

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1961

ENROLLED

SENATE BILL NO. 22

(By Mr. Carson, Mr. President)

PASSED March 11th 1961

In Effect July 1st, 1961

Passage



ENROLLED
Senate Bill No. 22
(By MR. CARSON, MR. PRESIDENT)

[Passed March 11, 1961; in effect July 1, 1961.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article designated article nine, relating to a contributing retirement system for persons in the employ of the state and affiliated political subdivisions of the state.

Be it enacted by the Legislature of West Virginia:

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

Article 9. West Virginia Public Employees Retirement Act.

Section 1. *Short Title.*—The short title by which this

2 article nine may be referred to is: West Virginia public
3 employees retirement act.

Sec. 2. *Definitions.*—The following words and phrases
2 as used in this article, unless a different meaning is clearly
3 indicated by the context, shall have the following mean-
4 ings:

5 (1) "State" means the state of West Virginia;

6 (2) "Retirement system" or "system" means the West
7 Virginia public employees retirement system created and
8 established by this article;

9 (3) "Board of ^{the} Trustees" or "^{the} Board" means the board
10 of trustees of the West Virginia public employees retire-
11 ment system;

12 (4) "Political subdivision" means the state of West
13 Virginia, a county, city or town in the state; a school cor-
14 poration or corporate unit; any separate corporation or
15 instrumentality established by one or more counties,
16 cities, or towns, as permitted by law; any corporation or
17 instrumentality supported in most part by counties, cities,
18 or towns; any public corporation charged by law with the
19 performance of a governmental function and whose juris-

20 diction is co-extensive with one or more counties, cities or
21 towns;

22 (5) "Participating public employer" means the state
23 of West Virginia, any board, commission, department, in-
24 stitution or spending unit; and any political subdivision
25 in the state which has elected to cover its employees, as
26 defined in this article, under the West Virginia public
27 employees retirement system.

28 (6) "Employee" means any person who serves regu-
29 larly as an officer or employee, full time, on a salary basis,
30 whose tenure is not restricted as to temporary or pro-
31 visional appointment, in the service of, and whose com-
32 pensation is payable in whole or in part by any political
33 subdivision, or an officer or employee whose compensation
34 is calculated on a daily basis and paid monthly or on com-
35 pletion of assignment, including technicians and other
36 personnel employed by the West Virginia national guard
37 whose compensation in whole or in part is paid by the
38 federal government: *Provided*, That members of the state
39 legislature and members of the legislative body of any
40 other political subdivision shall be considered to be em-

41 ployees, anything contained herein to the contrary not-
42 withstanding. In any case of doubt as to who is an em-
43 ployee within the meaning of this article the board of
44 trustees shall decide the question;

45 (7) "Member" means any person who is included in
46 the membership of the retirement system;

47 (8) "Retirant" means any member who retires with an
48 annuity payable by the retirement system;

49 (9) "Beneficiary" means any person, except a retirant,
50 who is entitled to, or will be entitled to, an annuity or
51 other benefit payable by the retirement system;

52 (10) "Service" means personal service rendered to a
53 participating public employer by an employee, as defined
54 in this article, of a participating public employer;

55 (11) "Prior service" means service rendered prior to
56 July one, one thousand nine hundred sixty-one, to the
57 extent credited a member as provided in this article;

58 (12) "Contributing service" means service rendered
59 by a member from and after the date of his entrance in
60 the retirement system, to the extent credited him as pro-
61 vided in this article;

62 (13) "Credited service" means the sum of a member's
63 prior service credit and contributing service credit stand-
64 ing to his credit as provided in this article;

65 (14) "Compensation" means the remuneration paid a
66 member by a participating public employer for personal
67 services rendered by him to the participating public em-
68 ployer. In the event a member's remuneration is not all
69 paid in money his participating public employer shall fix
70 the value of the portion of his remuneration which is not
71 paid in money;

72 (15) "Final average salary" means the average of the
73 highest annual compensations received by a member dur-
74 ing any period of five consecutive years of his credited
75 service contained within his ten years of credited service
76 immediately preceding the date his employment with a
77 participating public employer last terminated. If he has
78 less than five years of credited service his final average
79 salary shall be the average of the annual rate of compensa-
80 tions received by him during his total years of credited
81 service;

82 (16) "Accumulated contributions" means the sum of

83 all amounts deducted from the compensations of a mem-
84 ber and credited to his individual account in the members
85 deposit fund, together with regular interest thereon;

86 (17) "Regular interest" means such rate or rates of
87 interest per annum, compounded annually, as the board
88 of trustees shall from time to time adopt;

89 (18) "Annuity" means an annual amount payable by
90 the retirement system throughout the life of a person.
91 All annuities shall be paid in equal monthly installments,
92 using the upper cent for any fraction of a cent;

93 (19) "Annuity reserve" means the present value com-
94 puted upon the basis of such mortality and other tables
95 of experience, and regular interest, as the board of trus-
96 tees shall from time to time adopt;

97 (20) "Retirement" means a member's withdrawal from
98 the employ of a participating public employer with an
99 annuity payable by the retirement system;

100 (21) "Actuarial equivalent" means a benefit of equal
101 value computed upon the basis of such mortality table and
102 regular interest as the board of trustees shall from time
103 to time adopt;

104 (22) The masculine gender shall include the feminine
105 gender, and words of the singular number with respect to
106 persons shall include the plural number, and vice-versa.

Sec. 3. Retirement System Created and Established;

2 *Effective Date.*—The West Virginia public employees re-
3 tirement system is hereby created and established to
4 provide for the orderly retirements of employees, of the
5 state and the other participating public employers, who
6 become superannuated because of age or total and perm-
7 anent disability, and to provide certain survivor benefits.
8 The retirement system shall constitute a body corporate.
9 All business of the system shall be transacted in the name
10 of West Virginia public employees retirement system.

