WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1963

ENROLLED
Com. Sub. For
SENATE BILL NO. 174

(By Mr.______________________________)

PASSED___________________________1963

In Effect__________________________Passage

Filed in Office of the Secretary of State
of West Virginia 3-16-63

JOE F. BURDETT
SECRETARY OF STATE
AN ACT to repeal section forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, fourteen, seventeen, twenty, twenty-one, twenty-two, twenty-five, twenty-seven, thirty, thirty-one and thirty-three of said article ten; and to further amend said article ten by adding thereto three new sections, designated sections forty-eight, forty-nine and fifty, all 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 section forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as
amended, be repealed; that sections two, fourteen, seventeen, twenty, twenty-one, twenty-two, twenty-five, twenty-seven, thirty, thirty-one and thirty-three of said article ten be amended and reenacted; and that said article ten be further amended by adding thereto three new sections, designated sections forty-eight, forty-nine and fifty, to read as follows:

Section 2. Definitions.—The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, shall have the following meanings:

1. "State" means the state of West Virginia;
2. "Retirement system" or "system" means the West Virginia public employees retirement system created and established by this article;
3. "Board of trustees" or "board" means the board of trustees of the West Virginia public employees retirement system;
4. "Political subdivision" means the state of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities, or
towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns;

(5) “Participating public employer” means the state of West Virginia, any board, commission, department, institution or spending unit, and shall include any agency created by rule of the supreme court of appeals having full-time employees, which for the purposes of this article shall be deemed a department of state government; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia public employees retirement system;

(6) “Employee” means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable in whole or in part by any political subdivision, or an officer or employee whose compensa-
tion is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia national guard whose compensation in whole or in part is paid by the federal government: Provided, That members of the state Legislature, the clerk of the house of delegates, the clerk of the state senate and members of the legislative body of any political subdivision shall be considered to be employees, anything contained herein to the contrary notwithstanding. In any case of doubt as to who is an employee within the meaning of this article the board of trustees shall decide the question;

(7) “Member” means any person who is included in the membership of the retirement system;

(8) “Retirant” means any member who retires with an annuity payable by the retirement system;

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

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

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

(12) "Contributing service" means service rendered by a member from and after the date of his entrance in the retirement system, to the extent credited him as provided in this article;

(13) "Credited service" means the sum of a member's prior service credit and contributing service credit standing to his credit as provided in this article;

(14) "Compensation" means the remuneration paid a member by a participating public employer for personal services rendered by him to the participating public employer. In the event a member's remuneration is not all paid in money, his participating public employer shall fix the value of the portion of his remuneration which is not paid in money;

(15) "Final average salary" means the average of the highest annual compensations received by a member dur-
78 ing any period of five consecutive years of his credited
79 service contained within his ten years of credited service
80 immediately preceding the date his employment with a
81 participating public employer last terminated. If he has
82 less than five years of credited service, his final average
83 salary shall be the average of the annual rate of compens-
84 sations received by him during his total years of credited
85 service;
86 (16) “Accumulated contributions” means the sum of all
87 amounts deducted from the compensations of a member
88 and credited to his individual account in the members de-
89 posit fund, together with regular interest thereon;
90 (17) “Regular interest” means such rate or rates of in-
91 terest per annum, compounded annually, as the board of
92 trustees shall from time to time adopt;
93 (18) “Annuity” means an annual amount payable by
94 the retirement system throughout the life of a person. All
95 annuities shall be paid in equal monthly installments, us-
96 ing the upper cent for any fraction of a cent;
97 (19) “Annuity reserve” means the present value of all
98 payments to be made to a retirant or beneficiary of a re-
tirant on account of any annuity, computed upon the basis of such mortality and other tables of experience, and regular interest, as the board of trustees shall from time to time adopt;

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

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

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

Sec. 14. Service Credit.—(a) The board of trustees shall credit each member with the prior service and contributing service to which he is entitled based upon such rules and regulations as the board of trustees shall from time to time adopt: Provided, That in no case shall less than ten days of service rendered by a member in any calendar month be credited as a month of service; nor
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shall less than ten months of service rendered in any
calendar year be credited as a year of service; nor shall
more than one year of service be credited any member for
all service rendered by him in any calendar year; nor shall
any member who was not in the employ of a political sub-
division within a period of five years immediately preced-
ing the date the political subdivision became a participat-
ing public employer be credited with prior service.

