rary early retirement program. Salary and fringe
171 benefit moneys actually saved in a particular fiscal
172 year shall constitute the fund source. No such addi-
173 tional annuity shall be disallowed even though initial
174 receipts may not be sufficient, with funds of the
175 system to be applied for such purpose, as for the base
176 annuity.

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: *Provided*, That county boards of education
199 in replacing employees leaving under this temporary
200 early retirement incentive program shall be eligible to
201 replace in that number as authorized by the basic
202 school aid formula and pursuant to those guidelines in
203 respect of number of positions lost or projected to be
204 lost due to declining enrollment, changes in statutes,
205 changes in state appropriations and the other
206 guidelines set forth and contained within said basic
207 school aid formula. The vacant position abolishment
208 requirement shall not apply to elective positions or
209 appointed public officers whose positions are
210 established by state constitutional or statutory provi-
211 sion. The retirant's employing entity shall decide as to
212 which of the vacated positions made available through
213 special early retirement or through regular, voluntary
214 retirement are to be abolished and the head of such
215 spending unit shall immediately notify the state
216 auditor, the legislative auditor, and the commissioner
217 of the department of finance and administration of the
218 decisions and shall then apply and/or transfer, as
219 aforesaid, the remaining salary and fringe benefit
220 appropriations: *Provided, however*, That this vacant
221 position abolishment provision shall not apply to any
222 county position, other than those under the authority
223 of county boards of education, nor to any position or
224 positions, whether designated by spending unit,
225 department, agency, commission, entity or otherwise,
226 which the governor may exempt or amend under such
227 abolishment provision upon his recommendation that
228 such exemption or amendment is necessary to pre-
229 serve the health, welfare or safety of the people of
230 West Virginia, and with the prior concurrence of the
231 joint committee on government and finance in such
232 recommendation, after the chairmen thereof shall
233 cause such committee to meet.

234 (f) *Special rule of eighty.* — Any active, contributing
235 member of the retirement system as of the first day of
236 April, one thousand nine hundred eighty-eight who
237 selects one of the incentive options in this section, may
238 retire under the special early retirement provisions
239 with full pension rights, without reduction of benefits
240 if the sum of such member's age plus years of
241 contributing service equals or exceeds eighty: *Pro-*
242 *vided,* That such person has at least twenty years of
243 contributing service, up to two years of which may be
244 military service, or prior service, or already paid and
245 credited out-of-state service (if so paid and credited by
246 the first day of April, one thousand nine hundred
247 eighty-eight) or any combination thereof not exceed-
248 ing an aggregate of two years.

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

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.

1 Before entering upon their duties, all teachers shall
2 execute a contract with their boards of education,
3 which contract shall state the salary to be paid and
4 shall be in the form prescribed by the state superin-
5 tendent of schools. Every such contract shall be signed
6 by the teacher and by the president and secretary of
7 the board of education, and when so signed shall be
8 filed, together with the certificate of the teacher, by
9 the secretary of the office of the board.

10 A teacher's contract, under this section, shall be for
11 a term of not less than one nor more than three years;
12 and if, after three years of such employment, the

13 teacher who holds a professional certificate, based on
14 at least a bachelor's degree, has met the qualifications
15 for the same, and the board of education enter into a
16 new contract of employment, it shall be a continuing
17 contract: *Provided*, That any teacher holding a valid
18 certificate with less than a bachelor's degree who is
19 employed in a county beyond the said three-year
20 probationary period shall upon qualifying for said
21 professional certificate based upon a bachelor's degree,
22 if reemployed, be granted continuing contract status:
23 *Provided, however*, That a teacher holding continuing
24 contract status with one county shall be granted
25 continuing contract status with any other county upon
26 completion of one year of acceptable employment if
27 such employment is during the next succeeding school
28 year or immediately following an approved leave of
29 absence extending no more than one year.