Sec. 3-a. Retirement Plan Not a Substitute for Federal

2 *Social Security.*—The provisions of this article shall be
3 liberally construed so as to provide a general retirement
4 system for the employees of the state herein made eligible
5 for such retirement: *Provided, however, That nothing*
6 *in this article shall be construed as permitting any gov-*
7 *ernmental unit, its officers or employees, to substitute*

8 the retirement plan herein authorized for federal social
9 security, now in force in West Virginia.

10 The purpose of this act is to provide a state pension
11 plan which supplements the federal social security pen-
12 sion plan now in force and heretofore authorized by law
13 for all officers and employees of the state.

Sec. 4. *Effective Date of System.*—The effective date of
2 the West Virginia public employees retirement system
3 shall be July one, one thousand nine hundred sixty-one:
4 *Provided, however,* That for any participating public
5 employer which cannot make its contribution as provided
6 by this act from its one thousand nine hundred sixty-one
7 --one thousand nine hundred sixty-two current funds, the
8 effective date as to such participating public employer
9 shall be July one, one thousand nine hundred sixty-two.

Sec. 5. *Board of Trustees.*—The board of trustees of the
2 West Virginia public employees retirement system is
3 hereby created. The administration and management of
4 the retirement system, the responsibility for making ef-
5 fective the provisions of this article, and the authority to
6 make all rules and regulations therefor, are hereby vested

7 in the said board of trustees, except as is otherwise spe-
8 cifically provided in this article. The board shall consist
9 of five trustees, as follows:

- 10 (a) The auditor of the state, by virtue of his office;
11 (b) The commissioner of finance and administration, by
12 virtue of his office;
13 (c) A resident of the state, who is not a member, re-
14 tirant, or beneficiary of the retirement system, to be ap-
15 pointed by the governor with confirmation by the senate;
16 (d) Two members of the retirement system to be ap-
17 pointed by the governor.

Sec. 6. *Trustees' Terms of Office.*—The first terms of
2 office for the trustees provided for in section five (c) and
3 (d) hereof shall expire June thirty, one thousand nine
4 hundred sixty-five, June thirty, one thousand nine hun-
5 dred sixty-four, and June thirty, one thousand nine hun-
6 dred sixty-three, respectively, as the governor shall des-
7 ignate at the time of the appointments. Thereafter, the
8 terms of office for the said trustees shall be five years.
9 Each trustee shall serve as trustee until his successor is
10 appointed and has qualified. In order to make the pre-

11 liminary arrangements for the operation of the retirement
12 system as of its effective date, the governor shall make
13 the appointments provided for in section five hereof as
14 soon as practicable after the passage of this act.

Sec. 7. *Vacancy on Board; How Filled.*—In the event
2 any trustee, provided for in section five (c) and (d) here-
3 of, leaves the employ of a participating public employer,
4 or fails to attend three consecutive meetings of the board
5 of trustees, unless in each case excused for cause by the
6 remaining trustees attending such meeting or meetings,
7 he shall be considered to have resigned from the board
8 and the board shall, by resolution, declare his office of
9 trustee vacated. If a vacancy occurs in the office of such
10 trustee, the governor shall, within thirty days from and
11 after the date of the vacancy, fill the vacancy, by appoint-
12 ment, for the unexpired term.

Sec. 8. *Trustees' Compensation.*—The trustees shall
2 serve as trustees without compensation for their services
3 as such: *Provided, That* each trustee shall be reimbursed,
4 upon approval of the board of trustees, for any necessary
5 expenses incurred by him in carrying out his duties of

6 trustee. No trustee shall suffer any loss of salary or wages
7 on account of his service as trustee.

Sec. 9. *Chairman; Executive Secretary; Treasurer; Legal*
2 *Advisor; Actuary.*—(a) The board of trustees shall
3 elect from its own number a chairman and a vice-chair-
4 man.

5 (b) The board of trustees shall appoint an executive
6 secretary of the retirement system. The executive secre-
7 tary shall be the chief administrative officer of the system;
8 and he shall not be a member of the board. He shall per-
9 form such duties as are required of him in this article and
10 as the board shall from time to time delegate to him. The
11 compensation of the executive secretary shall be fixed by
12 the board subject to the approval of the board of public
13 works. He shall, with the approval of the board of trus-
14 tees, employ such administrative, technical, and clerical
15 employees as shall be required in the proper operation of
16 the system.

17 (c) The state treasurer shall be treasurer of the retire-
18 ment system and the custodian of its funds. All bonds
19 and other investments purchased according to the pro-

20 visions of this article shall forthwith be deposited with
21 the state treasurer. It shall be his duty to collect the prin-
22 cipal thereof and the interest and dividends thereon as
23 the same become due and payable, and when so collected
24 deposit same to the credit of the retirement system. All
25 disbursements from the funds of the system shall be made
26 by the state treasurer only upon written certification duly
27 authorized by a continuing or specific resolution adopted
28 by the board of trustees. He shall furnish the board with a
29 statement of the retirement system securities in his safe-
30 keeping as the board shall from time to time request.

31 (d) The attorney general shall be the legal advisor to
32 the board of trustees.

33 (e) The board of trustees shall appoint an actuary who
34 shall be the technical advisor to the board regarding the
35 operation of the retirement system on an actuarial basis.

Sec. 10. *Board Meetings; Quorum; Vote; Proceedings.*—

2 The board of trustees shall hold a meeting at least once
3 each three months, and shall designate the time and place
4 thereof. Three trustees shall constitute a quorum at any
5 meeting of the board. Each trustee shall be entitled to one

6 vote on each question before the board and at least three
7 concurring votes shall be required for a decision by the
8 board at any of its meetings. The board shall adopt its
9 own rules of procedure and shall keep a record of its pro-
10 ceedings. All meetings of the board shall be public.

