

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1947



ENROLLED

SENATE BILL No. 89

(By Mr. Hanning)



PASSED March 8, 1947

In Effect thirty days from Passage



89

**ENROLLED**  
**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*  
2 *"Employees' Retirement and Benefit Fund"*.—Every  
3 municipal corporation in the state of West Virginia, hav-

4 ing a population in excess of fifteen thousand is hereby  
5 authorized to and may establish and maintain an Em-  
6 ployees' Retirement and Benefit Fund in accordance with  
7 the provisions of this article.

Sec. 2. *Definition.*—For the purpose of this article:

2 (a) "Prior service credit" shall mean the number of  
3 years that the member has been in the service of the  
4 city prior to the effective date of the retirement and  
5 benefit fund.

6 (b) "Earned service credits" shall mean the number  
7 of years that the member has contributed to the retire-  
8 ment and benefit fund.

9 (c) "Total service credit" shall mean a total of all  
10 prior service credit and all earned service credit.

11 (d) "Fund" shall mean "the employees' retirement and  
12 benefit fund."

13 (e) "Board" shall mean the board of trustees of the  
14 employees' retirement and benefit fund.

15 (f) "Member" shall mean an eligible employee of the  
16 city, who is a member of the employees' retirement and  
17 benefit fund.

18 (g) "Total disability in line of duty" shall mean total  
19 and permanent disablement (from performing any work  
20 for pay, whether for the municipality or other employer),  
21 that shall be caused by injury sustained in the course  
22 of the operations usual to his employment, and shall  
23 include all operations necessary, incident or appurtenant  
24 thereto, or connected therewith, whether such operations  
25 are conducted at the usual place of employment or else-  
26 where in connection with or in relation to his usual and  
27 customary employment.

28 (h) The pronoun "he" means both masculine and fem-  
29 inine.

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

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

5 (a) For a "board of trustees of the employees' retire-  
6 ment and benefit fund."

7 The said board of trustees shall consist of the mayor,

8 four members of the fund, to be appointed by the mayor,  
9 with the advice and consent of a majority of members of  
10 the fund.

11 The initial appointments shall be for a term of one,  
12 two, three and four years, respectively, after which all  
13 appointments shall be for a term of four years.

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

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

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

26 The board shall have charge of and administer the fund  
27 and shall order payment therefrom, and no money shall  
28 be paid out of the fund except on the order of the board.

29 The council or other governing body shall have power  
30 to make any and all rules and regulations pertaining to  
31 the fund not inconsistent with this article, the constitu-  
32 tion and the laws of the state of West Virginia.

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

Sec. 4. *Employees Eligible for Participation In*  
2 *Fund.*—Employees eligible for participation in the fund  
3 shall include all employees who are employed by the mu-  
4 nicipality on a permanent basis. The following employees,  
5 however, shall not be eligible for participation in the  
6 fund:

7 (1) Appointive members of administrative boards and  
8 commissions, except employees of such boards and com-  
9 missions;

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

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

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

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

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

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

24 The board of trustees of the fund may make determina-  
25 tion as to any person's eligibility to become a member of  
26 the fund.

27 All employees eligible for participation at the effective

28 date of the fund shall become members of the fund, unless  
29 they file a written election not to become a member with-  
30 in thirty days after the effective date of the fund:  
31 *Provided*, That no member shall be entitled to any benefits  
32 under the fund until he has been in the employ of the  
33 municipality for at least five years, after the effective  
34 date of the fund, except those who are disabled in the  
35 performance of their duties may participate in the fund  
36 in the manner hereinafter provided.

Sec. 5. *Prior, Earned and Total Service Credits;*  
2 *Service Breaks.*—(1) For prior service, each participat-  
3 ing employee, on the effective date, shall be credited, as of  
4 such date, with a prior service credit of an amount equal  
5 to the accumulated value, as of such date, of the con-  
6 tributions which would have been made during the entire  
7 period of prior service of such employee. Assuming the  
8 earnings of such employee to have been uniform during  
9 such period of prior service and equal to the monthly  
10 earnings obtained by dividing the total earnings during  
11 the period of the three calendar years in such period  
12 immediately preceding the effective date, by the number



13 of months in such period during which any earnings were  
14 received by such employee, the rate of contribution to  
15 have been the prior service contribution rate applicable  
16 to such employee, the contributions for each calendar  
17 year to have been made at the end of such year, and the  
18 contributions to have accumulated with interest at the  
19 rate of three per cent per annum compounded annually.

