WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1935

ENROLLED

HOUSE BILL No. 167

(By Mr. ______)

PASSED ______ March 8 ______ 1935

In Effect ______ from ______ Passage
ENROLLED

House Bill No. 167

(BY MR. GENTRY)

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

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,
the election will be held for such purpose and that each mem-
ber shall send under seal, in writing, the names of four per-
sons, members of such fire department, voted for; and all
votes so cast shall be counted and canvassed by the mayor
or other chief executive officer and the council for the first
election after the passage of this amendment, and thereafter
the votes shall be counted by the then existing members of
such pension board, who after such election shall announce
the result, and the four members of the fire department re-
ceiving the highest number of votes shall, with the mayor or
other chief executive officer, constitute "The Board of Trus-
tees of the Firemen's Pension or Relief Fund". The four
members of the fire department shall be chosen and shall
serve as follows: The member receiving the highest number
of votes shall serve for a period of four years, the member re-
ceiving the second highest number of votes shall serve for a
period of three years, the member receiving the third highest
number of votes shall serve for a period of two years, and the
member receiving the fourth highest number of votes shall
serve for a period of one year. After the election specified
above the said board of trustees shall hold a similar election
each year to elect one member to succeed for a term of four
years the retiring member. In the case of a tie vote being
received by any two persons for the office of trustee, such tie
vote shall be decided by casting lots, or in any other way which
may be agreed upon by the persons for whom such tie vote
was cast. The result of such election shall be entered in the
record of the proceedings of said board and the members so
elected shall except as hereinabove specified serve for four
years and until their successors are elected and have qualified.
The election for such members of the board of trustees shall
be held annually upon the second Monday of the same month
upon which the first election occurred. In case of vacancy
by death, resignation, or otherwise, among the members so
elected, the remaining members shall choose the successor, or
successors, until the next annual election at which latter time
all vacancies shall be filled. The presiding officer of the board
of trustees shall be the mayor or other chief executive officer
of such municipal corporation, and the secretary thereof shall
be appointed by said board. It shall be the duty of such sec-
tary to keep a full and permanent record of all the pro-
ceedings of the board, and said trustees may fix his compen-
tion for this work, which shall be paid out of the funds of
said firemen's pension or relief fund.

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

Sec. 14. In every municipality there shall be a firemen's
pension or relief fund and a policemen's pension or relief fund
which shall be maintained as follows: The council or other
governing body of each municipality shall levy annually in
the manner provided by law for other municipal levies, and
include within the maximum levy or levies permitted by law,
and if necessary in excess of any charter provision, a tax not ex-
ceeding one cent on each one hundred dollars of all real and per-
sonal property as listed for taxation in such municipality
for the firemen’s pension or relief fund, and a like levy not ex-
ceeding one cent on each one hundred dollars on all real and
personal property as listed for taxation in such municipality for
a policemen’s pension fund. The amount of tax to be levied if
less than the one cent provided for above may be fixed and
determined by said boards of trustees as aforesaid, and certi-
fied to the council or other governing body of such munici-
pality. *Provided further*, That in any city or municipality of
twenty thousand population or less the laying of the levy herein
provided for shall be within the discretion of the common coun-
 cil or other body of like power and duties in such city or munici-
pality.

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

Such corporations are authorized to take by gift, grant,
device or bequest, any money or real or personal property,
upon such terms as to the investment and expenditures thereof as may be fixed by the grantor or determined by said trustees.

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

Sec. 15. The treasurer of every municipality shall be the custodian of all funds of the firemen’s and policemen’s pension or relief fund, and shall deposit and pay out the same upon and in accordance with any proper order of the board of trustees. Such treasurer shall be liable upon his official bond as treasurer for the faithful performance of his duties in respect to such fund or funds, and the official bond of the treasurer covering such fund or funds shall be executed with a 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 pension fund the amounts as fixed by the rules hereinafter provided for. If any member of such department shall at any time be injured or become sick, so as to render such member temporarily disabled, he shall be paid from said pension or relief fund the amount to be determined by the rules established, as aforesaid, during such disability for not exceeding twenty-six weeks. No person shall be eligible for any pension unless such member shall have presented himself for an examination at the time of his appointment to the department and his condition was then approved by a majority of a board of medical examiners appointed as aforesaid by such pension board: Provided, however, That this provision shall not apply to any person who is a member of either of said departments at the time of the enactment of this act.

34 Any person who has been heretofore, or who shall hereafter be, allowed a pension under the provisions of this act may be required by such board to be reexamined at any time and if he is then not disabled as aforesaid he shall be ordered by the mayor or other chief executive officer of the municipality to return to duty in his former position in the
40 fire or police department, as the case may be, and his pension discontinued: \textit{Provided, however}, That this provision shall not apply to any person until such person can and shall be restored to his former position in such department.

Sec. 20. Any member of a municipal fire department or police department who is entitled to the benefits of said fund, and who has been in the continuous service of such department for twenty-three years, and shall have reached the age of fifty years, may, upon written application to the board of trustees, be retired from all service from such department without medical examination or disability, and on such retirement the board of trustees shall authorize the payment to such retired member during the remainder of his life of seventy-five dollars per month. A member of such department who may have served twenty-three years, but not continuously, and shall have reached the age of fifty years, shall be entitled to the benefits of this section, provided he shall not have been out of the service for a period longer than two years.

The sum to be paid to permanently disabled members shall 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.

[Signature]
SECRETARY OF STATE
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 of Delegates

Takes effect passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates.

The within this the day of, 1935.

Governor.