Sec. 11. *Reports Required of Board.*—The board of
2 trustees shall submit to the governor for transmittal to
3 the legislature, on or before the first day of December in
4 each year, a report showing the fiscal affairs and transac-
5 tions of the retirement system for the preceding fiscal
6 year. The said report shall contain, but shall not be lim-
7 ited to, a financial balance sheet, a statement of income
8 and disbursements, an actuarial balance sheet prepared
9 by means of the last actuarial valuation of the system, a
10 detailed statement of investments acquired and disposed
11 of during the said fiscal year, and such other data as shall
12 be deemed necessary for a proper understanding of the
13 condition of the system. The board shall annually furnish
14 the members and the participating public employers with
15 a summary of the results of the operations of the system.

Sec. 12. *Officer and Employee Bonds.*—The state treas-

2 urer shall give a separate and additional bond in such
3 amount as shall from time to time be fixed by the board
4 of trustees. The said bond shall be approved by the at-
5 torney general and shall be conditioned for the faithful
6 performance of his duties as custodian of the moneys, se-
7 curities and other investments of the retirement system.
8 The executive secretary, and the employees of the system
9 designated by the board, shall furnish bonds in such form,
10 and in such amounts, as the board shall from time to time
11 determine. The costs of such bonds shall be paid from the
12 expense fund and such bonds shall be filed in the same
13 office as are the bonds of state officers.

Sec. 13. *Actuarial Investigations; Valuations.*—(a) The
2 board of trustees shall keep, or cause to be kept, such
3 data as shall be necessary for the preparation of mortality,
4 service, and retirement tables, and for the compilation
5 of such other data as shall be required for an actuarial
6 valuation of the assets and liabilities of the retirement
7 system.

8 (b) Beginning in one thousand nine hundred sixty-
9 six, and in each five-year period thereafter, the actuary

10 shall make actuarial investigations into the experiences
11 of the members, retirants and beneficiaries of the retire-
12 ment system. Based upon such investigations the board of
13 trustees shall adopt for the system rates of mortality, with-
14 drawal from service, superannuation retirement and dis-
15 ability retirement, and salary scales for final average
16 salary.

17 (c) Beginning in one thousand nine hundred sixty-
18 two, and at least once in each three-year period thereafter,
19 the actuary shall make an actuarial valuation of the assets
20 and liabilities of the retirement system: *Provided, That*
21 until the first actuarial investigations are made, the valua-
22 tions shall be based upon decrement assumptions which
23 are, in the opinion of the actuary, applicable to the mem-
24 bers, retirants and beneficiaries of the system.

25 (d) Beginning in one thousand nine hundred sixty-
26 two, the actuary shall annually compute the annuity re-
27 serve liabilities for annuities being paid retirants and
28 beneficiaries.

29 Sec. 14. *Service Credit.*—The board of trustees shall
30 credit each member with the prior service and contri-

3 buting service to which he is entitled based upon such
4 rules and regulations as the board of trustees shall from
5 time to time adopt: *Provided*, That in no case shall less
6 than ten days of service rendered by a member in any
7 calendar month be credited as a month of service; nor
8 shall less than ten months of service rendered in any
9 calendar year be credited as a year of service; nor shall
10 more than one year of service be credited any member for
11 all service rendered by him in any calendar year; nor shall
12 any member who was not in the employ of a political
13 subdivision within a period of five years immediately
14 preceding the date the political subdivision became a par-
15 ticipating public employer be credited with prior service.

Sec. 15. *Military Service Credit*.—In the event a mem-
2 ber, who while employed by a participating public em-
3 ployer, entered or enters the armed forces of the United
4 States during any period of compulsory military service
5 and reenters the employ of a participating public em-
6 ployer, such armed service rendered by him, not to exceed
7 five years, shall be credited to him: *Provided*, That (1)
8 his reemployment by a participating public employer

9 occurs within a period of six months from and after the
10 date of termination of such armed service actually re-
11 quired of him, and (2) he pays to the members deposit
12 fund the amount he may have withdrawn therefrom, to-
13 gether with regular interest from the date of withdrawal
14 to the date of repayment. In any case of doubt as to the
15 period of service to be so credited a member, the board
16 of trustees shall have final power to determine such
17 period. During the period of such armed service and
18 until his return to the employ of a participating public
19 employer his contributions to the retirement system shall
20 be suspended and any balance remaining to his credit in
21 the members deposit fund shall be accumulated at regular
22 interest.

Sec. 16. Political Subdivision Becomes Participating

2 *Public Employer.*—The state of West Virginia shall be-
3 come a participating public employer effective July one,
4 one thousand nine hundred sixty-one. Any other political
5 subdivision may by a three-fifths vote of its governing
6 body, or by a majority vote of its electors, elect to become
7 a participating public employer and thereby include its

8 employees in the membership of the retirement system.
9 It shall be the duty of the clerk or secretary of each such
10 political subdivision electing to become a participating
11 public employer to certify the determination of the politi-
12 cal subdivision to the board of trustees within ten days
13 from and after the vote of the governing body or the
14 canvass of votes upon such action.

Sec. 17. *Retirement System Membership.*—The mem-
2 bership of the retirement system shall consist of **the fol-**
3 lowing persons:

4 (a) All employees, as defined in section two hereof,
5 who are in the employ of a political subdivision the day
6 preceding the date it becomes a participating public em-
7 ployer and who continue in the employ of the said par-
8 ticipating public employer on or after the said date shall
9 become members of the retirement system; and all per-
10 sons who become employees of a participating public
11 employer on or after the said date shall thereupon become
12 members of the system; except as provided in paragraphs
13 (b) and (c) of this section.

