

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

ENROLLED

Com. Sub. pr
SENATE BILL NO. 299

(By Mr. *Carson* [*Mr. President*] *original*
Sponsor)

PASSED February 28, 1967

In Effect *from* Passage

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-9-67

299

ENROLLED
FINANCE
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 299

(Mr. CARSON [Mr. PRESIDENT] original sponsor)

[Passed February 28, 1967; in effect from passage.]

AN ACT to amend and reenact sections two, fourteen, fifteen, twenty, twenty-one, twenty-seven, twenty-nine and forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to a contributing retirement system for persons in the employ of the state and affiliated subdivisions of the state.

Be it enacted by the Legislature of West Virginia:

That sections two, fourteen, fifteen, twenty, twenty-one, twenty-seven, twenty-nine and forty-eight, article ten, chapter

five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES'
RETIREMENT ACT.**

§5-10-2. Definitions.

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

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

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

8 (3) "Board of trustees" or "board" means the board
9 of trustees of the West Virginia public employees' retire-
10 ment system;

11 (4) "Political subdivision" means the state of West
12 Virginia, a county, city or town in the state; a school
13 corporation or corporate unity; any separate corporation
14 or instrumentality established by one or more counties,
15 cities, or towns, as permitted by law; any corporation or

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

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

30 (6) "Employee" means any person who serves regu-
 31 larly as an officer or employee, full time, on a salary basis,
 32 whose tenure is not restricted as to temporary or provi-
 33 sional appointment, in the service of, and whose compen-
 34 sation is payable in whole or in part by any political sub-
 35 division, or an officer or employee whose compensation is
 36 calculated on a daily basis and paid monthly or on com-

37 pletion of assignment, including technicians and other
38 personnel employed by the West Virginia national guard
39 whose compensation in whole or in part is paid by the
40 federal government: *Provided*, That members of the state
41 Legislature, the clerk of the House of Delegates, the clerk
42 of the state Senate and members of the legislative body
43 of any political subdivision shall be considered to be em-
44 ployees, anything contained herein to the contrary not-
45 withstanding. In any case of doubt as to who is an em-
46 ployee within the meaning of this article, the board of
47 trustees shall decide the question;

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

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

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

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

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

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

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

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

75 (15) "Final average salary" means the average of the
76 highest annual compensation received by a member dur-
77 ing any period of five consecutive years of his credited
78 service contained within his ten years of credited service

79 immediately preceding the date his employment with a
80 participating public employer last terminated. If he has
81 less than five years of credited service, his final average
82 salary shall be the average of the annual rate of com-
83 pensation received by him during his total years of
84 credited service. Final average salary for members of the
85 Legislature means their actual compensation serving as
86 a member of the Legislature multiplied by four.

87 (16) "Accumulated contributions" means the sum of
88 all amounts deducted from the compensations of a mem-
89 ber and credited to his individual account in the members'
90 deposit fund, together with regular interest thereon;

91 (17) "Regular interest" means such rate or rates of in-
92 terest per annum, compounded annually, as the board of
93 trustees shall from time to time adopt;

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

98 (19) "Annuity reserve" means the present value of all
99 payments to be made to a retirant or beneficiary of a re-

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

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

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

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

§5-10-14. Service credit.

(a) The board of trustees shall credit each member
 2 with the prior service and contributing service to which
 3 he is entitled based upon such rules and regulations as
 4 the board of trustees shall from time to time adopt: *Pro-*
 5 *vided*, That in no case shall less than ten days of service
 6 rendered by a member in any calendar month be credited

7 as a month of service; nor shall less than ten months of
8 service rendered in any calendar year be credited as a
9 year of service; nor shall more than one year of service be
10 credited any member for all service rendered by him in
11 any calendar year; nor shall any member who was not in
12 the employ of a political subdivision within a period of
13 fifteen years immediately preceding the date the political
14 subdivision became a participating public employer be
15 credited with prior service.