30 The continuing contract of any teacher shall remain
31 in full force and effect except as modified by mutual
32 consent of the school board and the teacher, unless
33 and until terminated (1) by a majority vote of the full
34 membership of the board before April first of the then
35 current year, after written notice, served upon the
36 teacher, return receipt requested, stating cause or
37 causes, and an opportunity to be heard at a meeting of
38 the board prior to the board's action thereon, or (2) by
39 written resignation of the teacher before that date,
40 except that for the school year one thousand nine
41 hundred eighty-eight—eighty-nine only, the board
42 shall have until the fourth Monday of April, one
43 thousand nine hundred eighty-nine, to initiate termi-
44 nation of a continuing contract. Such termination shall
45 take effect at the close of the school year in which the
46 contract is so terminated: *Provided*, That the contract
47 may be terminated at any time by mutual consent of
48 the school board and the teacher, and that this section
49 shall not affect the powers of the school board to
50 suspend or dismiss a principal or teacher pursuant to
51 section eight of this article: *Provided, however*, That a
52 continuing contract for any teacher holding a certifi-
53 cate valid for more than one year and in full force and
54 effect during the school year one thousand nine

55 hundred eighty-four, and one thousand nine hundred
56 eighty-five, shall remain in full force and effect:
57 *Provided further*, That a continuing contract shall not
58 operate to prevent a teacher's dismissal based upon
59 the lack of need for the teacher's services pursuant to
60 the provisions of law relating to the allocation to
61 teachers and pupil-teacher ratios. But in case of such
62 dismissal, the teachers so dismissed shall be placed
63 upon a preferred list in the order of their length of
64 service with that board, and no teacher shall be
65 employed by the board until each qualified teacher
66 upon the preferred list, in order, shall have been
67 offered the opportunity for reemployment: *And pro-*
68 *vided further*, That he has not accepted a teaching
69 position elsewhere. Such reemployment shall be upon
70 a teacher's preexisting continuing contract and shall
71 have the same effect as though the contract had been
72 suspended during the time the teacher was not
73 employed.

74 In the assignment of position or duties of a teacher
75 under said continuing contract, the board shall have
76 authority to provide for released time of a teacher for
77 any special professional or governmental assignment
78 without jeopardizing the contractual rights of such
79 teacher or any other rights, privileges or benefits
80 under the provisions of this chapter.

81 Any teacher who fails to fulfill his contract with the
82 board, unless prevented from so doing by personal
83 illness or other just cause, or unless released from
84 such contract by the board, or who violates any lawful
85 provision thereof, shall be disqualified to teach in any
86 other public school in the state for a period of the next
87 ensuing school year, and the state department of
88 education or board may hold all papers and credentials
89 of such teacher on file for a period of one year for
90 such violation: *Provided*, That marriage of a teacher
91 shall not be considered a failure to fulfill, or violation
92 of, the contract.

93 Any classroom teacher, as defined in section one,
94 article one of this chapter, who desires to resign
95 employment with a board of education or request a

96 leave of absence, such resignation or leave of absence
97 to become effective on or before the fifteenth day of
98 July of the same year and after completion of the
99 employment term, may do so at any time during the
100 school year by written notification thereof, and any
101 such notification received by a board of education shall
102 automatically extend such teacher's public employee
103 insurance coverage until the thirty-first day of August
104 of the same year.