(b) The board of trustees may grant service credit
to employees of boards of health, the clerk of the house
of delegates and the clerk of the state senate who are
participating members, for service previously credited by
the state teachers’ retirement system, and may require
a transfer of the member’s contributions to the retirement
system, and may also require a deposit, with interest,
of any withdrawals of contributions.

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

(a) All employees, as defined in section two hereof,
preceding the date it becomes a participating public em-
ployer and who continues in the employ of the said partic-
pating public employer on or after the said date shall be-
come members of the retirement system; and all persons
who become employees of a participating public employer
on or after the said date shall thereupon become members
of the system; except as provided in paragraphs (b) and
(c) of this section.

(b) The membership of the retirement system shall not
include any person who is a member of, or who has been
retired by, the state teachers' retirement system, the
judges' retirement system, the retirement system of the
department of public safety, or any municipal retirement
system for either, or both, policemen or firemen, and the
West Virginia department of employment security, by the
director of such department, may elect whether its em-
ployees will accept coverage under this article or be cov-
ered under the authorization of a separate enactment:

Provided, That such exclusions of membership shall not
apply to any member of the state Legislature, the clerk of
the house of delegates, the clerk of the state senate or to
any member of the legislative body of any political subdivision provided he once becomes a contributing member of the retirement system.

(c) Any member of the state Legislature, the clerk of the house of delegates, the clerk of the state senate or any member of the legislative body of any other political subdivision shall become a member of the retirement system provided he notifies the retirement system in writing of his intention to be a member of the system and files a membership enrollment form as the board of trustees shall prescribe, and each person, upon filing his written notice to participants in the retirement system, shall by said act authorize the clerk of the house of delegates or the clerk of the state senate or such person as the legislative body of any other political subdivision shall designate to deduct said member's contribution, as provided in section twenty-nine-b hereof, and after said deductions have been made from said member's compensation, such deductions shall be forwarded to the retirement system.

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

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

Sec. 21. Deferred Retirement.—(a) Except as provided
in subparagraph (b) of this section, if any member, who
has twenty or more years of credited service in force, of
which at least three years are contributing service, leave
the employ of a participating public employer prior to his
attainment of age sixty years, for any reason except his
disability retirement or death, he shall be entitled to an
annuity computed according to section twenty-two here-
of, as the said section was in force as of the date of his said
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10 separation from the employ of a participating public em-

11 ployer: Provided, That he does not withdraw his accum-

12 ulated contributions from the members deposit fund. His

13 said annuity shall begin the first day of the calendar

14 month next following the month in which his application

15 for same is filed with the board of trustees on or after his

16 attainment of age sixty-two 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 sal-

4 ary multiplied by the number of years, and fraction of a

5 year, of his credited service in force at the time of his re-

6 tirement. Upon his retirement he shall have the right to

7 elect an option provided for in section twenty-four hereof.

8 All annuity payments shall commence effective the first

9 of the month following the month in which a member re-

10 tires or a member dies leaving a beneficiary entitled to

11 benefits and shall continue to the end of the month in

12 which said retirant or beneficiary dies, and said annuity

13 payments shall not be prorated for any portion of a month

14 in which a member retires or retirent or beneficiary dies.
Sec. 25. Disability Retirement.—(a) Upon the application of a member, or his employing authority, a member who (1) is in the employ of a participating public employer, (2) has ten or more years of credited service, and (3) becomes totally and permanently incapacitated for duty in the employ of a participating public employer, by reason of a personal injury or disease, may be retired by the board of trustees: Provided, That after a medical examination of the said member, made by or under the direction of a medical committee consisting of two physicians, one of whom shall be named by the board, and one by the said member, the said medical committee reports, in writing, to the board that (1) the said member is physically or mentally totally incapacitated for duty in the employ of a participating public employer, (2) that such incapacity will probably be permanent, and (3) that the said member should be retired. In the event the two above mentioned physicians do not agree in their findings, then the board of trustees may, at its discretion, appoint a third physician to examine said member and, based upon the third phy-
sician's report in writing, the board may retire said
member.