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

24 (c) Court reporters who are acting in an official
25 capacity, although paid by funds other than the county
26 court or state auditor, may receive prior service credit
27 for such time as served in such capacity.

§5-10-15. Military service credit.

In the event a member, who, while employed by a participating public employer, entered or enters the armed forces of the United States during any period of compulsory military service and reenters the employ of a participating public employer, such armed service rendered by him, not to exceed five years, shall be credited to him: *Provided*, That (1) his reemployment by a participating public employer occurs within a period of six months from and after the date of termination of such armed service actually required of him, and (2) he pays to the members' deposit fund the amount he may have withdrawn therefrom, together with regular interest from the date of withdrawal to the date of repayment. In any case of doubt as to the period of service to be so credited a member, the board of trustees shall have final power to determine such period. During the period of such armed service and until his return to the employ of a participating public employer, his contributions to the retirement system shall be suspended and any balance remaining to his credit in the members' deposit fund shall be accum-

21 ulated at regular interest: *And provided further*, That
22 any member who, prior to July one, one thousand nine
23 hundred sixty-one, while employed by a public employer
24 who is now a participating public employer or while em-
25 ployed in a position covered under teachers' retirement
26 system, entered the armed forces of the United States
27 during any period of compulsory military service and
28 reentered the employ of a public employer, who is now a
29 participating public employer, or reentered a position
30 covered under teachers' retirement system, such armed
31 service rendered by him, not to exceed five years, shall be
32 credited to him under the provisions of this section.

§5-10-20. Voluntary retirement.

Any member who has attained or attains age sixty
2 years and has five or more years of credit service in force,
3 at least one year of which he was a contributing member
4 of the retirement system, may retire upon his written ap-
5 plication filed with the board of trustees setting forth at
6 what time, not less than thirty days nor more than ninety
7 days subsequent to the execution and filing thereof he
8 desires to be retired. Upon his retirement he shall receive
9 an annuity provided for in section twenty-two hereof.

§5-10-21. Deferred retirement and early retirement.

(a) Any member, who has five or more years of
2 credited service in force, of which at least three years are
3 contributing service, leave the employ of a participating
4 public employer prior to his attainment of age sixty years,
5 for any reason except his disability retirement or death,
6 he shall be entitled to an annuity computed according to
7 section twenty-two hereof, as the said section was in force
8 as of the date of his said separation from the employ of a
9 participating public employer: *Provided*, That he does
10 not withdraw his accumulated contributions from the
11 members' deposit fund. His said annuity shall begin the
12 first day of the calendar month next following the month
13 in which his application for same is filed with the board
14 of trustees on or after his attainment of age sixty-two
15 years.

(b) Any member who qualifies for deferred retire-
17 ment benefits in accordance with subsection (a) of this
18 section, and has ten or more years of credited service in
19 force and who has attained age fifty-five as of the date of
20 his separation may, prior to the effective date of his re-

21 tirement, but not thereafter, elect to receive the actuarial
22 equivalent of his deferred retirement annuity as a
23 reduced annuity commencing on the first day of any
24 calendar month between his date of separation and his
25 attainment of age sixty-two years and payable through-
26 out his life.

§5-10-27. Non-duty death annuities.

(a) Any member who continues in the employ of a
2 participating public employer on or after the date he ac-
3 quires ten or more years of credited service, may at any
4 time prior to the effective date of his retirement, by writ-
5 ten declaration duly executed and filed with the board of
6 trustees, in the same manner as if he were then retiring
7 from the employ of a participating public employer, elect
8 option A provided for in section twenty-four hereof, and
9 nominate a beneficiary whom the board finds to have been
10 dependent upon the said member for at least fifty per cent
11 of his financial support. Prior to the effective date of his
12 retirement a member may revoke his said election of
13 option A and nomination of beneficiary and he may again
14 prior to his retirement elect the said option A and nomi-

15 nate a beneficiary as provided in this subsection. Upon
 16 the death of a member who has an option A election in
 17 force, his beneficiary, if living, shall immediately receive
 18 an annuity computed in the same manner in all respects
 19 as if the said member had retired the day preceding the
 20 date of his death, notwithstanding that he might not have
 21 attained age sixty years, and elected the said option A.
 22 If at the time of his retirement a member has an option A
 23 election in force, his said election of option A and nomina-
 24 tion of beneficiary shall thereafter continue in force.