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

25 These contributions shall continue until such time as  
26 the member has twenty-three years of earned service  
27 credit, he shall continue to contribute to the fund until  
28 he retires or until he has contributed to the fund for a  
29 period of twenty-three years, that is, has twenty-three  
30 years of "earned service credit." However, a member  
31 who has prior service credit shall be entitled to a full  
32 retirement payment when his prior service credit and  
33 his earned service credit totals twenty-three years of

34 total service credit, if he has reached compulsory re-  
35 tirement age, or when he becomes so physically or men-  
36 tally disabled as to render him unfit for the perform-  
37 ance of the duties of the position he occupies.

38 The member's contribution provided for herein may be  
39 raised at any time from five per cent to any higher amount  
40 not in excess of six per cent, upon a vote in favor of  
41 such raise by seventy-five per cent of all the members  
42 of the fund: *Provided*, That such raise shall not be ef-  
43 fective unless the governing body of the municipality  
44 shall, by ordinance or resolution, agree to contribute an  
45 equal increase percentage. In the event of such change  
46 the maximum of ten dollars shall be raised in accordance  
47 with the raise in percentage. The municipality contribu-  
48 tion shall at all times be not less than the amount con-  
49 tributed by the members. Whenever it is found that the  
50 total contributions are more than necessary to adequately  
51 maintain the fund, upon recommendation of a reputable  
52 actuary, a proper reduction shall be made of an equal per-  
53 centage from the contributions by the members and  
54 from the contributions by the municipality.

55 (3) In order to participate one hundred per cent in  
56 the retirement fund member must have a total service  
57 credit of twenty-three years which may be composed of  
58 either prior service credit or earned service credit, or  
59 both. At retirement, because of having reached the com-  
60 pulsory retirement age, the member shall participate in  
61 the fund only to the extent of his total service.

62 A person who is employed by the municipality at the  
63 time of the effective date of the fund and becomes a mem-  
64 ber of the fund shall be entitled to prior service credit  
65 even though such prior service was not continuous.

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

73 A member upon separation from the service shall be  
74 entitled to withdraw his contributions without interest.  
75 If such employee returns to the service of the municipality

76 within two years and becomes a member of the fund, he  
77 shall be considered as a new employee and shall have lost  
78 all prior service credits unless he shall repay to the fund  
79 in cash at the time of reemployment the amount of money  
80 which he has withdrawn plus two per cent interest com-  
81 pounded annually on said amount during the time he was  
82 separated from the service.

83 If, however, the service breaks of such members is  
84 more than two years, he shall not be entitled to any  
85 prior service credits nor shall he be entitled to redeposit  
86 withdrawals but he shall reenter the fund as a new mem-  
87 ber.

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

7 Retirement for all members of the fund shall be com-  
8 pulsory at the age of sixty-five, subject to the following  
9 conditions:

10 The employee may be permitted to continue in the ser-  
11 vice if he so desires; if his services are still valuable to  
12 the municipality.

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

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

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

29 Twenty-three or more years of total service credits,

30 fifty per cent of his average salary for the last fifteen  
31 years of service: *Provided*, That if a member has twenty-  
32 three years of total service credits he shall be entitled to  
33 a minimum retirement payment of fifty dollars per month.

34 Twenty-two years of total service credits, forty-nine  
35 per cent of his average salary for the last fifteen years  
36 of service.

37 Twenty-one years of total service credits, forty-eight  
38 per cent of his average salary for the last fifteen years  
39 of service.

40 Twenty years of total service credits, forty-seven per  
41 cent of his average salary for the last fifteen years of  
42 service.

43 Nineteen years of total service credits, forty-five per  
44 cent of his average salary for the last fifteen years of  
45 service.

46 Eighteen years of total service credits, forty-three per  
47 cent of his average salary for the last fifteen years of  
48 service.

49 Seventeen years of total service credits, forty-one per

50 cent of his average salary for the last fifteen years of  
51 service.

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

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

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

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

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

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

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

Sec. 7. *Disability Retirement Payments.*—(1) If  
2 a member becomes disabled by bodily injury effected  
3 directly or independently of all other causes through ac-  
4 cidental means while engaged in the course of his em-

5 ployment with the city and while in line of duty, and is  
6 totally disabled from performing any work for pay,  
7 whether for the municipality or other employer, he shall  
8 be entitled during the time of his disability to full re-  
9 tirement payment based on one-half his average salary  
10 during the time of service with the municipality: *Pro-*  
11 *vided*, That the minimum payment shall be fifty dollars  
12 per month and the maximum payment shall be one  
13 hundred dollars per month.

