WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1941

ENROLLED

HOUSE BILL No. 272

(By Mr. Speaker, Mr. Arnold)

PASSED March 6, 1941

In Effect ninety days from Passage
AN ACT to repeal and reenact article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, pertaining to the establishment of a retirement system for teachers of West Virginia.

Be it enacted by the Legislature of West Virginia:

That article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and reenacted to read as follows:

Article 7-a. State Teachers' Retirement System

Section 1. Establishment of Retirement System.—A retirement system to be known as the "State Teacher's Retirement System" is hereby established for the purpose of providing retirement allowances for the teachers of West Virginia.

Sec. 2. Supplemental Benefits.—Nothing in this article
shall be construed to preclude any employer from pro-
viding retirement benefits to retired teachers not eligible
to benefits under this article; nor shall it be construed to
preclude any employer from supplementing retirement
benefits to be received by any of its employees under
this article.

No such benefits, however, shall be paid to a present
teacher who elects not to become a member of the
teachers' retirement system.

Sec. 3. Definitions. "Teacher" shall include the follow-
ing:

(a) Any person regularly employed for instructional
service in the public schools of West Virginia,
(b) principals,
(c) public school librarians,
(d) county superintendents of schools and assistant
county superintendents of schools,
(e) county school attendance directors holding a West
Virginia teachers' certificates,
(f) the secretary of the retirement board,
(g) members of the research, extension, administrative,
and library staff of the public schools.

(h) the state superintendent of schools, heads and as-
sistant heads of the divisions created under his super-
vision, or any other employee thereunder performing serv-
ices of an educational nature,

(i) employees of the State Board of Education who are
performing services of an educational nature.

"Retirement system" shall mean the West Virginia
Teachers' Retirement System provided for in this act.

"Former teacher" shall mean a teacher whose period
of employment ceased prior to the effective date of this
act.

"Present teacher" shall mean any person who was a
teacher on the effective date of this act, and whose mem-
bership in the retirement system created by this act has
been continuous.

"Total service" shall mean all service as a teacher of a
member of the retirement system since last becoming a
member and, in addition thereto, all his prior serv-
vice.
"New entrant" shall mean any person who becomes a teacher subsequent to the effective date of this act.

"Prior service" shall mean all service as a teacher completed in this state prior to the effective date of this act.

"Average final salary" shall mean the average annual salary earned as a teacher during the last fifteen years of prior service, or if prior service is less than fifteen years, the average annual salary for that period. If the records for so determining "final average salary" cannot reasonably be established by the retirement board, then the term shall mean the legal minimum salary of such teacher during the last year of service.

"Accumulated contributions" shall mean the sum of all the amounts deducted from the compensation of a contributor and credited to his individual account in the employees' accumulation fund.

"Regular interest" shall mean interest at three per cent per annum compounded annually, or a higher earnable rate if approved by the board.
“Employer” shall mean the agency of and within the state which has employed or employs a member.

“Contributor” shall mean a member of the retirement system who has an account in the employees' accumulation fund.

“Beneficiary” shall mean the recipient of payments made under the retirement system.

“Earnable Compensation” shall mean the full compensation received by members for service as teachers whether or not a part of such compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions.

“Annuities” shall mean the annual (superannuation) payments for life derived from contributions made by a member.

“Member” shall mean a member of the Teachers' Retirement System.

“Public schools” shall mean all publicly supported schools, including normal schools, colleges and universities in this state.

The masculine gender shall be construed so as to include the feminine.
Age in excess of seventy years shall be deemed to be seventy years.

Sec. 4. The Retirement Board.—The general administration and the management of the retirement system are hereby vested in a "Teachers' Retirement Board."
The retirement board shall have the right to sue and be sued, plead and be impleaded, contract and be contracted with and shall make all necessary rules and regulations to carry out the provisions of this article. All of the business of the board shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property shall be held in the name of the "Teachers' Retirement Board".

