

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1959

ENROLLED

HOUSE BILL No. 207

(By Mr. WHITE, MR. SEIBERT
HAUGHT)

PASSED Feb 27 1959

In Effect July 1, 1959 Passage

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of West Virginia

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JOE F. BURDETT
SECRETARY OF STATE

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House Bill No. 207
(By MR. WHITE and MR. SEIBERT)

[Passed February 27, 1959; in effect July 1, 1959.]

AN ACT to amend and reenact sections fourteen, fourteen-a, twenty and twenty-one, article six, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to firemen's and policemen's pensions or relief funds, prescribing for the assessment of taxes and contributions from salaries to maintain such funds, collections of arrest fees for policemen's pension or relief fund, and providing for the payment of retirement and other pensions to members of such departments and their dependents.

Be it enacted by the Legislature of West Virginia:

That sections fourteen, fourteen-a, twenty and twenty-one, article six, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 14. *Levy to Maintain Fund; Gifts, etc.; Assess-*
2 *ments on Members of Departments; Return of Assess-*
3 *ments.*—In every municipality there shall be a firemen's
4 pension or relief fund and a policemen's pension or relief
5 fund, which shall be maintained as follows: The council
6 or other governing body of each municipality shall levy
7 annually and in the manner provided by law for other
8 municipal levies, and include within the maximum levy
9 or levies permitted by law, and if necessary in excess of
10 any charter provision, a tax at such rate as will, after
11 crediting all interest, if any, to be received in such year
12 from the investments of the respective boards, provide
13 funds equal to the sum of (1) the full amount of estimated
14 expenditures of the boards of trustees of the respective
15 funds and (2) an additional amount equal to ten per cent
16 of such estimated expenditures, said ten per cent amount
17 to be taken, accumulated and invested, if possible, as sur-
18 plus reserve: *Provided, however,* That in no event shall
19 such levy for each of the respective boards of trustees be
20 less than one cent nor more than three and one-half cents
21 on each one hundred dollars of all real and personal

22 property as listed for taxation in such municipality: *Pro-*
23 *vided*, That in any city or municipality of eight thousand
24 three hundred population or less the laying of the levies
25 herein provided for shall be within the discretion of the
26 common council or other body of like power and duties
27 in such city or municipality.

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

36 Such corporations are authorized to take by gift, grant,
37 devise or bequest, any money or real or personal property,
38 upon such terms as to the investment and expenditure
39 thereof as may be fixed by the grantor or determined by
40 said trustees.

41 In addition to all other sums provided for pensions in
42 this section, it shall be the duty of every municipal corp-

43 oration to assess and collect from each member of such
44 fire department and police department each month, the
45 sum of four per cent of the actual salary or compensation
46 of such member; and the amount so collected shall become
47 a regular part of the firemen's pension fund, if collected
48 from a fireman, and of the policemen's pension fund, if
49 collected from a policeman.

50 Any member of a municipal fire or police department
51 who is released or who before retirement on any pension
52 severs his connection with said department, provided he
53 has served two full years or more, shall, upon request, be
54 refunded all deductions made from his salary, but without
55 interest. In event such refund is made and such member
56 subsequently reenters the department no credit shall be
57 allowed him for any former service, unless any such mem-
58 ber of a municipal fire or police department repays to the
59 pension fund all sums refunded to him within one year
60 from the date he reenters the department with interest at
61 the rate of six per cent per annum, and provided further
62 that any member who, at the time of this amendment be-
63 comes effective, has already reentered the department,

64 shall be allowed credit for any former service upon repay-
65 ing all sums withdrawn or refunded to him within one
66 year from the date this amendment becomes effective with
67 interest at the rate of six per cent per annum, but in no
68 case shall interest be charged for more than three years.

Sec. 14-a. *When Arrest Fee to Be Collected for Municipal*
2 *Police Pension or Relief Fund.*—In cases of the
3 conviction for violation of any municipal ordinance or
4 any state law of any person arrested by any member of
5 the police department of any municipality having a
6 policemen's pension or relief fund, or of the forfeiture of
7 bail not vacated after arrest for violation of any municipal
8 ordinance or any state law by any person so arrested,
9 whether the conviction or forfeiture be in the court of a
10 justice of the peace, or police court judge, or of the mayor
11 of a municipality, or of any other court of criminal juris-
12 diction, an arrest fee of one dollar shall be taxed as part
13 of the costs, in addition to other fees authorized by law,
14 and shall be collected from the person convicted or furn-
15 ishing bail, and such arrest fee shall be paid into the
16 policemen's pension or relief fund.