14 (b) The membership of the retirement system shall

15 not include any person who is a member of, or who has
16 been retired by, the state teachers' retirement system, the
17 judges' retirement system, the retirement system of the
18 department of public safety, or any municipal retirement
19 system for either, or both, policemen or firemen, and the
20 West Virginia department of employment security, by
21 the director of such department, may elect whether its
22 employees will accept coverage under this article or be
23 covered under authorization of a separate enactment: *Pro-*
24 *vided*, That such exclusions of membership shall not apply
25 to any member of the state legislature, or to any member
26 of the legislative body of any other political subdivision.

27 (c) Any member of the state legislature, or any mem-
28 ber of the legislative body of any other political sub-
29 division may exempt himself from membership in the
30 retirement system by filing his written notice with the
31 board of trustees of his desire to be so exempted: *Pro-*
32 *vided*, That such written notice shall be filed prior to July
33 one, one thousand nine hundred sixty-two, if he was a
34 member of such legislative body June thirty, one thou-
35 sand nine hundred sixty-one; or prior to the expiration of

36 a period of one year from and after the date he assumes
37 such legislative office, if he was not a member of such
38 legislative body June thirty, one thousand nine hundred
39 sixty-one.

40 (d) Should any question arise regarding the member-
41 ship status of any employee, the board of trustees has the
42 final power to decide the question.

Sec. 18. *Termination of Membership.*—In the event a
2 member leaves the employ of a participating public em-
3 ployer, except to become a retirant or his death, he shall
4 thereupon cease to be a member and his credited service
5 at that time shall be forfeited by him. If he becomes re-
6 employed by a participating public employer he shall
7 again become a member of the retirement system. Should
8 his said reemployment occur within a period of five years
9 from and after the date he last left the employ of a par-
10 ticipating public employer his credited service last for-
11 feited by him shall be restored to his credit: *Provided,*
12 That he returns to the members deposit fund the amount,
13 if any, he withdrew therefrom, together with regular in-
14 terest thereon from the date of withdrawal to the date of

15 repayment. Upon a member's retirement or death he shall
16 thereupon cease to be a member.

Sec. 19. *Membership Forms.*—Each participating public
2 employer shall file with the board of trustees, in such
3 form as the board shall from time to time prescribe, a
4 detailed statement of all service rendered to participating
5 public employers by each of its employees, and such other
6 information as the board shall require in the operation of
7 the retirement system.

Sec. 20. *Voluntary Retirement.*—Any member who has
2 attained or attains age sixty years and has ten or more
3 years of credited service in force may retire upon his
4 written application filed with the board of trustees setting
5 forth at what time, not less than thirty days nor more
6 than ninety days subsequent to the execution and filing
7 thereof he desires to be retired. Upon his retirement he
8 shall receive an annuity provided for in section twenty-
9 two hereof.

Sec. 21. *Deferred Retirement.*—If any member, who has
2 twenty or more years of credited service in force, of which
3 at least five years are contributing service, leave the em-

4 ploy of a participating public employer prior to his attain-
5 ment of age sixty years, for any reason except his dis-
6 ability retirement or death, he shall be entitled to an
7 annuity computed according to section twenty-two hereof,
8 as the said section was in force as of the date of his said
9 separation from the employ of a participating public em-
10 ployer: *Provided*, That he does not withdraw his accumu-
11 lated contributions from the members deposit fund. His
12 said annuity shall begin the first day of the calendar
13 month next following the month in which his application
14 for same is filed with the board of trustees on or after his
15 attainment of age sixty-five years.

Sec. 22. *Retirement Annuity*.—Upon a member's retire-
2 ment, as provided in this article, he shall receive a straight
3 life annuity equal to one per cent of his final average
4 salary multiplied by the number of years, and fraction of
5 a year, of his credited service in force at the time of his
6 retirement. Upon his retirement he shall have the right
7 to elect an option provided for in section twenty-four
8 hereof:

Sec. 23. *Terminal Payment*.—In the event a retirant

2 dies before he has received in straight life annuity pay-
3 ments an aggregate amount equal to his accumulated con-
4 tributions standing to his credit in the members deposit
5 fund at the time of his retirement, the difference between
6 his said accumulated contributions and the said aggregate
7 amount of straight life annuity payments received by him
8 shall be paid to such person or persons as he shall have
9 nominated by written designation duly executed and filed
10 with the board of trustees. If there be no such designated
11 person or persons surviving the said retirant such differ-
12 ence, if any, shall be paid to his estate. In no case shall any
13 benefits be paid under this section twenty-three on ac-
14 count of the death of a retirant if he was receiving an
15 annuity under option A or B provided for in section
16 twenty-four hereof.

Sec. 24. *Annuity Options.*—Prior to the effective date
2 of his retirement, but not thereafter, a member may elect
3 to receive his annuity as a straight life annuity payable
4 throughout his life, or he may elect to receive the ac-
5 tuarial equivalent, at that time, of his straight life an-
6 nuity in a reduced annuity payable throughout his life,

7 and nominate a beneficiary, in accordance with option A
8 or B set forth below:

9 Option A—*Joint and Survivor Annuity*.—Upon the
10 death of a retirant, who elected option A, his reduced an-
11 nuity shall be continued throughout the life of and paid
12 to such person, having an insurable interest in his life, as
13 he shall have nominated by written designation duly exe-
14 cuted and filed with the board of trustees prior to the
15 effective date of his retirement; or

16 Option B—*Modified Joint and Survivor Annuity*.—Upon
17 the death of a retirant who elected option B, one-half of
18 his reduced annuity shall be continued throughout the life
19 of and paid to such person, having an insurable interest in
20 his life, as he shall have nominated by written designation
21 duly executed and filed with the board of trustees prior
22 to the effective date of his retirement.