(b) A member with less than ten years of credited
service shall have the service requirement provided for
in paragraph (a) above waived in the event (1) the
board of trustees finds his total and permanent disability
to be the natural and proximate result of a personal injury
or disease arising out of and in the course of his actual
performance of duty in the employ of a participating
public employer, and (2) he is in receipt of workmen's
compensation on account of such physical or mental
disability.

(c) Upon a member's retirement, as provided in this
section, he shall receive a straight life annuity computed
according to section twenty-two hereof and he shall have
the right to elect an option provided for in section twenty-
four hereof: Provided, however, That his straight life
annuity payable to his attainment of age sixty-five years
shall not be less than twenty-five per cent of his final
average salary; and his said straight life annuity payable
from and after his attainment of age sixty-five years shall
not be less than ten per cent of his final average salary:

Provided further, That his said annuity shall be subject to section twenty-six hereof.

Sec. 27. Non duty Death Annuities.—(a) Any member who continues in the employ of a participating public employer on or after the date he either (1) acquires twenty-five years of credited service, or (2) attains age sixty years and has ten or more years of credited service, may at any time prior to the effective date of his retirement, by written declaration duly executed and filed with the board of trustees, in the same manner as if he were then retiring from the employ of a participating public employer, elect option A provided for in section twenty-four hereof, and nominate a beneficiary whom the board finds to have been dependent upon the said member for at least fifty per cent of his financial support. Prior to the effective date of his retirement a member may revoke his said election of option A and nomination of beneficiary and he may again prior to his retirement elect the said option A and nominate a beneficiary as provided in this subsection. Upon the death of a member
who has an option A election in force, his beneficiary, if living, shall immediately receive an annuity computed in the same manner in all respects as if the said member had retired the day preceding the date of his death, notwithstanding that he might not have attained age sixty years, and elected the said option A. If at the time of his retirement a member has an option A election in force, his said election of option A and nomination of beneficiary shall thereafter continue in force.

(b) In the event any member continues in the employ of a participating public employer on or after the date he either acquires twenty-five years of credited service, or attains age sixty years and has ten or more years of credited service, and does not have an option A election in force as provided in subsection (a) of this section, and (1) dies while in the employ of a participating public employer, and (2) leaves a widow, or in the case of a female member leaves a widower whom the board of trustees finds to be totally and permanently disabled and to have been dependent upon the said female member for at least fifty per cent of his financial support, the said
widow or widower, as the case may be, shall immediately receive an annuity computed in the same manner in all respects as if the said member had (1) retired the day preceding the date of his death, notwithstanding that he might not have attained age sixty years, (2) elected option A provided for in section twenty-four hereof, and (3) nominated his said widow or widower, as the case may be, as beneficiary.

(c) In the event any member continues in the employ of a participating public employer on or after the date he either (1) acquires twenty-five years of credited service, or (2) attains age sixty years and has ten or more years of credited service, and (3) dies without leaving surviving him a spouse, but (4) leaves surviving him an infant child or children, and (5) does not have a beneficiary nominated as provided in subsection (a) of this section, said infant child or children shall be entitled to an annuity to be calculated as follows: The annuity reserve shall be calculated as though said member had retired as of the date of his decease and elected a straight life annuity, and the amount of said annuity reserve shall
be paid in equal monthly installments to said member's infant child or children until said child or children attain age twenty-one or sooner marry or become emancipated; however, in no event shall any child or children receive more than two hundred fifty dollars per month each. The said annuity payments shall be computed as of the date of the death of the said member and the amount of said annuity shall remain constant during the period of payment. The annual amount of the annuities payable by this section shall not exceed sixty per cent of said deceased member's final average salary.

Sec. 30. Refund of Accumulated Contributions.—(a) In the event a member leaves the employ of a participating public employer prior to the date he becomes entitled to retire with an annuity payable by the retirement system he shall be paid, upon his written application filed with the board of trustees, his accumulated contributions standing to his credit in the members deposit fund, if his separation from the employ of a participating public employer occurs subsequent to a period of five years from and after the date he last became a member of the system. If his
said separation from the employ of a participating public employer occurs within a period of five years from and after the date he last became a member of the system, he shall be paid his accumulated contribution standing to his credit in the members deposit fund less the total interest credited to his individual account therein; and the said total interest credit shall be transferred to the income fund.

