WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1947

ENROLLED

SENATE BILL No. 89

(By Mr. Hannig)

PASSED March 8, 1947

In Effect Thirty days from Passage
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Senate Bill No. 89
(By Mr. Hannig)

(Passed March 8, 1947; in effect ninety days from passage.)

AN ACT to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, numbered article fifteen, authorizing municipal corporations, as defined by chapter eight-a of said code, to establish and maintain an employees' retirement and benefit fund.

Be it enacted by the Legislature of West Virginia:

That chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, numbered fifteen, to read as follows:

Article 15. Employees' Retirement and Benefit Fund.

Section 1. Municipalities Authorized to Establish "Employees' Retirement and Benefit Fund".—Every municipal corporation in the state of West Virginia, hav-
ing a population in excess of fifteen thousand is hereby
authorized to and may establish and maintain an Em-
ployees' Retirement and Benefit Fund in accordance with
the provisions of this article.

Sec. 2. Definition.—For the purpose of this article:
(a) “Prior service credit” shall mean the number of
years that the member has been in the service of the
city prior to the effective date of the retirement and
benefit fund.
(b) “Earned service credits” shall mean the number
of years that the member has contributed to the retire-
ment and benefit fund.
(c) “Total service credit” shall mean a total of all
prior service credit and all earned service credit.
(d) “Fund” shall mean “the employees’ retirement and
benefit fund.”
(e) “Board” shall mean the board of trustees of the
employees’ retirement and benefit fund.
(f) “Member” shall mean an eligible employee of the
city, who is a member of the employees’ retirement and
benefit fund.
(g) "Total disability in line of duty" shall mean total and permanent disablement (from performing any work for pay, whether for the municipality or other employer), that shall be caused by injury sustained in the course of the operations usual to his employment, and shall include all operations necessary, incident or appurtenant thereto, or connected therewith, whether such operations are conducted at the usual place of employment or elsewhere in connection with or in relation to his usual and customary employment.

(h) The pronoun "he" means both masculine and feminine.

(i) "Mayor," which means the chief executive officer of the city.

Sec. 3. Board of Trustees.—The council or other governing body of each municipality desiring to establish and maintain a retirement and benefit fund as herein authorized shall by ordinance provide:

(a) For a "board of trustees of the employees' retirement and benefit fund."

The said board of trustees shall consist of the mayor,
The initial appointments shall be for a term of one, two, three and four years, respectively, after which all appointments shall be for a term of four years.

The presiding officer of the board shall be the mayor, and the secretary thereof shall be appointed by said board. It shall be the duty of such secretary to keep a full and permanent record of all the proceedings of the board, and said board may fix his compensation for this work which shall be paid out of said fund.

The mayor or any three members of the board shall have the power to call a meeting at any time that it is necessary in order to carry out the business of the board.

Three members of the board shall constitute a quorum to transact business, but it shall require not less than three affirmative votes to carry any matter before the board.

The board shall have charge of and administer the fund and shall order payment therefrom, and no money shall be paid out of the fund except on the order of the board.
The council or other governing body shall have power to make any and all rules and regulations pertaining to the fund not inconsistent with this article, the constitution and the laws of the state of West Virginia.

Such board shall be a corporation by the name and style of "The Board of Trustees of the Employees' Retirement and Benefit Fund of (name the municipality)," by which name they may sue and be sued, plead and be impleaded, contract and be contracted with, take and hold real estate and personal estate, for the use of said fund; and have and use a common seal. Said board may also in its corporate name do and perform any and all other acts and business pertaining to the trust created hereby or by any conveyance, device or dedication made for the uses and purposes of said board.

Sec. 4. Employees Eligible for Participation In Fund.—Employees eligible for participation in the fund shall include all employees who are employed by the municipality on a permanent basis. The following employees, however, shall not be eligible for participation in the fund:
(1) Appointive members of administrative boards and commissions, except employees of such boards and commissions;

(2) Persons employed under contract for a definite period or for the performance of a particular, special service;

(3) Employees serving on a part-time basis of less than one-half time;

(4) Policemen and firemen who are now covered by a pension or relief fund;

(5) Employees who are paid in part by the county, state or other governmental agency, and only in part by the municipality;

(6) Employees who are past sixty years of age and have less than ten years of service;

(7) Persons employed after the establishment date of the fund who are over fifty years of age.

The board of trustees of the fund may make determination as to any person's eligibility to become a member of the fund.

All employees eligible for participation at the effective
Provided, That no member shall be entitled to any benefits under the fund until he has been in the employ of the municipality for at least five years, after the effective date of the fund, except those who are disabled in the performance of their duties may participate in the fund in the manner hereinafter provided.