Sec. 25. *Disability Retirement*.—Upon the application
2 of a member, or his employing authority, a member who
3 (1) is in the employ of a participating public employer,
4 (2) has ten or more years of credited service, and (3) be-
5 comes totally and permanently incapacitated for duty in

6 the employ of a participating public employer, by reason
7 of a personal injury or disease, may be retired by the
8 board of trustees: *Provided*, That after a medical exami-
9 nation of the said member, made by or under the direction
10 of a medical committee consisting of three physicians, one
11 of whom shall be named by the board, one by the said
12 member, and the third by the first two physicians so
13 named, the said medical committee reports, in writing, to
14 the board that (1) the said member is physically or men-
15 tally totally incapacitated for duty in the employ of a
16 participating public employer, (2) that such incapacity
17 will probably be permanent, and (3) that the said mem-
18 ber should be retired.

19 (b) A member with less than ten years of credited
20 service shall have the service requirement provided for in
21 paragraph (a) above waived in the event (1) the board
22 of trustees finds his total and permanent disability to be
23 the natural and proximate result of a personal injury or
24 disease arising out of and in the course of his actual per-
25 formance of duty in the employ of a participating public
26 employer, and (2) he is in receipt of workmen's compen-

27 sation on account of such physical or mental disability.

28 (c) Upon a member's retirement, as provided in this

29 section, he shall receive a straight life annuity computed

30 according to section twenty-two hereof and he shall have

31 the right to elect an option provided for in section twenty-

32 four hereof: *Provided*, That his straight life annuity pay-

33 able to his attainment of age sixty-five years shall not be

34 less than twenty-five per cent of his final average salary;

35 and his said straight life annuity payable from and after

36 his attainment of age sixty-five years shall not be less

37 than ten per cent of his final average salary: *Provided*

38 *further*, That his said annuity shall be subject to section

39 twenty-six hereof.

Sec. 26. *Reexamination of Disability Retirants.*—(a)

2 At least once each year during the first five years follow-

3 ing the retirement of a member on account of disability,

4 as provided in section ten hereof, and at least once in each

5 three-year period thereafter, the board of trustees may,

6 and upon the retirant's application shall, require a dis-

7 ability retirant, who has not attained age sixty years, to

8 undergo a medical examination to be made by or under

9 the direction of a physician designated by the board.
10 Should the said retirant refuse to submit to such medical
11 examination in any such period his disability annuity
12 may be discontinued by the board until his withdrawal
13 of such refusal. Should such refusal continue for one year
14 all his rights in and to his annuity may be revoked by the
15 board. If upon such medical examination of a disability
16 retirant, the said physician reports to the board that the
17 retirant is physically able and capable of resuming em-
18 ployment with a participating public employer he shall
19 be returned to the employ of the participating public em-
20 ployer from whose employment he retired and his dis-
21 ability annuity shall terminate: *Provided*, That the report
22 of the said physician is concurred in by the board.

23 (b) A disability retirant who is returned to the employ
24 of a participating public employer shall again become a
25 member of the retirement system and his credited service
26 in force at the time of his retirement shall be restored to
27 his credit.

28 (c) If a disability retirant, who has not attained age
29 sixty years, becomes engaged in a gainful occupation,

30 business or employment, and the sum of his earnings
31 from such occupation, business or employment, and his
32 disability annuity exceeds his annual rate of compensa-
33 tion at the time of his retirement, his disability annuity
34 shall be reduced to an amount which when added to the
35 amount so earned by him shall equal his said annual rate
36 of compensation. If his earnings are later changed his
37 disability annuity shall be correspondingly adjusted.

Sec. 27. *Non-duty Death Annuities.*—(a) Any member
2 who continues in the employ of a participating public
3 employer on or after the date he either (1) acquires twen-
4 ty-five years of credited service, or (2) attains age sixty
5 years and has ten or more years of credited service, may
6 at any time prior to the effective date of his retirement,
7 by written declaration duly executed and filed with the
8 board of trustees, in the same manner as if he were then
9 retiring from the employ of a participating public em-
10 ployer, elect option A provided for in section twenty-four
11 hereof, and nominate a beneficiary whom the board finds
12 to have been dependent upon the said member for at least
13 fifty per cent of his financial support. Prior to the effective

14 date of his retirement a member may revoke his said
15 election of option A and nomination of beneficiary and he
16 may again prior to his retirement elect the said option A
17 and nominate a beneficiary as provided in this subsection.
18 Upon the death of a member who has an option A elec-
19 tion in force his beneficiary, if living, shall immediately
20 receive an annuity computed in the same manner in all
21 respects as if the said member had retired the day pre-
22 ceding the date of his death, notwithstanding that he
23 might not have attained age sixty years, and elected the
24 said option A. If at the time of his retirement a member
25 has an option A election in force, his said election of option
26 A and nomination of beneficiary shall thereafter con-
27 tinue in force.

28 (b) Any member who continues in the employ of a
29 participating public employer on or after the date he
30 either acquires twenty-five years of credited service, or
31 attains age sixty years and has ten or more years of cred-
32 ited service, and does not have an option A election in
33 force as provided in subsection (a) of this section, and (1)
34 dies while in the employ of a participating public em-

35 ployer, and (2) leaves a widow, or, in the case of a female
36 member, leaves a widower whom the board of trustees
37 finds to be totally and permanently disabled and to have
38 been dependent upon the said female member for at least
39 fifty per cent of his financial support, the said widow or
40 widower, as the case may be, shall immediately receive
41 an annuity computed in the same manner in all respects
42 as if the said member had (1) retired the day preceding
43 the date of his death, notwithstanding that he might not
44 have attained age sixty years, (2) elected option A pro-
45 vided for in section twenty-four hereof, and (3) nominated
46 his said widow or widower, as the case may be, as bene-
47 ficiary.

Sec. 28. *Funds of Retirement System.*—For financing
2 and accounting purposes the West Virginia public em-
3 ployees retirement system shall consist of two divisions,
4 namely, the state division for the participation of state
5 employees, and the public employer division for the par-
6 ticipation of the public employees who are not state em-
7 ployees. Separate accounting of the retirement system
8 transactions shall be maintained for each division showing

9 the equities of each division in the assets of the system.
10 The retirement system funds shall be (1) the members
11 deposit fund, (2) the employers accumulation fund, (3)
12 the retirement reserve fund, (4) the income fund, and
13 (5) the expense fund. Each such fund shall be main-
14 tained by the board of trustees for the state division and
15 the public employer division, respectively. Nothing con-
16 tained in this section shall be interpreted to mean that
17 the assets of the system are to be segregated between the
18 division or the funds.