Sec. 5. Membership of the Retirement Board.—The retirement board shall consist of the following seven members: (a) The governor, who shall be ex officio chairman; (b) the state superintendent of free schools; (c) the state treasurer; (d) the state insurance commissioner; (e) three teacher members of the retirement system, appointed for the first term by the governor,
upon recommendation of the state superintendent of schools. The first member under subsection (e) shall be appointed for a term of one year, the second for a term of two years, and the third for a term of three years. After the terms of these appointed members shall have expired, the members under subsection (e) shall thenceforth be elected for three year terms by the members of the retirement system. The manner and mode of such election shall be determined by the retirement board. Vacancies occurring in the terms of the elected membership of the retirement board shall be filled for the unexpired periods by the governor upon recommendation of the state superintendent of schools.

Sec. 6. Compensation. The members of the retirement board shall serve without compensation, but they shall be reimbursed from the expense fund for all necessary expenses incurred. No member of the retirement board shall suffer loss of salary while performing his duties as a member of the retirement board.

Sec. 7. Quorum.—A majority of the members of the retirement board shall constitute a quorum for the transaction of any business.
Sec. 8. Legal Adviser.—The attorney general of the state shall be the legal adviser of the retirement board.

Sec. 9. Meetings of the Retirement Board.—The retirement board shall hold meetings in the state capitol at least twice a year.

Sec. 10. Employment of Secretary and Other Employees.—The retirement board shall employ an executive secretary and is authorized to secure the services of such technical and administrative employees as may be necessary for the transaction of the business of the retirement system.

The executive secretary shall receive compensation not to exceed the maximum prescribed for the office of county superintendent of schools. The retirement board may require the executive secretary to furnish adequate bond with satisfactory corporate surety, the cost of which shall be paid from the expense fund.

Sec. 11. Records; Actuarial Data.—The retirement board shall maintain an individual account with each member, showing the amount of the member's contributions and the interest accumulations thereon. It shall
collect and keep in convenient form such data as may be necessary for the preparation of the required mortality and service tables, and for the compilation of such other information as may be needed for the actuarial valuation of the funds created by this article. The retirement board shall adopt appropriate tables for the purpose of evaluating and computing retirement allowances.

Sec. 12. *Reports by Retirement Board.*—At such times as the retirement board may deem it necessary but at least once within the first three years of the operation of this article and each quinquennial period thereafter, the retirement board shall employ a competent actuary to prepare a report containing an evaluation of the present and prospective assets and liabilities of the funds created by this article.

The retirement board shall publish an annual report showing the condition of the various funds created by this article. It shall certify in such report the amount of accumulated cash and securities in the funds and shall present a full account of the operation of the system.
Sec. 13. Membership in System.—The membership of the retirement system shall consist of the following:

(a) All persons employed as teachers on the effective date of this act, who, within a year from such date notify the retirement board in writing of their decision to become members. Such persons shall automatically be constituted members one year after the effective date of this act unless the retirement board receives written notice from such persons of their decision not to become members.

(b) New entrants, whose membership in the system shall herein be compulsory upon employment as teachers.

(c) Former teachers retired under the State Teachers' Retirement Fund created in one thousand nine hundred and thirty-nine.

The membership of any person in the retirement system shall cease:

(1) Upon the withdrawal of his accumulated contributions after the cessation of teaching service, or

(2) Upon retirement, or

(3) at death, or
(4) if service amounts to less than five years in any period of ten consecutive years.

Any person in subsection (a) of this section who elects to become a member after having declined to accept membership, shall be permitted to enter the retirement system, but shall be accorded only the rights of a new entrant.

If any person resumes membership once it has ceased, such member shall be accorded only the rights of a new entrant.

Sec. 14. Contributions by Members.—At the end of each month of the school year beginning with the year one thousand nine hundred and forty-one, every member of the retirement system shall contribute four per centum of his earnable compensation to the accumulation fund.

Such contributions however, shall only be made upon that part of the member's earnable compensation which does not exceed two thousand five hundred dollars. The contributions shall be deducted from the salaries of the members as hereinafter prescribed, and every member
shall be deemed to have given his consent to such deductions.

Payment by an employer to a member of the sum specified in the employment contract minus the amount of the employee's contributions shall be deemed to be a full discharge of the employer's contractual obligation as to earnable compensation.