Sec. 5. Prior, Earned and Total Service Credits;

Service Breaks.—(1) For prior service, each participating employee, on the effective date, shall be credited, as of such date, with a prior service credit of an amount equal to the accumulated value, as of such date, of the contributions which would have been made during the entire period of prior service of such employee. Assuming the earnings of such employee to have been uniform during such period of prior service and equal to the monthly earnings obtained by dividing the total earnings during the period of the three calendar years in such period immediately preceding the effective date, by the number
of months in such period during which any earnings were received by such employee, the rate of contribution to have been the prior service contribution rate applicable to such employee, the contributions for each calendar year to have been made at the end of such year, and the contributions to have accumulated with interest at the rate of three per cent per annum compounded annually.

(2) Each member shall pay into the fund, five per cent of his salary up to two hundred dollars a month. Unless the members' percentage of contributions is changed as hereinafter provided, no member shall be required to contribute more than ten dollars per month.

These contributions shall continue until such time as the member has twenty-three years of earned service credit, he shall continue to contribute to the fund until he retires or until he has contributed to the fund for a period of twenty-three years, that is, has twenty-three years of "earned service credit." However, a member who has prior service credit shall be entitled to a full retirement payment when his prior service credit and his earned service credit totals twenty-three years of
total service credit, if he has reached compulsory retire-
tirement age, or when he becomes so physically or men-
tally disabled as to render him unfit for the perform-
ance of the duties of the position he occupies.

The member’s contribution provided for herein may be
raised at any time from five per cent to any higher amount
not in excess of six per cent, upon a vote in favor of
such raise by seventy-five per cent of all the members
of the fund: Provided, That such raise shall not be ef-
fective unless the governing body of the municipality
shall, by ordinance or resolution, agree to contribute an
equal increase percentage. In the event of such change
the maximum of ten dollars shall be raised in accordance
with the raise in percentage. The municipality contribu-
tion shall at all times be not less than the amount con-
tributed by the members. Whenever it is found that the
total contributions are more than necessary to adequately
maintain the fund, upon recommendation of a reputable
actuary, a proper reduction shall be made of an equal per-
centage from the contributions by the members and
from the contributions by the municipality.
(3) In order to participate one hundred per cent in the retirement fund member must have a total service credit of twenty-three years which may be composed of either prior service credit or earned service credit, or both. At retirement, because of having reached the compulsory retirement age, the member shall participate in the fund only to the extent of his total service.

A person who is employed by the municipality at the time of the effective date of the fund and becomes a member of the fund shall be entitled to prior service credit even though such prior service was not continuous.

A person who is not employed by the municipality at the time of the effective date of the fund, but who has been employed in the past shall be entitled to prior service credit if he returns to the service within two years from the date of his termination of service and becomes a member of the fund within such two-year period.

A member upon separation from the service shall be entitled to withdraw his contributions without interest.

If such employee returns to the service of the municipality
within two years and becomes a member of the fund, he shall be considered as a new employee and shall have lost all prior service credits unless he shall repay to the fund in cash at the time of reemployment the amount of money which he has withdrawn plus two per cent interest compounded annually on said amount during the time he was separated from the service.

If, however, the service breaks of such members is more than two years, he shall not be entitled to any prior service credits nor shall he be entitled to redeposit withdrawals but he shall reenter the fund as a new member.

Sec. 6. Retirement Age and Benefits.—After the effective date of the fund any member of the fund who has had at least twenty-three years service and has reached the age of sixty may at his option retire from the service of the city upon a retirement payment as herein-after provided.

Retirement for all members of the fund shall be compulsory at the age of sixty-five, subject to the following conditions:
The employee may be permitted to continue in the service if he so desires; if his services are still valuable to the municipality.

Whether an employee's services are valuable at the age of sixty-five shall be determined by the appointing officer of the municipality. If he determines that such services are valuable, his determination must be certified to the board for approval. If the board approves the employee may continue in the service of the municipality.

The appointing officer shall annually certify to the board relative to the ability and competency of all employees over sixty-five years. A member of the fund upon retirement, shall be entitled to the following retirement payment;

23a A member with at least ten years of earned service credits, who has reached the retirement age or who has become so physically or mentally disabled as to render him unfit for the performance of the duties of the position he occupies shall upon retirement be paid according to the following table:

Twenty-three or more years of total service credits,
fifty per cent of his average salary for the last fifteen years of service: Provided, That if a member has twenty-three years of total service credits he shall be entitled to a minimum retirement payment of fifty dollars per month. Twenty-two years of total service credits, forty-nine per cent of his average salary for the last fifteen years of service. Twenty-one years of total service credits, forty-eight per cent of his average salary for the last fifteen years of service. Twenty years of total service credits, forty-seven per cent of his average salary for the last fifteen years of service. Nineteen years of total service credits, forty-five per cent of his average salary for the last fifteen years of service. Eighteen years of total service credits, forty-three per cent of his average salary for the last fifteen years of service. Seventeen years of total service credits, forty-one per
cent of his average salary for the last fifteen years of service.