Sec. 29. *Members Deposit Fund.*—(a) The members de-
2 posit fund is hereby created. It shall be the fund in which
3 shall be accumulated, at regular interest, the contribu-
4 tions deducted from the compensations of members, and
5 from which refunds of accumulated contributions shall
6 be paid and transfers made as provided in this section.
7 (b) The contributions of a member to the retirement
8 system shall be three and five-tenths per cent of his an-
9 nual compensations. The said contributions shall be made
10 notwithstanding that the minimum salary or wages pro-
11 vided by law for any member shall be thereby changed.

12 Each member shall be deemed to consent and agree to the
13 deductions made and provided for herein. Payment of a
14 member's compensation less said deductions shall be a
15 full and complete discharge and acquittance of all claims
16 and demands whatsoever for services rendered by him to
17 a participating public employer, except as to benefits pro-
18 vided by this article.

19 (c) The officer or officers responsible for making up the
20 payrolls for payroll unit of the state government and for
21 each of the other participating public employers shall
22 cause the contributions, provided for in paragraph (b)
23 above, to be deducted from the compensations of each
24 member in the employ of the participating public em-
25 ployer, on each and every payroll, for each and every pay-
26 roll period, from the date the member enters the retire-
27 ment system to the date his membership terminates.
28 When deducted, each of said amounts shall be paid by the
29 participating public employer to the retirement system;
30 said payments to be made in such manner and form, and
31 in such frequency, and shall be accompanied by such sup-
32 porting data, as the board of trustees shall from time to

OK JH
(by FE)

S |

33 time prescribe. When paid to the retirement system each
34 of said amounts shall be credited to the members deposit
35 fund account of the member from whose compensations
36 said contributions were deducted.

37 (d) In addition to the contributions deducted from the
38 compensations of a member, as heretofore provided, a
39 member shall deposit in the members deposit fund, by a
40 single contribution or by an increased rate of contribution
41 as approved by the board of trustees, the amounts he may
42 have withdrawn therefrom and not repaid thereto, to-
43 gether with regular interest from the date of withdrawal
44 to the date of repayment. In no case shall a member be
45 given credit for service rendered prior to the date he
46 withdrew his contributions or accumulated contributions,
47 as the case may be, until he returns to the members de-
48 posit fund all amounts due the said fund by him.

49 (e) Upon the retirement of a member, or if a survivor
50 annuity becomes payable on account of his death, in
51 either event his accumulated contributions standing to
52 his credit in the members deposit fund shall be trans-
53 ferred to the retirement reserve fund.

54 (f) In the event an employee's membership in the re-
55 tirement system terminates and no annuity becomes or
56 will become payable on his account, any accumulated con-
57 tributions standing to his credit in the members deposit
58 fund, unclaimed by the said employee, or his legal repre-
59 sentative, within three years from and after the date his
60 membership terminated, shall be transferred to the in-
61 come fund.

Sec. 30. *Refund of Accumulated Contributions.*—(a) In
2 the event a member leaves the employ of a participating
3 public employer prior to the date he becomes entitled to
4 retire with an annuity payable by the retirement system
5 he shall be paid, upon his written application filed with
6 the board of trustees, his accumulated contributions
7 standing to his credit in the members deposit fund, if his
8 separation from the employ of a participating public em-
9 ployer occurs within a period of five years from and after
10 the date he last became a member of the system. If his
11 said separation from the employ of a participating public
12 employer occurs within a period of five years from and
13 after the date he last became a member of the system, he

14 shall be paid his accumulated contributions standing to
15 his credit in the members deposit fund less the total in-
16 terest credited to his individual account therein; and the
17 said total interest credit shall be transferred to the income
18 fund.

19 (b) In the event a member dies and does not leave a
20 beneficiary entitled to an annuity payable by the retire-
21 ment system, his accumulated contributions standing to
22 his credit in the members deposit fund at the time of his
23 death shall be paid to such person or persons as he shall
24 have nominated by written designation duly executed
25 and filed with the board of trustees. If there be no such
26 designated person or persons surviving the said member,
27 his said accumulated contributions shall be paid to his
28 estate.

29 (c) Refunds of a member's contributions or accumu-
30 lated contributions, as the case may be, may be made in
31 equal installments according to such rules and regula-
32 tions as the board of trustees may from time to time
33 adopt.

Sec. 31. *Employers Accumulation Fund.*—The employ-

2 ers accumulation fund is hereby created. It shall be the
3 fund in which shall be accumulated the contributions
4 made by the participating public employers to the re-
5 tirement system, and from which transfers shall be made
6 as provided in this section.

7 (b) Based upon the provisions of section thirteen of
8 this article, the participating public employers' contribu-
9 tions to the retirement system shall be determined, ac-
10 cording to paragraphs (1), (2), (3) and (4) below, for
11 the state as the state division, and for the other partici-
12 pating public employers as the public employer division.

13 (1) The participating public employers' contributions
14 for members' current service shall be a per cent of the
15 members' annual compensation which will equal an
16 amount which if paid annually by the participating public
17 employers during the members' future service will be
18 sufficient to provide, at the time annuities will become
19 payable on their account, the difference between the an-
20 nuity reserves for the future service portions of the an-
21 nuities to be paid and the present value of the members'
22 future net contributions.

23 (2) The participating public employers' contributions
24 for members' accrued service shall be a per cent of the
25 members' annual compensation which will equal an
26 amount which if paid annually by the participating public
27 employers over a period of years, to be determined by the
28 board of trustees, will amortize, at regular interest, the
29 unfunded annuity reserves for the accrued portions of
30 the annuities to be paid on account of members.