Sec. 20. *Payments upon Retirement without Disability*

2 *Payments for Retirement at Sixty-Five; Payments for*
3 *Permanent Disability; Credit for Military Service.*—Any
4 member of a municipal fire department or police depart-
5 ment who is entitled to benefits of said fund, and who has
6 been in the service of such department for twenty years,
7 and upon reaching the age of fifty years, may upon written
8 application to the board of trustees, be retired from all
9 service from such department without medical examina-
10 tion or disability; and on such retirement the board of
11 trustees shall authorize the payment of an annual pension,
12 payable in twelve monthly installments for each year of
13 the remainder of his life, in an amount equal to fifty per
14 cent of such member's average annual salary or compen-
15 sation received during the five fiscal years in which such
16 member received his highest compensation while a mem-
17 ber of the department, or an amount of one hundred fifty
18 dollars per month, whichever shall be greater; and any
19 member of such department who is entitled to benefits
20 of said fund and who has been in the service of such de-
21 partment for more than twenty years at the time of his

22 retirement, as herein provided, shall in addition to the
23 aforesaid pension authorized to be paid upon retirement
24 after twenty years of service and reaching the age of fifty
25 years, receive an additional sum per month during the re-
26 mainder of his life, equal to one per cent of such average
27 monthly salary for each year of the first five additional
28 years served with the department in excess of the said
29 twenty years.

30 *Provided*, That any member of such department who has
31 served in the armed services as defined hereinafter, shall
32 be eligible to retirement prior to reaching the age of fifty
33 years if he is otherwise eligible hereunder.

34 Any member of a municipal fire or police department,
35 upon reaching the age of sixty-five years shall be retired
36 in the manner herein provided: Each member of the fire
37 and police department shall, at the request of the board
38 of trustees, furnish said board of trustees with a birth cer-
39 tificate or other satisfactory proof of his date of birth, at
40 the time of his appointment to the fire or police depart-
41 ment. When a member of the fire or police department
42 shall have reached the age of sixty-five years, the said

43 board of trustees shall notify the mayor or other chief
44 executive officer of the municipal corporation, within
45 thirty days of such member's sixty-fifth birthday; and
46 the mayor or other chief executive officer shall cause such
47 sixty-five year old member of the fire or police depart-
48 ment to be retired within a period of not more than
49 thirty additional days. It shall be the duty of each mem-
50 ber of the fire or police department who are members at
51 the time this article becomes effective to furnish the said
52 necessary proof of his date of birth to the said board of
53 trustees within a reasonable length of time, said length
54 of time to be determined by the said board of trustees;
55 and then the board of trustees and the mayor or other
56 chief executive officer of the municipal corporation shall
57 proceed to act in the manner herein provided, and shall
58 cause all members of the fire or police department who are
59 over the age of sixty-five years to be retired in not less
60 than sixty days from the date this article becomes effec-
61 tive. The amount of pension such member shall receive
62 shall depend upon their length of service as herein pro-
63 vided. Such member need not have served twenty years

64 to be eligible to receive the pension hereinabove pre-
65 scribed.

66 The sum to be paid to each permanently disabled mem-
67 ber shall be equal to fifty per cent of the salary being
68 received by such member, at the time he is so disabled,
69 or an amount of one hundred fifty dollars per month,
70 whichever shall be greater: *Provided however*, That any
71 member who is permanently disabled, after having served
72 twenty years in such department, and, who has attained
73 the age of fifty years, shall be entitled to such sum as
74 shall equal fifty per cent of such members average salary
75 during the five fiscal years in which he received his high-
76 est compensation while a member of the department, and
77 also the additional sum per month equal to one per cent of
78 such average monthly salary for each year of the first five
79 years served in excess of said twenty years, or a total
80 amount of one hundred fifty dollars per month, which-
81 ever shall be greater.

