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
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 compelling state interest exists in providing a temporary, early retirement incentives program for encouraging the early, voluntary retirement of those public employees who were current, active, contributing members of this retirement system on the first day of April, one thousand nine hundred eighty-eight, in the reduction of the number of such employees and in reduction of governmental costs therefor; that such program constitutes a public purpose; and that the special classifications and differentiations provided in respect of such program are reasonable and equitable ones for the accomplishment of such purpose and program as enacted in Enrolled Committee Substitute for H. B. No. 4672, regular session, one thousand nine hundred eighty-eight, and as clarified and supplemented herein, retroactive to such beginning date, aforesaid.

(a) Beginning on the first day of April, one thousand nine hundred eighty-eight, and continuing through the thirty-first day of December, one thousand nine hundred eighty-eight, (or as extended by contract or by eligibility qualification requirement, as hereinafter specified) eligible members, being those active, contributing members actually and currently employed on such beginning date, retiring pursuant to this section, (except disability retirees, but including those so employed on said beginning date and leaving the system during the incentive period and who are eligible for deferred benefits), may elect to participate
in this incentives program and may elect any one of
the three following incentive options:

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

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

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

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

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

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

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

Also, eligible, active, contributing members
employed, not under contract, who desire to retire
under this section but who are unable to retire by the thirty-first day of December, one thousand nine hundred eighty-eight because an element of eligibility for retirement, such as age or other element, will not be met until a date after the thirty-first day of December, one thousand nine hundred eighty-eight and before the first day of July, one thousand nine hundred eighty-nine, shall be permitted to postpone actual retirement until the date of fulfilling such element of eligibility and shall retire on such date, before the temporary retirement incentive program ends on the thirtieth day of June, one thousand nine hundred eighty-nine; with proper credit to be granted for such extended period: Provided, That members eligible under the preceding paragraph and this paragraph shall have made application for retirement, including choice of their respective option, and given notice to their respective employer by the thirty-first day of December, one thousand nine hundred eighty-eight, although postponing actual retirement, as aforesaid: Provided, however, That an application for retirement under the provisions of the preceding paragraph and this paragraph shall be binding upon a member unless the member provides the retirement system and the local board of education or other educational agency with written notification of his or her decision not to retire by the first day of April, one thousand nine hundred eighty-nine: Provided further, That an eligible member under this paragraph or the preceding paragraph who has a grievance filed on or before the twenty-second day of February, one thousand nine hundred eighty-nine, or court proceeding which is pending as of the twenty-second day of February, one thousand nine hundred eighty-nine, shall be required to give final notice of decision not to retire by the thirtieth day of June, one thousand nine hundred eighty-nine: And provided further, That the state teachers retirement board on or before the seventeenth day of March, one thousand nine hundred eighty-nine, shall provide calculations of anticipated retirement benefits to those members who intend to retire pursuant to the provisions of this section.
Eligible members other than those covered under the provisions of the two preceding paragraphs, desiring to retire under this incentive program shall make their option election prior to and take their respective retirement by the close of the thirty-first day of December, one thousand nine hundred eighty-eight.

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

(c) Any member participating in this retirement incentive program is not eligible to accept further employment from the state or any of its political subdivisions: Provided, That a person may retire under this section and thereafter serve in an elective office: Provided, however, That he shall not receive an incentive annuity under this section during the term of service in said office, but shall receive his or her annuity calculated on regular basis, as if originally taken not under this section but on such regular basis. At the end of such term and cessation of service in such office, such incentive annuity shall resume. In respect of an appointive office, as distinguished from an elective office, any person retiring under this section and thereafter serving in such appointive office shall not receive an incentive annuity under this section during the term of service in said office, but the same shall be suspended during such period: Provided further, That at the end of such term and cessation of service in such appointive office the incentive annuity provided for under this section shall be resumed.