31 (3) The participating public employers' contributions
32 for annuities being paid retirants and beneficiaries shall
33 be a per cent of the members' annual compensations which
34 will equal an amount which if paid annually by the par-
35 ticipating public employers over a period of years, to be
36 determined by the board of trustees, will amortize, at
37 regular interest the unfunded annuity reserves for annu-
38 ities being paid retirants and beneficiaries.

39 (4) In no year shall the total of the contributions, pro-
40 vided for in paragraphs (1), (2) and (3) above, to be paid
41 by any participating public employer exceed five per cent
42 of the total payroll for the members in the employ of such

43 participating public employer for the preceding fiscal
44 year.

Sec. 32. *State Contributions to Retirement System.*—

2 (a) At least thirty days prior to each regular session of
3 the legislature, the board of trustees shall certify to the
4 governor the contributions, determined according to sec-
5 tion thirty-one hereof, to be made by the state to the re-
6 tirement system for the next following fiscal year; the
7 said contributions to be based upon the state's total pay-
8 roll for the preceding twelve calendar months. The
9 amounts so ascertained shall be included in the appropri-
10 ation bill to be submitted to the legislature. In the event
11 the state's contributions for the fiscal year are less than
12 they would have been based upon the state's actual pay-
13 roll for the fiscal year, the amount of the insufficiency
14 shall be included in the appropriation bill for the next
15 following fiscal year. The said contributions shall be paid
16 to the retirement system quarterly and when paid shall
17 be credited to the employers accumulation fund.

18 (b) In the case of any member whose compensation is
19 paid out of moneys derived in whole or in part out of any

20 special fund, or from any source other than the state, then
21 contributions on behalf of such member in any year shall
22 be paid out of such special fund or by such other source
23 in proportion to that part of the member's compensation
24 derived therefrom for that year. The governing body of
25 each participating public employer is hereby authorized
26 to make such contributions from funds of the partici-
27 pating public employer as shall be necessary to pay its
28 proportionate share of contributions on account of each
29 state employee whose compensation is paid by such par-
30 ticipating public employer.

Sec. 33. *Contributions by Other Participating Public*
2 *Employers.*—(a) The board of trustees shall annually
3 certify to each participating public employer, other than
4 the state, the employer contribution rate, determined in
5 section thirty-one hereof, for the public employer division.
6 Each participating public employer shall pay to the state
7 treasurer, for credit to the retirement system, the contri-
8 butions equal to the said contribution rate applied to each
9 and every payroll of the participating public employer.
10 The said payments shall be made in such manner and

11 form, and in such frequency, and shall be accompanied by
12 such supporting data, as the board shall from time to time
13 prescribe. When paid, the said contributions shall be cred-
14 ited to the employers accumulation fund.

15 (b) If any participating public employer, other than
16 the state, fails to make any payment due the retirement
17 system for a period of sixty days after the payment is
18 due, the participating public employer shall become de-
19 linquent, and such delinquency shall be certified to the
20 state auditor by the board of trustees. If any participating
21 public employer becomes delinquent, as provided herein,
22 the state auditor is authorized and directed to withhold
23 any money due such participating public employer by
24 the state until such delinquency, together with regular
25 interest thereon, from the date due, is satisfied. Such
26 money so withheld by the state auditor shall be paid to
27 the retirement system and credited to the employers ac-
28 cumulation fund.

Sec. 34. *Transfers from Employers Accumulation Fund.*

2 —Upon the retirement of a member, or if an annuity be-
3 comes payable on account of the death of a member, the

4 difference between the annuity reserve and the member's
5 accumulated contributions standing to his credit in the
6 members deposit fund at the time of his retirement or
7 death, as the case may be, shall be transferred to the re-
8 tirement reserve fund.

Sec. 35. *Retirement Reserve Fund.*—The retirement
2 reserve fund is hereby created. It shall be the fund from
3 which shall be paid all annuities payable as provided in
4 this article. If a disability retirant returns to the employ
5 of a participating public employer his annuity reserve at
6 that time shall be transferred from the retirement reserve
7 fund to the members deposit fund and the employers
8 accumulation fund in the same proportions as the annuity
9 reserve was originally transferred to the retirement re-
10 serve fund. The amount so transferred to the members
11 deposit fund shall be credited to his individual account
12 therein.

Sec. 36. *Income Fund.*—The income fund is hereby
2 created. It shall be the fund to which shall be credited
3 all interest, dividends and other income from invest-
4 ments of the retirement system, all transfers from the

5 members deposit fund by reason of lack of claimant or
6 forfeiture of interest credits, and all other moneys re-
7 ceived by the retirement system, the disposition of which
8 is not specifically provided for in this article. The board
9 of trustees may accept gifts and bequests and same shall
10 be credited to the income fund. There shall be paid or
11 transferred from the income fund all amounts required
12 to credit regular interest to the members deposit fund,
13 employers accumulation fund, and the retirement reserve
14 fund, as provided in this article. Whenever the board
15 determines that the balance in the income fund is more
16 than sufficient to cover the current charges to the fund,
17 the board may, by resolution, provide for contingency
18 reserves, or for the transfer of such excess, or portions
19 thereof, to cover the needs of the other funds of the re-
20 tirement system.

Sec. 37. *Expense Fund.*—The expense fund shall be the
2 fund from which shall be paid the expenses incurred in
3 the administration of the retirement system. The cost of
4 administering the system shall be paid by the state and
5 the other participating public employers on a proportion-

6 ate basis to be determined by the board of trustees. The
7 board shall annually certify to the governor the state's
8 proportionate share of the cost of administration, and to
9 each of the other participating public employers their
10 respective shares and each of said participating public
11 employers shall pay the amounts due by them to the state
12 treasurer for credit to the expense fund.