25 (b) In the event any member continues in the employ
 26 of a participating public employer on or after the date he
 27 acquires ten or more years of credited service, and does
 28 not have an option A election in force as provided in sub-
 29 section (a) of this section, and (1) dies while in the em-
 30 ploy of a participating public employer, and (2) leaves
 31 a widow, or in the case of a female member leaves a
 32 widower whom the board of trustees finds to have been
 33 dependent upon the said female member for at least fifty
 34 per cent of his financial support, the said widow or
 35 widower, as the case may be, shall immediately receive an

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

42 (c) In the event any member continues in the employ
43 of a participating public employer on or after the date he
44 (1) acquires ten or more years of credited service, and
45 (2) dies without leaving surviving him a spouse, but
46 (3) leaves surviving him an infant child or children, and
47 (4) does not have a beneficiary nominated as provided
48 in subsection (a) of this section, said infant child or
49 children shall be entitled to an annuity to be calculated
50 as follows: The annuity reserve shall be calculated as
51 though said member had retired as of the date of his de-
52 cease and elected a straight life annuity, and the amount
53 of said annuity reserve shall be paid in equal monthly
54 installments to said member's infant child or children
55 until said child or children attain age twenty-one or
56 sooner marry or become emancipated; however, in no

57 event shall any child or children receive more than two
 58 hundred fifty dollars per month each. The said annuity
 59 payments shall be computed as of the date of the death
 60 of the said member and the amount of said annuity shall
 61 remain constant during the period of payment. The an-
 62 nual amount of the annuities payable by this section shall
 63 not exceed sixty per cent of said deceased member's final
 64 average salary.

§5-10-29. Members' deposit fund.

(a) The members' deposit fund is hereby created. It
 2 shall be the fund in which shall be accumulated, at
 3 regular interest, the contributions deducted from the
 4 compensations of members, and from which refunds of
 5 accumulated contributions shall be paid and transfers
 6 made as provided in this section.

(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

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

19 (c) The officer or officers responsible for making up
20 the payrolls for payroll units of the state government and
21 for 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
26 payroll period, from the date the member enters the re-
27 tirement 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
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,
 43 together with regular interest from the date of with-
 44 drawal to the date of repayment. In no case shall a mem-
 45 ber be given credit for service rendered prior to the date
 46 he withdrew his contributions or accumulated contribu-
 47 tions, as the case may be, until he returns to the members'
 48 deposit 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.

62 (g) Duly elected members of the Legislature who have
63 elected to become members of the retirement system,
64 pursuant to other sections of this article, shall contribute
65 to the retirement system fourteen per cent of their annual
66 compensation for serving as a member of the Legislature.

§5-10-48. Reemployment after retirement.

In the event a retirant becomes employed by a par-
2 ticipating public employer, payment of his annuity shall
3 be suspended during the period of his reemployment.
4 Upon termination of such reemployment, payment of
5 his annuity will be resumed without increase or decrease
6 due to such reemployment, except that nothing herein
7 to the contrary shall prohibit a retirant from accepting
8 temporary employment for a participating employer so

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9 long as he shall not receive compensation in excess of
10 eighteen hundred dollars per year.

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

William Tenney
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Howard Meyer
Clerk of the Senate

C. G. Blankenship
Clerk of the House of Delegates

Howard Roberson
President of the Senate

H. Frank White
Speaker House of Delegates

The within approved this the 9
day of March, 1967.

Herbert C. Smith
Governor

PRESENTED TO THE
GOVERNOR

Date 3/7/67

Time 1:40 pm