82 Absence from the service because of sickness or injury
83 shall not be construed as time out of service.

84 Any member of such department who has served in the

85 armed services of the United States between September
86 fifteen, one thousand nine hundred forty, the date of the
87 selective service act, and September second, one thousand
88 nine hundred forty-five, the date of the official termina-
89 tion of the hostilities with Japan, and who has not been
90 dishonorably discharged from said service, shall be given
91 credit for continuous service in said fire or police depart-
92 ment if he was already a member of such department at
93 the time of his entrance into such armed service, and that
94 such member did not re-enlist in such armed services
95 after such official termination of hostilities and did pre-
96 sent himself to the mayor or other officer, board or person
97 having the power of original appointment to such fire or
98 police department within six months after his honorable
99 discharge from such armed service, and offer to resume
100 service as an active member of such fire or police depart-
101 ment, and was declared mentally and physically capable
102 of performing his entire duties as a member of the depart-
103 ment by the pension board doctors.

104 Any member of any fire or police department covered
105 by this article who has been required to or shall at any

106 future time be required to enter the armed forces of the
107 United States by a conscription, by reason of being a mem-
108 ber of some reserve unit of the armed forces, or a member
109 of the West Virginia national guard, or who enlists in one
110 of the armed services of the United States during hos-
111 tilities, and upon his receipt of an honorable discharge
112 from such armed forces presents himself for resumption
113 of duty to his appointing municipal official within six
114 months from date of discharge, and is accepted by the
115 pension board doctors as being mentally and physically
116 capable of performing his required duties as a member of
117 such fire or police department, shall be given credit for
118 continuous service in said fire or police department, and
119 his pension rights shall be governed as herein provided.

120 No member of the fire or police department shall be
121 required to pay the monthly assessment as now required
122 by law, during his period of service in the armed forces
123 of the United States.

124 Any member or former member of a fire or police de-
125 partment, who at the time this section takes effect is re-
126 ceiving any pension, payment or benefit from the fire-

127 men's or policemen's pension or relief funds, shall con-
128 tinue to receive a pension, payment or benefit, in the
129 amount of one hundred fifty dollars per month.

Sec. 21. *Payments in Case of Death.*—In case any such
2 municipal employee who has been in continuous service
3 for more than five years shall die while in service, leaving
4 surviving him a dependent wife, or any dependent minor
5 child or children, or dependent mother and/or father, or
6 any dependent brothers and/or sisters under the age of
7 eighteen years, or in case any such former municipal em-
8 ployee who is receiving or is entitled to receive a pension
9 under the provisions of this article, or on a disability
10 basis after he shall have been in continuous service for
11 more than five years, shall die, leaving surviving him a
12 dependent wife to whom he was married prior to the date
13 of his retirement, or any dependent minor child or chil-
14 dren who were born prior to or within ten months
15 after such retirement, or dependent mother and/or father,
16 or any dependent brothers and/or sisters under the age
17 of eighteen years, then, and in either of such cases the
18 board of trustees of such pension fund shall pay to or for

19 each of such entitled surviving dependents the following
20 pensions, viz: To such dependent widow, until death or
21 remarriage, a sum per month equal to twenty-five per
22 cent of the average monthly salary received by such mem-
23 ber during the five fiscal years in which such member
24 received his highest compensation, or the sum of seventy-
25 five dollars per month, whichever shall be greater; to
26 each such dependent child a sum per month equal to ten
27 per cent of the average monthly salary received by such
28 member during the five calendar years in which such
29 member received his highest compensation, or the sum
30 of thirty dollars per month for each such child, whichever
31 shall be greater, until such child shall attain the age of
32 eighteen years, or marry, whichever first occurs: *Pro-*
33 *vided, however,* That each surviving orphaned child shall
34 receive a sum of fifteen per cent of the average monthly
35 salary received by such member during the five fiscal years
36 in which such member received his highest compensation,
37 or the sum of forty-five dollars, whichever shall be greater,
38 until such child shall attain the age of eighteen years, or
39 marry, whichever occurs first; to each such dependent