Sec. 38. *Investment of Moneys.*—All moneys of the re-
2 tirement system not currently required for the payment
3 of annuities or other benefits shall be invested by the
4 board of public works in any securities or investments in
5 which the sinking funds of the state may be legally in-
6 vested, or in any securities or investments in which the
7 deposits in savings banks and participation deposits in
8 banks and trust companies may be legally invested, as
9 provided by the general laws. The board of public works
10 shall have full power to hold, purchase, sell, assign, trans-
11 fer or dispose of any of the securities or investments in
12 which any of the moneys of the retirement system have
13 been invested, as well as the proceeds of such investments.
14 It shall be the duty of every state department or insti-

15 tution issuing any bonds to offer same in writing to the
16 board of public works prior to advertising them for sale.
17 The said board, within fifteen days from and after re-
18 ceipt of such offer, may accept or reject such offer in
19 whole or in part. Available cash on deposit shall not ex-
20 ceed ten per cent of the total assets of the system.

Sec. 39. *No Trustee Shall Gain from Investments of*
2 *System.*—Except as otherwise provided in this article, no
3 trustee, no member of the board of public works, and no
4 employee of the board of trustees shall have any interest,
5 direct or indirect, in the gains or profits arising from any
6 investment or reinvestment of retirement system moneys.
7 No trustee, no member of the board of public works, and
8 no employee of the board of trustees shall, directly or
9 indirectly, for himself or as an agent or partner of others,
10 in any manner use the same, except to make current and
11 necessary payments as are authorized by the board of
12 trustees. No trustee, no member of the board of public
13 works, and no employee of the board of trustees shall
14 become an endorser or surety or become in any manner
15 an obligor for moneys loaned or borrowed by the retire-

16 ment system. Nothing contained herein shall be con-
17 strued to impair the rights of any member of the retire-
18 ment system to benefits provided by the system.

Sec. 40. *Restricted Use of Retirement System Moneys.*—

2 The moneys, investments and all other assets of the re-
3 tirement system shall be used for the sole purpose of
4 meeting the disbursements for annuities and other pay-
5 ments authorized by this article, and shall be used for
6 no other purpose whatsoever.

Sec. 41. *Allowance of Regular Interest.*—The board of
2 trustees shall, at the end of each fiscal year, allow and
3 credit regular interest on the balance at the beginning of
4 the said fiscal year in each member's individual account
5 in the members deposit fund, and on the mean balances in
6 the employers accumulation fund and the retirement re-
7 serve fund. The interest so allowed and credited shall
8 be charged to the income fund.

Sec. 42. *Fiscal Year.*—The fiscal year of the retirement
2 system shall coincide with the fiscal year of the state.

Pro Rata
Sec. 43. *Pro Rata* of Annuities.—Any provision in this

2 article to the contrary notwithstanding, if at the end of

ok
JH
(July 7E)

3 any fiscal year the total of the annuities paid from the
4 retirement reserve fund during the said fiscal year is
5 more than ten per cent of the sum of the balances in the
6 employers accumulation fund and the retirement reserve
7 fund at the end of the said fiscal year, the said annuities
8 payable in the next ensuing fiscal year shall be reduced,
9 pro rata, so that the sum of the annuities so reduced shall
10 not exceed ten per cent of the sum of the said balances in
11 the employers accumulation fund and the retirement re-
12 serve fund. The said pro rata reduction shall be applied
13 to all annuities payable in the said ensuing fiscal year.

Sec. 44. *Errors.*—Should any change or error in the
2 records of any participating public employer or the re-
3 tirement system result in any person receiving from the
4 system more or less than he would have been entitled to
5 receive had the records been correct, the board of trustees
6 shall correct such error, and as far as is practicable shall
7 adjust the payment of the benefit in such manner that the
8 actuarial equivalent of the benefit to which such person
9 was correctly entitled shall be paid.

Sec. 45. *Fraud Penalty.*—Any person who shall know-

2 ingly make any false statement or shall falsify or permit
3 to be falsified any record or records of the retirement
4 system in any attempt to defraud the system shall be
5 guilty of a misdemeanor and upon conviction thereof
6 shall be punished accordingly.

Sec. 46. *Assignments Prohibited.*—The right of a person
2 to any benefit provided for in this article shall not be
3 subject to execution, attachment, garnishment, the opera-
4 tion of bankruptcy or insolvency laws, or other process
5 whatsoever, nor shall any assignment thereof be enforce-
6 able in any court: *Provided*, That should a member be
7 covered by a group insurance or prepayment plan par-
8 ticipated in by a participating public employer, and should
9 he be permitted to, and elect to, continue such coverage
10 as a retirant, he may authorize the board of trustees to
11 have deducted from his annuity the payments required of
12 him to continue coverage under such group insurance or
13 prepayment plan: *Provided further*, That a participating
14 public employer shall have the right of setoff for any
15 claim arising from embezzlement by, or fraud of, a mem-
16 ber, retirant or beneficiary.

Sec. 47. *Tax Exemptions.*—The annuities and other
2 benefits provided by this article, and the assets of the
3 retirement system, are hereby exempt from state, county
4 and municipal taxes.

Sec. 48. *Validity.*—If any part of this article is declared
2 unconstitutional by a court of competent jurisdiction,
3 such decision shall not affect the validity of the remaining
4 provisions of this article, or the article in its entirety.

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

Thomas Davis, Jr.
Chairman Senate Committee

Mrs. M. H. Withrow
Chairman House Committee

Originated in the Senate.

Takes effect

July 1st, 1961

passage.

Howard Thye
Clerk of the Senate

C. A. Blankinship
Clerk of the House of Delegates

Harvard Pearson
President of the Senate

Julius W. Singleton, Jr.
Speaker House of Delegates

The within *approved* this the *17th*
day of *March*, 1961.

W. W. Bann
Governor

