

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1935



## ENROLLED

HOUSE BILL No. 167

(By Mr. Gentry)



PASSED March 8 1935

In Effect from Passage

167

**ENROLLED**  
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(BY MR. GENTRY)

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[Passed March 8, 1935: in effect from passage.]

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AN ACT to amend and reenact sections ten, twelve, thirteen, fourteen, fifteen, eighteen and twenty, article six, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, relating to firemen's and policemen's pension or relief fund.

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

That section ten, twelve, thirteen, fourteen, fifteen, eighteen, twenty, article six, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

Section 10. In any municipal corporation in this state having, or which may hereafter have, a fire department and a police department, or either of such departments, supported

4 in whole or in part at public expense, the council or other  
5 governing body shall, by ordinance provide for the establish-  
6 ment and maintenance of a firemen's pension or relief fund,  
7 and for a policemen's pension or relief fund, for the purposes  
8 hereinafter enumerated: *Provided, however,* That this act shall  
9 not apply to any paid police or fire department that is not under  
10 civil service, and thereupon there shall be created boards of  
11 trustees who shall administer and distribute the funds author-  
12 ized to be raised by this section and succeeding sections.

Sec. 12. The said board of trustees of the firemen's pen-  
2 sion or relief fund shall consist of the Mayor or other chief  
3 executive officer of the municipal corporation and four mem-  
4 bers of the fire department, to be chosen as follows: The  
5 mayor or other chief executive officer of such municipal cor-  
6 poration shall give notice of an election to be held on the  
7 second Monday of the month following the passage of the  
8 ordinance mentioned in the tenth section hereof, or following  
9 the passage of this act, which notice shall be served upon each  
10 member of the fire department and which shall notify each  
11 member that between the hours of nine in the forenoon and  
12 six in the afternoon, on the day designated for such election,

13 the election will be held for such purpose and that each mem-  
14 ber shall send under seal, in writing, the names of four per-  
15 sons, members of such fire department, voted for; and all  
16 votes so cast shall be counted and canvassed by the mayor  
17 or other chief executive officer and the council for the first  
18 election after the passage of this amendment, and thereafter  
19 the votes shall be counted by the then existing members of  
20 such pension board, who after such election shall announce  
21 the result, and the four members of the fire department re-  
22 ceiving the highest number of votes shall, with the mayor or  
23 other chief executive officer, constitute "The Board of Trus-  
24 tees of the Firemen's Pension or Relief Fund". The four  
25 members of the fire department shall be chosen and shall  
26 serve as follows: The member receiving the highest number  
27 of votes shall serve for a period of four years, the member re-  
28 ceiving the second highest number of votes shall serve for a  
29 period of three years, the member receiving the third highest  
30 number of votes shall serve for a period of two years, and the  
31 member receiving the fourth highest number of votes shall  
32 serve for a period of one year. After the election specified  
33 above the said board of trustees shall hold a similar election

34 each year to elect one member to succeed for a term of four  
35 years the retiring member. In the case of a tie vote being  
36 received by any two persons for the office of trustee, such tie  
37 vote shall be decided by casting lots, or in any other way which  
38 may be agreed upon by the persons for whom such tie vote  
39 was cast. The result of such election shall be entered in the  
40 record of the proceedings of said board and the members so  
41 elected shall except as hereinabove specified serve for four  
42 years and until their successors are elected and have qualified.  
43 The election for such members of the board of trustees shall  
44 be held annually upon the second Monday of the same month  
45 upon which the first election occurred. In case of vacancy  
46 by death, resignation, or otherwise, among the members so  
47 elected, the remaining members shall choose the successor, or  
48 successors, until the next annual election at which latter time  
49 all vacancies shall be filled. The presiding officer of the board  
50 of trustees shall be the mayor or other chief executive officer  
51 of such municipal corporation, and the secretary thereof shall  
52 be appointed by said board. It shall be the duty of such sec-  
53 retary to keep a full and permanent record of all the pro-  
54 ceedings of the board, and said trustees may fix his compensa-

55 tion for this work, which shall be paid out of the funds of  
56 said firemen's pension or relief fund.