**§18A-2-6. Continuing contract status for service personnel;
termination.**

1 After three years of acceptable employment, each
2 service personnel employee who enters into a new
3 contract of employment with the board shall be
4 granted continuing contract status: *Provided*, That a
5 service personnel employee holding continuing con-
6 tract status with one county shall be granted continu-
7 ing contract status with any other county upon com-
8 pletion of one year of acceptable employment if such
9 employment is during the next succeeding school year
10 or immediately following an approved leave of absence
11 extending no more than one year. The continuing
12 contract of any such employee shall remain in full
13 force and effect except as modified by mutual consent
14 of the school board and the employee, unless and until
15 terminated with written notice, stating cause or
16 causes, to the employee, by a majority vote of the full
17 membership of the board before the first day of April
18 of the then current year, or by written resignation of
19 the employee before that date, except that for the
20 school year one thousand nine hundred eighty-eight—
21 eighty-nine only, the board shall have until the fourth
22 Monday of April, one thousand nine hundred eighty-
23 nine, to initiate termination of a continuing contract.
24 The affected employee shall have the right of a
25 hearing before the board, if requested, before final
26 action is taken by the board upon the termination of
27 such employment.

28 Those employees who have completed three years of
29 acceptable employment as of the effective date of this
30 legislation shall be granted continuing contract status.

§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent; preliminary notice of transfer; hearing on the transfer; proof required.

1 The superintendent, subject only to approval of the
2 board, shall have authority to assign, transfer, pro-
3 mote, demote or suspend school personnel and to
4 recommend their dismissal pursuant to provisions of
5 this chapter. However, an employee shall be notified
6 in writing by the superintendent on or before the first
7 Monday in April if he is being considered for transfer
8 or to be transferred, except that for the school year
9 one thousand nine hundred eighty-eight—eighty-nine
10 only, the superintendent shall have until the fourth
11 Monday of April to provide an employee with such
12 written notice. Any teacher or employee who desires
13 to protest such proposed transfer may request in
14 writing a statement of the reasons for the proposed
15 transfer. Such statement of reasons shall be delivered
16 to the teacher or employee within ten days of the
17 receipt of the request. Within ten days of the receipt
18 of the statement of the reasons, the teacher or
19 employee may make written demand upon the super-
20 intendent for a hearing on the proposed transfer
21 before the county board of education. The hearing on
22 the proposed transfer shall be held on or before the
23 first Monday in May, except that for the school year
24 one thousand nine hundred eighty-eight—eighty-nine
25 only, the hearing shall be held on or before the fourth
26 Monday in May, one thousand nine hundred eighty-
27 nine. At the hearing, the reasons for the proposed
28 transfer must be shown.

29 The superintendent at a meeting of the board on or
30 before the first Monday in May, shall furnish in
31 writing to the board a list of teachers and other
32 employees to be considered for transfer and subse-
33 quent assignment for the next ensuing school year,
34 except that for the school year one thousand nine
35 hundred eighty-eight—eighty-nine only, the superin-
36 tendent shall have until the fourth Monday in May to

37 provide the board with such written list. All other
38 teachers and employees not so listed shall be consid-
39 ered as reassigned to the positions or jobs held at the
40 time of this meeting. The list of those recommended
41 for transfer shall be included in the minute record of
42 such meeting and all those so listed shall be notified in
43 writing, which notice shall be delivered in writing, by
44 certified mail, return receipt requested, to such
45 persons' last known addresses within ten days follow-
46 ing said board meeting, of their having been so
47 recommended for transfer and subsequent assignment
48 and the reasons therefor. The superintendent's
49 authority to suspend school personnel shall be tempo-
50 rary only pending a hearing upon charges filed by the
51 superintendent with the board of education and such
52 period of suspension shall not exceed thirty days
53 unless extended by order of the board.

54 The provisions of this section respecting hearing
55 upon notice of transfer shall not be applicable in
56 emergency situations where the school building
57 becomes damaged or destroyed through an
58 unforeseeable act and which act necessitates a transfer
59 of such school personnel because of the
60 aforementioned condition of the building.

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

Frederick L. Parker
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originated in the Senate.

In effect from passage.

Isaac C. Stuebs
Clerk of the Senate

Donald L. Hogg
Clerk of the House of Delegates

Samuel T. Hunter
President of the Senate

John A. Caldwell
Speaker House of Delegates

The within *is approved* this the *5th*
day of *March* 1889.

Gaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/03

Time 10:07