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

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

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

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

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

(e) Within every spending unit, department, board, corporation, commission, or any other agency or entity wherein two or multiples of two members elect to
retire either under the temporary early retirement incentives set forth above, or under regular, voluntary retirement, and countable on an agency-wide or entity-wide basis, no more than one of such vacated positions may be filled, with the second position being abolished upon the effective day of the member’s retirement: Provided, That county boards of education in replacing employees leaving under this temporary early retirement incentive program shall be eligible to replace in that number as authorized by the basic school aid formula and pursuant to those guidelines in respect of number of positions lost or projected to be lost due to declining enrollment, changes in statutes, changes in state appropriations and the other guidelines set forth and contained within said basic school aid formula. The vacant position abolishment requirement shall not apply to elective positions or appointed public officers whose positions are established by state constitutional or statutory provision. The retirant’s employing entity shall decide as to which of the vacated positions made available through special early retirement or through regular, voluntary retirement are to be abolished and the head of such spending unit shall immediately notify the state auditor, the legislative auditor, and the commissioner of the department of finance and administration of the decisions and shall then apply and/or transfer, as aforesaid, the remaining salary and fringe benefit appropriations: Provided, however, That this vacant position abolishment provision shall not apply to any county position, other than those under the authority of county boards of education, nor to any position or positions, whether designated by spending unit, department, agency, commission, entity or otherwise, which the governor may exempt or amend under such abolishment provision upon his recommendation that such exemption or amendment is necessary to preserve the health, welfare or safety of the people of West Virginia, and with the prior concurrence of the joint committee on government and finance in such recommendation, after the chairmen thereof shall cause such committee to meet.
(f) **Special rule of eighty.** — Any active, contributing member of the retirement system as of the first day of April, one thousand nine hundred eighty-eight who selects one of the incentive options in this section, may retire under the special early retirement provisions with full pension rights, without reduction of benefits if the sum of such member's age plus years of contributing service equals or exceeds eighty: Provided, That such person has at least twenty years of contributing service, up to two years of which may be military service, or prior service, or already paid and credited out-of-state service (if so paid and credited by the first day of April, one thousand nine hundred eighty-eight) or any combination thereof not exceeding an aggregate of two years.

(g) **Termination of temporary retirement incentives program.** — The right to elect, choose, select or use any of the options, special rule of eighty, or other benefits set forth in this section shall terminate on the thirtieth day of June, one thousand nine hundred 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 execute a contract with their boards of education, which contract shall state the salary to be paid and shall be in the form prescribed by the state superintendent of schools. Every such contract shall be signed by the teacher and by the president and secretary of the board of education, and when so signed shall be filed, together with the certificate of the teacher, by the secretary of the office of the board.

10 A teacher’s contract, under this section, shall be for a term of not less than one nor more than three years; and if, after three years of such employment, the
teacher who holds a professional certificate, based on at least a bachelor's degree, has met the qualifications for the same, and the board of education enter into a new contract of employment, it shall be a continuing contract: Provided, That any teacher holding a valid certificate with less than a bachelor's degree who is employed in a county beyond the said three-year probationary period shall upon qualifying for said professional certificate based upon a bachelor's degree, if reemployed, be granted continuing contract status: Provided, however, That a teacher holding continuing contract status with one county shall be granted continuing contract status with any other county upon completion of one year of acceptable employment if such employment is during the next succeeding school year or immediately following an approved leave of absence extending no more than one year.

The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated (1) by a majority vote of the full membership of the board before April first of the then current year, after written notice, served upon the teacher, return receipt requested, stating cause or causes, and an opportunity to be heard at a meeting of the board prior to the board's action thereon, or (2) by written resignation of the teacher before that date, except that for the school year one thousand nine hundred eighty-eight—eighty-nine only, the board shall have until the fourth Monday of April, one thousand nine hundred eighty-nine, to initiate termination of a continuing contract. Such termination shall take effect at the close of the school year in which the contract is so terminated: Provided, That the contract may be terminated at any time by mutual consent of the school board and the teacher, and that this section shall not affect the powers of the school board to suspend or dismiss a principal or teacher pursuant to section eight of this article: Provided, however, That a continuing contract for any teacher holding a certificate valid for more than one year and in full force and effect during the school year one thousand nine
hundred eighty-four, and one thousand nine hundred eighty-five, shall remain in full force and effect:

Provided further, That a continuing contract shall not operate to prevent a teacher's dismissal based upon the lack of need for the teacher's services pursuant to the provisions of law relating to the allocation to teachers and pupil-teacher ratios. But in case of such dismissal, the teachers so dismissed shall be placed upon a preferred list in the order of their length of service with that board, and no teacher shall be employed by the board until each qualified teacher upon the preferred list, in order, shall have been offered the opportunity for reemployment: And provided further, That he has not accepted a teaching position elsewhere. Such reemployment shall be upon a teacher's preexisting continuing contract and shall have the same effect as though the contract had been suspended during the time the teacher was not employed.

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

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

Any classroom teacher, as defined in section one, article one of this chapter, who desires to resign employment with a board of education or request a
leave of absence, such resignation or leave of absence to become effective on or before the fifteenth day of July of the same year and after completion of the employment term, may do so at any time during the school year by written notification thereof, and any such notification received by a board of education shall automatically extend such teacher's public employee insurance coverage until the thirty-first day of August of the same year.

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

1 After three years of acceptable employment, each service personnel employee who enters into a new contract of employment with the board shall be granted continuing contract status: Provided, That a service personnel employee holding continuing contract status with one county shall be granted continuing contract status with any other county upon completion of one year of acceptable employment if such employment is during the next succeeding school year or immediately following an approved leave of absence extending no more than one year. The continuing contract of any such employee shall remain in full force and effect except as modified by mutual consent of the school board and the employee, unless and until terminated with written notice, stating cause or causes, to the employee, by a majority vote of the full membership of the board before the first day of April of the then current year, or by written resignation of the employee before that date, except that for the school year one thousand nine hundred eighty-eight—eighty-nine only, the board shall have until the fourth Monday of April, one thousand nine hundred eighty-nine, to initiate termination of a continuing contract. The affected employee shall have the right of a hearing before the board, if requested, before final action is taken by the board upon the termination of such employment.

Those employees who have completed three years of acceptable employment as of the effective date of this 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.

The superintendent, subject only to approval of the board, shall have authority to assign, transfer, promote, demote or suspend school personnel and to recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before the first Monday in April if he is being considered for transfer or to be transferred, except that for the school year one thousand nine hundred eighty-eight—eighty-nine only, the superintendent shall have until the fourth Monday of April to provide an employee with such written notice. Any teacher or employee who desires to protest such proposed transfer may request in writing a statement of the reasons for the proposed transfer. Such statement of reasons shall be delivered to the teacher or employee within ten days of the receipt of the request. Within ten days of the receipt of the statement of the reasons, the teacher or employee may make written demand upon the superintendent for a hearing on the proposed transfer before the county board of education. The hearing on the proposed transfer shall be held on or before the first Monday in May, except that for the school year one thousand nine hundred eighty-eight—eighty-nine only, the hearing shall be held on or before the fourth Monday in May, one thousand eight hundred eighty-nine. At the hearing, the reasons for the proposed transfer must be shown.

The superintendent at a meeting of the board on or before the first Monday in May, shall furnish in writing to the board a list of teachers and other employees to be considered for transfer and subsequent assignment for the next ensuing school year, except that for the school year one thousand nine hundred eighty-eight—eighty-nine only, the superintendent shall have until the fourth Monday in May to
provide the board with such written list. All other teachers and employees not so listed shall be considered as reassigned to the positions or jobs held at the time of this meeting. The list of those recommended for transfer shall be included in the minute record of such meeting and all those so listed shall be notified in writing, which notice shall be delivered in writing, by certified mail, return receipt requested, to such persons' last known addresses within ten days following said board meeting, of their having been so recommended for transfer and subsequent assignment and the reasons therefor. The superintendent's authority to suspend school personnel shall be temporary only pending a hearing upon charges filed by the superintendent with the board of education and such period of suspension shall not exceed thirty days unless extended by order of the board.

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

Joseph C. Needle  
Clerk of the Senate

Donald L. Ventry  
Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the sixth day of March, 1888.

Gaston Caperton  
Governor