

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1963

ENROLLED

COM. SUB. FOR
SENATE BILL NO. 174

(By Mr.)

PASSED March 9, 1963

In Effect From Passage



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JOE F. BURDETT
SECRETARY OF STATE

#174

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 174

[Passed March 9, 1963; in effect from passage.]

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amended, be repealed; that sections two, fourteen, seventeen, twenty, twenty-one, twenty-two, twenty-five, twenty-seven, thirty, thirty-one and thirty-three of said article ten be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
2 phrases as used in this article, unless a different meaning
3 is clearly indicated by the context, shall have the follow-
4 ing meanings:

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 trustees” or “board” means the board of
10 trustees of the West Virginia public employees retirement
11 system;

12 (4) “Political subdivision” means the state of West Vir-
13 ginia, a county, city or town in the state; a school corpora-
14 tion or corporate unit; any separate corporation or instru-
15 mentality established by one or more counties, cities, or

16 towns, as permitted by law; any corporation or instru-
 17 mentality supported in most part by counties, cities, or
 18 towns; any public corporation charged by law with the
 19 performance of a governmental function and whose juris-
 20 diction is coextensive with one or more counties, cities or
 21 towns;

22 (5) "Participating public employer" means the state of
 23 West Virginia, any board, commission, department, insti-
 24 tution or spending unit, and shall include any agency
 25 created by rule of the supreme court of appeals having
 26 full-time employees, which for the purposes of this article
 27 shall be deemed a department of state government; and
 28 any political subdivision in the state which has elected to
 29 cover its employees, as defined in this article, under the
 30 West Virginia public employees retirement system;

31 (6) "Employee" means any person who serves regu-
 32 larly as an officer or employee, full time, on a salary basis,
 33 whose tenure is not restricted as to temporary or pro-
 34 visional appointment, in the service of, and whose com-
 35 pensation is payable in whole or in part by any political
 36 subdivision, or an officer or employee whose compensa-

37 tion is calculated on a daily basis and paid monthly or on
38 completion of assignment, including technicians and other
39 personnel employed by the West Virginia national guard
40 whose compensation in whole or in part is paid by the
41 federal government: *Provided*, That members of the
42 state Legislature, the clerk of the house of delegates, the
43 clerk of the state senate and members of the legislative
44 body of any political subdivision shall be considered to be
45 employees, anything contained herein to the contrary
46 notwithstanding. In any case of doubt as to who is an
47 employee within the meaning of this article the board of
48 trustees shall decide the question;

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

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

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

56 (10) "Service" means personal service rendered to a

57 participating public employer by an employee, as defined
58 in this article, of a participating public employer;

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

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

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

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

76 (15) "Final average salary" means the average of the
77 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 compen-
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-

99 tirant on account of any annuity, computed upon the basis
100 of such mortality and other tables of experience, and reg-
101 ular interest, as the board of trustees shall from time to
102 time adopt;

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

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

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

Sec. 14. Service Credit.—(a) The board of trustees
2 shall credit each member with the prior service and con-
3 tributing 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 sub-
13 division within a period of five years immediately preced-
14 ing the date the political subdivision became a participat-
15 ing public employer be credited with prior service.

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

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 continues in the employ of the said partici-
8 pating public employer on or after the said date shall be-
9 come members of the retirement system; and all persons
10 who become employees of a participating public employer
11 on or after the said date shall thereupon become members
12 of the system; except as provided in paragraphs (b) and
13 (c) of this section.

14 (b) The membership of the retirement system shall not
15 include any person who is a member of, or who has been
16 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 the
21 director of such department, may elect whether its em-
22 ployees will accept coverage under this article or be cov-
23 ered under the authorization of a separate enactment:
24 *Provided*, That such exclusions of membership shall not
25 apply to any member of the state Legislature, the clerk of
26 the house of delegates, the clerk of the state senate or to

27 any member of the legislative body of any political sub-
28 vision provided he once becomes a contributing member
29 of the retirement system.

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

46 (d) Should any question arise regarding the member-

47 ship status of any employee, the board of trustees has the
48 final power to decide the question.

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, at least one year of
4 which he was a contributing member of the retirement
5 system, may retire upon his written application filed with
6 the board of trustees setting forth at what time, not less
7 than thirty days nor more than ninety days subsequent to
8 the execution and filing thereof he desires to be retired.
9 Upon his retirement he shall receive an annuity provided
10 for in section twenty-two hereof.

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

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-

21 sician's report in writing, the board may retire said
22 member.

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

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

42 not be less than ten per cent of his final average salary:
 43 *Provided further*, That his said annuity shall be subject
 44 to section twenty-six hereof.

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
 4 twenty-five years of credited service, or (2) attains age
 5 sixty years and has ten or more years of credited service,
 6 may at any time prior to the effective date of his retire-
 7 ment, by written declaration duly executed and filed
 8 with the board of trustees, in the same manner as if he
 9 were then retiring from the employ of a participating
 10 public employer, elect option A provided for in section
 11 twenty-four hereof, and nominate a beneficiary whom the
 12 board finds to have been dependent upon the said mem-
 13 ber for at least fifty per cent of his financial support.
 14 Prior to the effective date of his retirement a member
 15 may revoke his said election of option A and nomination
 16 of beneficiary and he may again prior to his retirement
 17 elect the said option A and nominate a beneficiary as pro-
 18 vided in this subsection. Upon the death of a member

19 who has an option A election in force, his beneficiary,
20 if living, shall immediately receive an annuity computed
21 in the same manner in all respects as if the said member
22 had retired the day preceding the date of his death, not-
23 withstanding that he might not have attained age sixty
24 years, and elected the said option A. If at the time of his
25 retirement a member has an option A election in force,
26 his said election of option A and nomination of beneficiary
27 shall thereafter continue in force.