Sec. 15. Collection of Member Contributions.—Each employer shall compile a list of all members in its employ and shall specify the amount of the contributions to be made by such members for the ensuing school year. Such data shall be filed with the retirement board.

The monthly payments which members would receive from employers as compensation for service in the absence of this article, shall be decreased to the amount of the contributions due under this article. The amount of such deductions shall be retained in the fund containing the state appropriations to such employer, until such time as the retirement board shall make appropriate requisition for such sums.

Each employer shall be held accountable for the sum
composing the contributions made by its member employees.

During any period which the retirement board deems appropriate, it shall make requisition upon the state auditor to issue warrants for the total amount of the paid contributions of the members. Such sum shall be paid to the retirement board from the fund containing the state appropriations made to such employers.

Sec. 16. Payment of Employer Contributions.—The aggregate of employer contributions due and payable under this article shall be paid from general fund appropriations for the Teachers' Retirement System. Such amount shall equal four per centum of the aggregate earnable compensation of the members.

The retirement board shall make and certify each year to the governor an estimate of the maximum employers' contributions to be due at the end of each school year. The governor is hereby authorized to order the transfer of three-fourths of the amount of such certified estimate from general appropriation funds to the retirement board at the beginning of each fiscal year. The balance of the
employers' contributions due, computed on the basis of the records available at the end of each school year, shall be transferred from general appropriation funds to the retirement fund during the last week of each fiscal year.

Sec. 17. Statement and Computation of Teacher's Service.—Under such rules and regulations as the retirement board may adopt, each teacher shall file a detailed statement of his length of service as a teacher for which he claims credit. The retirement board shall determine what part of a year is the equivalent of a year of service. In computing such service, however, it shall credit no period of more than a month's duration, during which a member was absent without pay, nor shall credit for more than one year service performed in any calendar year.

Subject to the above restrictions and to such other rules and regulations as the retirement board shall adopt, the board shall verify as soon as practicable the statements of service submitted.

The retirement board shall issue prior service certificates to members eligible to receive prior service pen-
sions under this article. Such certificates shall state the
length of such prior service in the state.

Sec. 18. Funds Created; Uses and Purposes.—The funds hereby created are the teachers' accumulation fund, the employers' accumulation fund, the benefit fund, the expense fund, and the reserve fund.

(a) The teachers' accumulation fund shall be the fund in which contributions from the compensation of members shall be accumulated. The accumulated contributions of a member returned to him upon his withdrawal, or paid to his estate or designated beneficiary in the event of his death shall be paid from the teachers' accumulation fund. Any accumulated contributions forfeited by failure to claim such contributions shall be transferred from the accumulation fund to the reserve fund.

Any member shall be permitted to deposit in the teachers' accumulation fund such amounts in multiples of one hundred dollars as such members shall desire.

(b) The employers' accumulation fund shall contain the contributions paid by employers. Upon the retirement of a member, the full amount of the employer's contribu-
tions shall be transferred from the employers' accumulation fund to the benefit fund.

(c) The benefit fund shall be the fund from which retirement allowances shall be paid. Upon the retirement of a member, his accumulated contributions shall be transferred from the teachers' accumulation fund to the benefit fund; the employer's contributions and a sum for prior service pension, if any, shall be transferred from the employers' accumulation fund to the benefit fund.

(d) The retirement board is hereby authorized to accept gifts and bequests. Any funds that may come into possession of the retirement system in this manner or which may be transferred from the teachers' accumulation fund by reason of lack of claimant or because of a surplus in any of the funds; or any other moneys whose disposition is not otherwise provided for shall be credited to the reserve fund. The retirement board shall allow regular interest on the sums in the teachers' accumulation fund. Such regular interest shall be paid from the reserve fund and credited to the teachers' accumulation fund. Any deficit occurring in any fund which would not
be automatically covered by the payments to that fund
as otherwise provided by this article shall be met by pay-
ments from the reserve fund to such fund.

(e) The expense fund shall be the fund from which
shall be paid the expense incurred in the administration
of the retirement system.