Sec. 13. The method of procedure for the establishment of  
2 a policemen's pension or relief fund shall be in all respects  
3 the same as provided for the formation of the firemen's pen-  
4 sion or relief fund in the preceding section; *Provided, however,*  
5 That there shall be a separate board of trustees, composed  
6 of the mayor or other chief executive officer of the municipal  
7 corporation and four members from the police department, the  
8 four members to be elected in the same manner as provided  
9 for the election of firemen to the firemen's pension or relief  
10 fund in the preceding section.

Sec. 14. In every municipality there shall be a firemen's  
2 pension or relief fund and a policemen's pension or relief fund  
3 which shall be maintained as follows: The council or other  
4 governing body of each municipality shall levy annually in  
5 the manner provided by law for other municipal levies, and  
6 include within the maximum levy or levies permitted by law,  
7 and if necessary in excess of any charter provision, a tax not ex-  
8 ceeding one cent on each one hundred dollars of all real and per-  
9 sonal property as listed for taxation in such municipality

10 for the firemen's pension or relief fund, and a like levy not ex-  
11 ceeding one cent on each one hundred dollars on all real and  
12 personal property as listed for taxation in such municipality for  
13 a policemen's pension fund. The amount of tax to be levied if  
14 less than the one cent provided for above may be fixed and  
15 determined by said boards of trustees as aforesaid, and certi-  
16 fied to the council or other governing body of such munici-  
17 pality. *Provided further*, That in any city or municipality of  
18 twenty thousand population or less the laying of the levy herein  
19 provided for shall be within the discretion of the common coun-  
20 cil or other body of like power and duties in such city or munici-  
21-27 pality.

28 The levies authorized under this section, or any part of them,  
29 may by the council or other governing body be laid in addition  
30 to all other municipal levies, and to that extent beyond the  
31 limit of levy imposed by the charter of such municipality;  
32 and such levies shall supercede and if necessary exclude levies  
33 for other purposes if such priority or exclusion is necessary  
34 under limitations upon taxes or tax levies imposed by law.

35 Such corporations are authorized to take by gift, grant,  
36 devise or bequest, any money or real or personal property,

37 upon such terms as to the investment and expenditures thereof  
38 as may be fixed by the grantor or determined by said trus-  
39 tees.

40 In addition to all other sums provided for pensions in this  
41 section, it shall be the duty of every municipal corporation  
42 to assess and collect from each member of such fire department  
43 and police department, the sum of one dollar each month,  
44 which sum shall be deducted from the monthly pay of such  
45 person, and the amount so collected shall become a regular  
46 part of the firemen's pension fund, if collected from a fireman,  
47 and of the policemen's pension fund, if collected from a police-  
48 man.

Sec. 15. The treasurer of every municipality shall be the  
2 custodian of all funds of the firemen's and policemen's pen-  
3 sion or relief fund, and shall deposit and pay out the same  
4 upon and in accordance with any proper order of the board of  
5 trustees. Such treasurer shall be liable upon his official bond  
6 as treasurer for the faithful performance of his duties in re-  
7 spect to such fund or funds, and the official bond of the trea-  
8 surer covering such fund or funds shall be executed with a  
9 good and financially responsible surety company, authorized



10 to do business in this state, as surety for such funds. Such  
11 fund or funds shall not be used for any other purpose than  
12 provided herein.

Sec. 18. If any member of such fire department or police  
2 department of any such municipality shall become and be  
3 found upon examination by a majority of a board of medi-  
4 cal examiners, which board shall consist of not less than three  
5 physicians appointed by the board of trustees, to have become  
6 so physically or mentally permanently disabled by reason of  
7 services rendered in the performance of his duties in such  
8 department, as to render necessary his retirement from all  
9 service in such department, or if any member who has been  
10 such a member of either of such departments for a period  
11 of not less than five consecutive years preceding his disability  
12 become and be found upon such an examination to have be-  
13 come so physically or mentally permanently disabled, re-  
14 gardless of the cause therefor, as to render necessary his re-  
15 tirement from all services in such department, such board  
16 of trustees shall retire such permanently disabled persons from  
17 all services in such department; and said board of trustee of  
18 such pension or relief fund shall authorize the payment to