28 (b) In the event any member continues in the employ
29 of a participating public employer on or after the date
30 he either acquires twenty-five years of credited service,
31 or attains age sixty years and has ten or more years of
32 credited service, and does not have an option A election
33 in force as provided in subsection (a) of this section, and
34 (1) dies while in the employ of a participating public
35 employer, and (2) leaves a widow, or in the case of a
36 female member leaves a widower whom the board of
37 trustees finds to be totally and permanently disabled and
38 to have been dependent upon the said female member
39 for at least fifty per cent of his financial support, the said

40 widow or widower, as the case may be, shall immediately
41 receive an annuity computed in the same manner in all
42 respects as if the said member had (1) retired the day
43 preceding the date of his death, notwithstanding that he
44 might not have attained age sixty years, (2) elected
45 option A provided for in section twenty-four hereof, and
46 (3) nominated his said widow or widower, as the case may
47 be, as beneficiary.

48 (c) In the event any member continues in the employ
49 of a participating public employer on or after the date
50 he either (1) acquires twenty-five years of credited serv-
51 ice, or (2) attains age sixty years and has ten or more
52 years of credited service, and (3) dies without leaving
53 surviving him a spouse, but (4) leaves surviving him an
54 infant child or children, and (5) does not have a bene-
55 ficiary nominated as provided in subsection (a) of this
56 section, said infant child or children shall be entitled to
57 an annuity to be calculated as follows: The annuity re-
58 serve shall be calculated as though said member had
59 retired as of the date of his decease and elected a straight
60 life annuity, and the amount of said annuity reserve shall

61 be paid in equal monthly installments to said member's
62 infant child or children until said child or children attain
63 age twenty-one or sooner marry or become emancipated;
64 however, in no event shall any child or children receive
65 more than two hundred fifty dollars per month each.
66 The said annuity payments shall be computed as of the
67 date of the death of the said member and the amount of
68 said annuity shall remain constant during the period of
69 payment. The annual amount of the annuities payable by
70 this section shall not exceed sixty per cent of said de-
71 ceased member's final average salary.

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 stand-
7 ing to his credit in the members deposit fund, if his sepa-
8 ration from the employ of a participating public employer
9 occurs subsequent to 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,
 14 he shall be paid his accumulated contribution standing
 15 to his credit in the members deposit fund less the total
 16 interest credited to his individual account therein; and
 17 the said total interest credit shall be transferred to the
 18 income 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 and
 25 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.

34 (d) In the event a member dies and a refund of his
35 contributions is due to be made to an infant child or
36 children by reason of being the person or persons nomi-
37 nated by written designation duly executed and filed
38 with the retirement system, and the amount of said refund
39 is less than one thousand dollars, then, and in said event,
40 the board of trustees may make said refund, upon written
41 application, to the closest relative or natural guardian
42 for the use of said infant child or children. The board
43 of trustees may, at its discretion, require that said rela-
44 tive or natural guardian post bond with the retirement
45 system to insure that said money will be used for the
46 benefit of said infant child or children. In any event,
47 before said refund is made to said relative or natural
48 guardian of the said infant or infants, said relative or
49 natural guardian shall give the retirement system an
50 indemnifying release of said sums so paid over.

Sec. 31. Employers Accumulation Fund.—(a) The em-
2 ployers accumulation fund is hereby created. It shall be

3 the 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
28 the board of trustees, will amortize, at regular interest,
29 the unfunded annuity reserves for the accrued portions
30 of the annuities to be paid on account of members.

31 (3) The participating public employers' contribu-
32 tions for annuities being paid retirants and beneficiaries
33 shall be a per cent of the members' annual compensations
34 which will equal an amount which if paid annually by
35 the participating public employers over a period of years,
36 to be determined by the board of trustees, will amortize,
37 at regular interest, the unfunded annuity reserves for
38 annuities 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
41 paid by any participating public employer exceed six
42 per cent of the total payroll for the members in the
43 employ of such participating public employer for the
44 preceding fiscal year.

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 divi-
6 sion. Each participating public employer shall pay to the
7 state treasurer, for credit to the retirement system, the
8 contributions equal to the said contribution rate applied
9 to each and every payroll of the participating public em-
10 ployer. The said payments shall be made in such manner
11 and form, and in such frequency, and shall be accom-
12 panied by such supporting data, as the board shall from
13 time to time prescribe. When paid, the said contributions
14 shall be credited 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 participat-
21 ing public employer becomes delinquent, as provided

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

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

Sec. 49. Removal from Office.—Any member of the re-
2 tirement system who has been removed from office or his
3 office shall have been vacated for official misconduct, in-
4 competence, neglect of duty, gross immorality, malfea-
5 sance, or misfeasance shall immediately have his mem-
6 bership in the retirement system terminated permanently
7 by the board of trustees and shall never become eligible
8 for an annuity; however, any such member so terminated

9 by virtue of this section shall be entitled to a refund of
10 his contributions with regular interest as provided in sec-
11 tion thirty hereof.

Sec. 50. Validity.—If any part of this article is declared
2 unconstitutional by a court of competent jurisdiction, such
3 decision shall not affect the validity of the remaining pro-
4 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. Randall
Chairman House Committee

Originated in the Senate.

Takes effect From passage.

John W. Meyer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard Roberson
President of the Senate

Julius W. Sigler Jr.
Speaker House of Delegates

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

W. M. Baum
Governor