Sec. 19. Custody of Funds; Bond of Custodian.—The
state treasurer shall be the custodian of the funds and
securities of the retirement system. Disbursements from
the funds of the retirement system shall be made by the
custodian only upon warrants signed by a member or
members of the retirement board, or an official thereof,
authorized to do so by resolution of the retirement board.
The state treasurer shall give a separate and additional
bond in such amount as may be fixed by the governor for
the faithful performance of the duties as custodian of
the retirement system. Such bond shall be approved by
the governor and filed in the same office as are the bonds
of other state officers. The cost of such bond shall be paid
from the expense fund.

The custodian shall furnish annually to the retirement
Sec. 20. Investment of Funds.—The members of the retirement board shall be the trustees of the several funds created by this article, and shall determine from time to time what part of the moneys belonging to the retirement system shall be invested. When such board shall determine to invest any moneys or to convert or sell any securities, it shall by resolution so direct the custodian. The board of public works is hereby empowered to determine in what securities the investments shall be made but such investments shall be made only in those securities to which the board of public works is limited in the investment of workmen's compensation funds under section two, article three, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended. It shall be the duty of every county, school district or municipality issuing any bonds, to offer them in writing to the retirement board, prior to advertising the bonds for sale. The board of public works, within fifteen days after receipt of such
It shall be the duty of the custodian to collect the principal and the interest on investments when they become due and payable and to credit such collections to the retirement system.

Sec. 21. Misuse of Funds; Penalties.—No member nor employee of the retirement board, for himself or as an agent or partner of others, or for a corporation of which he is an officer, stockholder or member, shall directly or indirectly borrow any of the funds or deposits of the retirement board or in any manner use such funds except to make such payments as are authorized by the board under this article. Any member or employee violating the provisions of this section shall be guilty of a misdemeanor and upon conviction, be fined not more than one thousand dollars or be imprisoned for one year, or both.

Sec. 22. Eligibility for Prior Service Pensions.—The following shall be eligible for prior service pensions as prescribed in subsection (c), section twenty-six of this article:

(a) Present members, upon retirement;
(b) Any person who has served at least thirty years as a teacher prior to the enactment of this article;

c) Former teachers retired under the State Teachers’ Retirement Fund created in one thousand nine hundred and thirty-nine.

A new entrant shall not be eligible to receive prior service pensions.

When membership ceases, prior service credits due a member previous to cessation shall be void and not renewable.

Sec. 23. Withdrawal and Death Benefits.—Benefits upon death or upon withdrawal from service prior to retirement, shall be payable as follows:

(a) A member who withdraws from service for any cause other than death or retirement shall, on demand, be paid his accumulated contributions made up to the date of his withdrawal.

(b) A member with twenty years of total service at the time of withdrawal from service may elect (1) to receive his accumulated contributions at the time of such withdrawal; (2) or receive at retirement age an annuity
which is the actuarial equivalent of his accumulated contributions plus the employer's contributions.

(c) Should a member die before retirement, his accumulated contributions shall be paid to his estate or to such person as he shall have nominated by written designation duly executed and filed with the retirement board.

Sec. 24. Disposition of Accumulated Contributions.—A person who ceases to be a member for any cause other than death or retirement, shall upon demand be paid the accumulated contributions standing to his credit in the accumulation fund. Ten years after such cessation of service, if no previous demand has been made, the accumulated contributions of such member shall be returned to him or to his legal representative. If the member or his legal representative cannot be found, his accumulated contributions shall be forfeited to the retirement system and credited to the reserve fund.

Sec. 25. Eligibility for Retirement Allowance.—Any member, who has attained the age of sixty years or who has had thirty-five years of total service as a teacher in West Virginia, regardless of age, shall be eligible for re-
No new entrant nor present member shall be eligible for retirement allowance, however, if either has less than five years of service to his credit.

The request for a retirement allowance shall be made in writing to the Retirement Board.

Sec. 26. Allowance upon Retirement.—Upon retirement, a member shall be granted a retirement allowance consisting of an annuity which shall be the sum of the following:

(a) The actuarial equivalent of the contributions and deposits of the member up to the time of his retirement, with regular interest.