19 such permanently disabled persons monthly from the pen-  
20 sion fund the amounts as fixed by the rules hereinafter pro-  
21 vided for. If any member of such department shall at any  
22 time be injured or become sick, so as to render such member  
23 temporarily disabled, he shall be paid from said pension or  
24 relief fund the amount to be determined by the rules estab-  
25 lished, as aforesaid, during such disability for not exceeding  
26 twenty-six weeks. No person shall be eligible for any pension  
27 unless such member shall have presented himself for an ex-  
28 amination at the time of his appointment to the department  
29 and his condition was then approved by a majority of a board  
30 of medical examiners appointed as aforesaid by such pen-  
31 sion board: *Provided, however,* That this provision shall not  
32 apply to any person who is a member of either of said depart-  
33 ments at the time of the enactment of this act.

34 Any person who has been heretofore, or who shall here-  
35 after be, allowed a pension under the provisions of this  
36 act may be required by such board to be reexamined at any  
37 time and if he is then not disabled as aforesaid he shall be  
38 ordered by the mayor or other chief executive officer of the  
39 municipality to return to duty in his former position in the

40 fire or police department, as the case may be, and his pen-  
41 sion discontinued: *Provided, however,* That this provision  
42 shall not apply to any person until such person can and shall  
43 be restored to his former position in such department.

Sec. 20. Any member of a municipal fire department or  
2 police department who is entitled to the benefits of said fund,  
3 and who has been in the continuous service of such depart-  
4 ment for twenty-three years, and shall have reached the age  
5 of fifty years, may, upon written application to the board  
6 of trustees, be retired from all service from such department  
7 without medical examination or disability, and on such retire-  
8 ment the board of trustees shall authorize the payment to  
9 such retired member during the remainder of his life of  
10 seventy-five dollars per month. A member of such depart-  
11 ment who may have served twenty-three years, but not con-  
12 tinuously, and shall have reached the age of fifty years, shall  
13 be entitled to the benefits of this section, provided he shall  
14 not have been out of the service for a period longer than two  
15 years.

16 The sum to be paid to permanently disabled members shall  
17 be at the rate of ninety dollars per month, which shall be paid


18 regardless of the position in the department of such disabled  
19 member.

20 Absence from service because of sickness or injury shall  
21 not be construed as time out of service.

22 All acts and parts of acts, general and special, inconsistent  
23 with this act, are hereby repealed.

I certify that the foregoing act,  
having been presented to the Governor for  
his approval, and not having been returned  
by him to the House of the Legislature in  
which it originated within the time pre-  
scribed by the constitution of the state, has  
become a law without his approval.

This the 15th day of March,  
1935.

  
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SECRETARY OF STATE

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

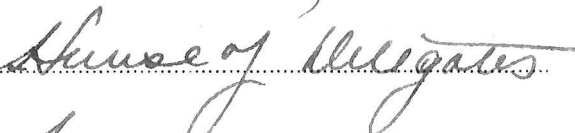
  
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Chairman Senate Committee

  
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Chairman House Committee

Originated in the



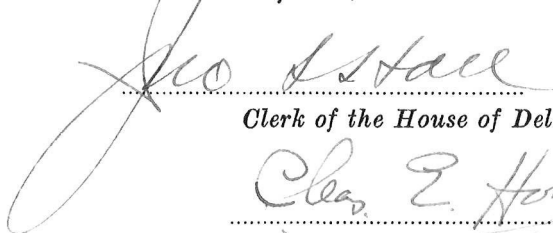
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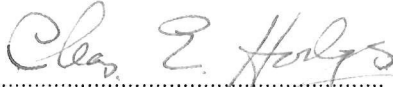
passage.

  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker House of Delegates.

The within.....this the.....

day of....., 1935.

.....  
Governor.

Filed in the office of the Secretary of State  
of West Virginia.

**MAR 15 1935**  
Wm. S. O'BRIEN,

Secretary of State