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

24 (3) When a member has reached the retirement age  
25 or has become so physically or mentally disabled as to



26 render him unfit for the performance of the duties of the  
27 position he occupies and who has less than ten years  
28 earned service credits, he shall be entitled to an annuity  
29 which shall be the actual equivalent of his total accumula-  
30 tion account at the time of his retirement.

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

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

8 (2) Death benefits after retirement shall be the same  
9 as death before retirement except a widow shall not be  
10 entitled to benefits unless she has been married to the  
11 member before the date of his retirement.

12 Payment shall be made for the remaining period of ten  
13 years from the date of the member retirement. If a  
14 widow of a member remarries, her retirement payments  
15 shall be terminated.

Sec. 9. *Contributions by the Municipality.*—The coun-  
2 cil or other governing body shall annually provide suf-  
3 ficient funds in the budget to take care of the estimated  
4 cost of the employees' retirement and benefit fund over  
5 and above the amount contributed by the members.

6 The municipality shall contribute not less than the  
7 amount contributed by the members of the fund, plus an  
8 amount required, at three per cent interest per annum,  
9 to amortize, over the remainder of the period of forty  
10 years following the effective date, the amount as of the  
11 beginning of such year, of the obligation for the prior  
12 service credits granted to the employees, and a sufficient  
13 amount to pay the cost of the administration of the fund.

Sec. 10. *Investment of Funds.*—The board shall  
2 have full power in its sole discretion to invest or reinvest  
3 any moneys received by it, either in interest-bearing  
4 bonds of the United States, or of the State of West Vir-

5 ginia, or the county, school district, or any municipality  
6 in the state of West Virginia, or upon approved real es--  
7 tate security to the extent of not more than fifty per  
8 cent of the assessed value of such real estate.

Sec. 11. *Records; Actuarial Data.*—The board of  
2 trustees shall maintain an individual account with each  
3 member, showing the amount of the member's contribu-  
4 tions and the interest accumulations thereon. It shall  
5 collect and keep in convenient form such data as may be  
6 necessary for the preparation of the required mortality  
7 and service tables, and for the compilation of such other  
8 information as may be needed for the actuarial valua-  
9 tion of the funds created by ordinance. The board of  
10 trustees shall adopt appropriate tables for the purpose of  
11 evaluating and computing retirement allowances.

Sec. 12. *Reports by Board of Trustees.*—At such  
2 times as the board of trustees may deem it necessary,  
3 but at least once within the first three years of the opera-  
4 tion of the fund and each quin-quennial period thereafter,  
5 the board of trustees shall employ a competent actuary  
6 to prepare a report containing an evaluation of the pres-

7 ent and prospective assets and liabilities of the fund.

8 The board of trustees shall submit to the council or  
9 other governing body an annual report showing the con-  
10 dition of the various funds under its control. It shall  
11 certify in such report the amount of accumulated cash  
12 and securities in the funds and shall present a full ac-  
13 count of the operation of the system.

Sec. 13. *Custodian of funds; Duties, Bond.*—The  
2 treasurer or his equivalent of each municipality shall be  
3 the custodian of all funds, and shall deposit and pay out  
4 the same upon, and in accordance with, any proper order  
5 of the board of trustees. Such treasurer shall be liable  
6 upon his official bond as treasurer for the faithful per-  
7 formance of his duties in respect to such funds, and the  
8 official bond of the treasurer covering such funds shall  
9 be executed with a good and financially responsible  
10 surety company, authorized to do business in this state,  
11 as surety for such funds. Such funds shall not be used  
12 for any other purpose than provided herein.

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

Forest L. McNeer  
Chairman Senate Committee

R. S. Matthews  
Chairman House Committee

Originated in the Senate

Takes effect Thirty days from passage.

Howard Myers  
Clerk of the Senate

J. R. Hill  
Clerk of the House of Delegates

Arnold M. Vickers  
President of the Senate

John E. Amos  
Speaker House of Delegates

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

Oliver M. Mahan  
Governor.



Filed In the Office of the Secretary of State  
of West Virginia

**MAR 13 1947**  
W. S. O'BRIEN,  
SECRETARY OF STATE