Sixteen years of total service credits, thirty-nine per cent of his average salary for the last fifteen years of service.

Fifteen years of total service credits, thirty-six per cent of his average salary for his term of service.

Fourteen years of total service credits, thirty-three per cent of his average salary for his term of service.

Thirteen years of total service credits, thirty-one per cent of his average salary for his term of service.

Twelve years of total service credits, twenty-nine per cent of his average salary for his term of service.

Eleven years of total service credits, twenty-seven per cent of his average salary for his term of service.

Ten years of total service credits, twenty-five per cent of his average salary for his term of service.

Sec. 7. Disability Retirement Payments.—(1) If a member becomes disabled by bodily injury effected directly or independently of all other causes through accidental means while engaged in the course of his em-
ployment with the city and while in line of duty, and is totally disabled from performing any work for pay, whether for the municipality or other employer, he shall be entitled during the time of his disability to full retirement payment based on one-half his average salary during the time of service with the municipality: Provided, That the minimum payment shall be fifty dollars per month and the maximum payment shall be one hundred dollars per month.

(2) If a member becomes disabled while an employee of the municipality after he has had at least ten years total service credits, and before he has reached retirement age, but such disability is not incurred in the line of duty during the course of his employment, he shall be entitled to a one-fourth retirement payment of (during the time of his disability,) his average salary during the time of his service: Provided, That he shall be entitled to a minimum payment of twenty-five dollars per month and a maximum payment of fifty dollars per month.

(3) When a member has reached the retirement age or has become so physically or mentally disabled as to
render him unfit for the performance of the duties of the
position he occupies and who has less than ten years
earned service credits, he shall be entitled to an annuity
which shall be the actual equivalent of his total accumula-
tion account at the time of his retirement.

(4) The board of trustees of the employees' retire-
ment and benefit fund may order a reexamination of
members of the fund receiving disability retirement pay-
ment and if the disability no longer exists the payments
shall be discontinued.

Sec. 8. Death Benefits.—(1) A member who dies
after he has had ten or more years total service credits
shall be entitled, for a period not to exceed ten years, to
a retirement payment in accordance to the table contained
in section two of this article. The payments shall be made
to the person having an insurable interest in his life, as
he shall nominate to the board.

(2) Death benefits after retirement shall be the same
as death before retirement except a widow shall not be
entitled to benefits unless she has been married to the
member before the date of his retirement.
Payment shall be made for the remaining period of ten years from the date of the member retirement. If a widow of a member remarries, her retirement payments shall be terminated.

Sec. 9. Contributions by the Municipality.—The council or other governing body shall annually provide sufficient funds in the budget to take care of the estimated cost of the employees' retirement and benefit fund over and above the amount contributed by the members. The municipality shall contribute not less than the amount contributed by the members of the fund, plus an amount required, at three per cent interest per annum, to amortize, over the remainder of the period of forty years following the effective date, the amount as of the beginning of such year, of the obligation for the prior service credits granted to the employees, and a sufficient amount to pay the cost of the administration of the fund.

Sec. 10. Investment of Funds.—The board shall have full power in its sole discretion to invest or reinvest any moneys received by it, either in interest-bearing bonds of the United States, or of the State of West Vir-
ginia, or the county, school district, or any municipality in the state of West Virginia, or upon approved real estate security to the extent of not more than fifty per cent of the assessed value of such real estate.

Sec. 11. Records; Actuarial Data.—The board of trustees 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 ordinance. The board of trustees shall adopt appropriate tables for the purpose of evaluating and computing retirement allowances.

Sec. 12. Reports by Board of Trustees.—At such times as the board of trustees may deem it necessary, but at least once within the first three years of the operation of the fund and each quin-quennial period thereafter, the board of trustees shall employ a competent actuary to prepare a report containing an evaluation of the pres-
ent and prospective assets and liabilities of the fund.

The board of trustees shall submit to the council or other governing body an annual report showing the condition of the various funds under its control. 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. Custodian of funds; Duties, Bond.—The treasurer or his equivalent of each municipality shall be the custodian of all funds, 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 funds, and the official bond of the treasurer covering such funds shall be executed with a good and financially responsible surety company, authorized to do business in this state, as surety for such funds. Such funds shall not be used for any other purpose than provided herein.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate

Takes effect Thirty days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within Approved this the 13th day of March, 1947.

Governor.