40 mother or father the sum equal to ten per cent of the aver-
41 age monthly salary received by such member during the
42 five fiscal years in which such member received his highest
43 compensation, or the sum of thirty dollars, whichever is
44 greater; to each such dependent brother or sister the sum
45 of five dollars per month until such person shall attain
46 the age of eighteen years, or marry, whichever first occurs,
47 but in no event shall the aggregate amount paid to such
48 brothers and sisters exceed thirty dollars per month, but
49 if at any time, because of the number of dependents, all
50 such dependents cannot be paid in full as herein provided,
51 then each dependent shall receive his pro rata share of
52 such payments: *Provided, however,* That in no case shall
53 the payments to the widow and children be cut below
54 sixty per cent of the total amount to be paid all depend-
55 ents.

56 The dependent wife, child or children, or dependent
57 father or mother, brothers or sisters of any such municipal
58 employee who shall be killed in the performance of his
59 duties shall, regardless of the length of his service, receive
60 a pension as provided for in that portion of this section

61 fixing the amount to be paid to the dependents.

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

64 The dependent wife, child or children, or dependent
65 father or mother, brothers or sisters, or any such municipi-
66 pal employee or former municipal employee, who at the
67 time this section takes effect is receiving any pension,
68 payment or benefit from the firemen's or policemen's pen-
69 sion or relief fund, shall continue to receive a pension in
70 the following amounts: To a dependent widow, until death
71 or remarriage, the sum of seventy-five dollars per month;
72 to each dependent child the sum of thirty dollars per
73 month, until such child shall attain the age of eighteen
74 years, or marry, whichever first shall occur: *Provided,*
75 *however,* That each surviving orphaned child shall re-
76 ceive the sum of forty-five dollars per month, until such
77 child shall attain the age of eighteen years, or marry,
78 whichever first shall occur; to each dependent mother or
79 father the sum of thirty dollars per month; to each de-
80 pendent brother or sister the sum of five dollars per

81 month, until such person shall attain the age of eighteen
82 years, or marry, whichever first shall occur, but in no
83 event shall the aggregate amount paid to such brothers
84 and sisters exceed thirty dollars per month, but if at any
85 time, because of the number of dependents, all such de-
86 pendants cannot be paid in full as herein provided, then
87 each dependent shall receive his pro rata share of such
88 payments: *Provided, however,* That in no case shall the
89 payment to the widow and children be cut below sixty
90 per cent of the total amount to be paid to all dependents.

91 Any member of a fire or police department who becomes
92 eligible for retirement for any reason previously defined,
93 between the dates of July first, one thousand nine hundred
94 fifty-nine, and July first, one thousand nine hundred sixty-
95 two, shall receive a pension, payment or benefit in the
96 amount of one hundred fifty dollars per month. As of July
97 first, one thousand nine hundred sixty-two, said retired
98 member shall continue to receive the pension, payment or
99 benefit of one hundred fifty dollars per month or a month-
100 ly pension, payment or benefit based upon the percentages

101 heretofore described, whichever shall be greater: *Pro-*
102 *vided*, That any survivor of any member who becomes
103 eligible for pension or survivor benefits between the dates
104 of July first, one thousand nine hundred fifty-nine, and
105 July first, one thousand nine hundred sixty-two, shall re-
106 ceive the amounts as heretofore described, viz: to each
107 surviving widow, seventy-five dollars per month; each
108 surviving child thirty dollars per month; surviving orphan
109 child forty-five dollars per month; dependent father or
110 mother thirty dollars per month; dependent brothers or
111 sisters five dollars per month. As of July first, one thou-
112 sand nine hundred sixty-two, such survivor shall continue
113 to receive such monthly pension or benefits or a monthly
114 pension or benefit based upon the percentages as hereto-
115 fore described, whichever shall be greater.

116 The provisions of this section shall not be construed
117 as creating or establishing any contractual or vested
118 rights in favor of any person who may be or become quali-
119 fied as a beneficiary of the payments herein authorized to
120 be made, and all the provisions of this article and benefits

121 provided for hereunder being expressly subject to such
122 subsequent legislative enactments as may provide for any
123 change, modification or elimination of the beneficiaries or
124 benefits specified 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 House of Delegates.

Takes effect July 1, 1959. passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within approved this the 11th
day of March, 1959.


Governor