(b) The actuarial equivalent of the contributions of the employer up to the time of the member’s retirement, which shall equal the sum in subsection (a) of this section minus deposits.

(c) Where prior service credit has been granted, an allowance of one and twenty-five hundredths per centum of the member’s final average salary multiplied by the number of years of prior service credited to him.

For the purposes of this subsection:
(1) An allowance for prior service, shall in no case exceed one half of the member's final average salary.

(2) Final average salary shall in no instance be deemed to exceed the sum of two thousand five hundred dollars.

(3) Teachers retired under the State Teachers' Retirement Fund in one thousand nine hundred and thirty-nine shall be deemed to have retired at the age of sixty years.

Sec. 27. Regular Interest.—Regular interest shall be added to all sums, except for prior service, due and payable to beneficiaries under this article.

Sec. 28. Options to Beneficiaries.—The retirement board is hereby authorized to offer plans, optional with the beneficiary, for the payment of allowances due such beneficiary for retirement, withdrawal or prior service pensions under the retirement system. No plans shall be offered, however, which are not approved by competent actuaries.

Sec. 29. Protection against Fraud; Penalties.—Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records
of the retirement system in any attempt to defraud such
system shall be guilty of a misdemeanor, and upon con-
viction be punished by a fine not exceeding one thousand
dollars, or imprisonment in jail not exceeding one year,
or both.

Sec. 30. Exemption from Taxation, Garnishment and
Other Process.—The moneys in the various funds and
the right of a member to a retirement allowance, to the
return of contributions, or to any benefit under the pro-
visions of this article are hereby exempt from any state
or municipal tax; shall not be subject to execution, garnish-
ment, attachment or any other process whatsoever; and
shall be unassignable except as is provided in this article.

Sec. 31. Unexpended Funds under Prior Appropriations.
—Any unexpended funds for teachers' retirement bene-
fits which were appropriated from general revenue prior
to the enactment of this article, shall be credited and
transferred to the reserve fund of the retirement system.

Sec. 32. Inconsistent Acts Repealed.—All previous acts
and parts of acts inconsistent with this act are hereby
repealed.
Sec. 33. Constitutionality.—If any part of this act is declared unconstitutional it shall not affect any portion which remains, but the remaining portions of the act shall be in full force and effect as if the portions declared unconstitutional had never been a part of the act.

The Teachers’ Retirement System which this bill proposes to establish embodies a principle underlying modern retirement plans—that of joint contribution. Under it, teachers would be required to contribute by permitting deductions amounting to four per cent of their earnable compensation from their regular salary checks.

The state, for the teaching agencies within it, would by general appropriation, contribute an equal amount, making a total of eight per cent for teachers’ retirement.

Upon retirement at the age of sixty or after thirty-five years of teaching in the state, a teacher would receive the equivalent of the total of these contributions with interest. In addition, a pension is permitted for teaching service in the state prior to the establishment of the proposed retirement system.

Other features of the bill are as follows:
(a) Persons who are teachers at the time the retirement system is established are given a period of one year within which to become a member of the retirement system.

(b) Membership would be compulsory for persons who become teachers subsequent to the establishment of the retirement system.

(c) The retirement fund created in one thousand nine hundred and thirty-nine would be abolished, but teachers retired under that fund would be provided a pension for prior service under the proposed bill.

(d) The amount of earnable compensation on which the contributions are based is limited to $2,500.00. The maximum limit for pensions for prior service would be set at one half of the teachers' average final salary.

A retirement board would be created and empowered to administer the retirement system. It would be composed of seven members: the governor, as chairman, the state superintendent of free schools, the state treasurer, the state insurance commissioner and three members elected for three years from the membership of the re-
43 retirement system. No salary would be attached to mem-
44 bership on the board.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

C. H. MC KOWN
Chairman Senate Committee

Leon Rice
Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

A. H. Watkins
Clerk of the Senate

Kaliff
Clerk of the House of Delegates

Bryan Randolph
President of the Senate

Malcolm R. Arnold
Speaker House of Delegates

The within approved this the 14th
day of March, 1941.

Mathew Snecky
Governor.

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

MAR 17 1941

Wm. S. O'Brien,
Secretary of State