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

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

(d) In the event a member dies and a refund of his contributions is due to be made to an infant child or children by reason of being the person or persons nominated by written designation duly executed and filed with the retirement system, and the amount of said refund is less than one thousand dollars, then, and in said event, the board of trustees may make said refund, upon written application, to the closest relative or natural guardian for the use of said infant child or children. The board of trustees may, at its discretion, require that said relative or natural guardian post bond with the retirement system to insure that said money will be used for the benefit of said infant child or children. In any event, before said refund is made to said relative or natural guardian of the said infant or infants, said relative or natural guardian shall give the retirement system an indemnifying release of said sums so paid over.

Sec. 31. Employers Accumulation Fund.—(a) The employers accumulation fund is hereby created. It shall be
the fund in which shall be accumulated the contributions
made by the participating public employers to the re-
tirement system, and from which transfers shall be made
as provided in this section.

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

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

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

(3) The participating public employers' contributions for annuities being paid retirants and beneficiaries shall be a per cent of the members' annual compensations which will equal an amount which if paid annually by the participating public employers over a period of years, to be determined by the board of trustees, will amortize, at regular interest, the unfunded annuity reserves for annuities being paid retirants and beneficiaries.

(4) In no year shall the total of the contributions, provided for in paragraphs (1), (2) and (3) above, to be paid by any participating public employer exceed six per cent of the total payroll for the members in the employ of such participating public employer for the preceding fiscal year.
Sec. 33. Contributions by Other Participating Public Employers.—(a) The board of trustees shall annually certify to each participating public employer, other than the state, the employer contribution rate, determined in section thirty-one hereof, for the public employer division. Each participating public employer shall pay to the state treasurer, for credit to the retirement system, the contributions equal to the said contribution rate applied to each and every payroll of the participating public employer. The said payments shall be made in such manner and form, and in such frequency, and shall be accompanied by such supporting data, as the board shall from time to time prescribe. When paid, the said contributions shall be credited to the employers accumulation fund.

(b) If any participating public employer, other than the state, fails to make any payment due the retirement system for a period of sixty days after the payment is due, the participating public employer shall become delinquent, and such delinquency shall be certified to the state auditor by the board of trustees. If any participating public employer becomes delinquent, as provided

herein, the state auditor is authorized and directed to
withhold any money due such participating public em-
employer by the state until such delinquency, together
with regular interest thereon, from the date due, is satis-
fied. Such money so withheld by the state auditor shall
be paid to the retirement system.

Sec. 48. Reemployment after Retirement.—In the
event a retirant becomes employed by a participating
public employer, payment of his annuity shall be sus-
pended during the period of his reemployment. Upon
termination of such reemployment, payment of his an-
nuity will be resumed without increase or decrease due
to such reemployment.

Sec. 49. Removal from Office.—Any member of the re-
tirement system who has been removed from office or his
office shall have been vacated for official misconduct, in-
competence, neglect of duty, gross immorality, malfea-
sance, or misfeasance shall immediately have his mem-
ership in the retirement system terminated permanently
by the board of trustees and shall never become eligible
for an annuity; however, any such member so terminated
by virtue of this section shall be entitled to a refund of
his contributions with regular interest as provided in sec-
tion thirty hereof.

Sec. 50. Validity.—If any part of this article is declared
unconstitutional by a court of competent jurisdiction, such
decision shall not affect the validity of the remaining pro-
visions of this article, or the article in its entirety.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

O. Ray Parker  
Chairman Senate Committee

Ethel L. Crandall  
Chairman House Committee

Originated in the Senate.

Takes effect From passage.

James Wofford  
Clerk of the Senate

C.A. Blankenship  
Clerk of the House of Delegates

Howard R. Carver  
President of the Senate

Julius W. Singletary  
Speaker House of Delegates

The within approve this the 14th day of March, 1963.

MM Baum  
Governor