

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1968

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**ENROLLED**

*Com. Sub-ord*  
SENATE BILL NO. 55

(By ~~Mr.~~ *Originating in the Committee*  
*on Finance*)

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PASSED February 7, 1968

In Effect from  Passage

FILED IN THE OFFICE  
ROBERT D. BAILEY  
SECRETARY OF STATE  
THIS DATE 2-14-68

# 55

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 55**

(Originating in the Committee on Finance)

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[Passed February 7, 1968; in effect from passage.]

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AN ACT to amend and reenact sections two, fifteen, twenty-one, twenty-two, twenty-five, twenty-seven, twenty-nine and thirty-one, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public employees' retirement.

*Be it enacted by the Legislature of West Virginia:*

That sections two, fifteen, twenty-one, twenty-two, twenty-five, twenty-seven, twenty-nine and thirty-one, 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' RETIRE-  
MENT ACT.**

**§5-10-2. Definitions.**

1 The following words and phrases as used in this article,  
2 unless a different meaning is clearly indicated by the con-  
3 text, 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 of  
9 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 cor-  
13 poration or corporate unity; any separate corporation or  
14 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,  
23 institution 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 to  
28 cover its employees, as defined in this article, under the  
29 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 pro-  
33 visional appointment, in the service of, and whose com-  
34 pensation is payable in whole or in part by any political  
35 subdivision, or an officer or employee whose compensation  
36 is 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, judges of the state court of  
44 claims shall be considered to be employees, anything con-  
45 tained herein to the contrary notwithstanding. In any  
46 case of doubt as to who is an employee within the mean-  
47 ing of this article the board of trustees shall decide the  
48 question;

49 (7) "Member" means any person who is included in  
50 the 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 by  
63 a member from and after the date of his entrance in the  
64 retirement system, to the extent credited him as provided  
65 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 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  
74 fix the value of the portion of his remuneration which is  
75 not paid in money;

76 (15) "Final average salary" means the average of the  
77 highest annual compensation 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 sation received by him during his total years of credited  
85 service. Final average salary for members of the Legisla-  
86 ture means their actual compensation serving as a mem-  
87 ber of the Legislature multiplied by eight;

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

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

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

99 (19) "Annuity reserve" means the present value of all  
100 payments to be made to a retirant or beneficiary of a re-  
101 tirant on account of any annuity, computed upon the basis  
102 of such mortality and other tables of experience, and  
103 regular interest, as the board of trustees shall from time  
104 to time adopt;

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

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

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

**§5-10-15. Military service credit.**

1 Any member of the retirement system who entered  
2 or enters the active service of the armed forces of the  
3 United States during any period of compulsory military  
4 service shall receive credited service for said time spent  
5 in the armed forces of the United States, not to exceed  
6 five years if such member pays to the members' deposit  
7 fund the amount he may have withdrawn therefrom,  
8 together with regular interest from the date of with-  
9 drawal to the date of repayment. In any case of doubt  
10 as to the period of service to be so credited a member,



11 the board of trustees shall have final power to determine  
12 such period. During the period of such armed service  
13 and until his return to the employ of a participating  
14 public employer, his contributions to the retirement  
15 system shall be suspended and any balance remaining  
16 to his credit in the members' deposit fund shall be accu-  
17 mulated at regular interest.

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

1 (a) Any member, who has five or more years of cred-  
2 ited service in force, of which at least three years are  
3 contributing service, and who leaves the employ of a  
4 participating public employer prior to his attainment of  
5 age sixty years, for any reason except his disability re-  
6 tirement or death, shall be entitled to an annuity com-  
7 puted according to section twenty-two hereof, as the  
8 said section was in force as of the date of his said sep-  
9 aration from the employ of a participating public em-  
10 ployer: *Provided*, That he does not withdraw his accu-  
11 mulated contributions from the members' deposit fund.  
12 His 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  
15 his attainment of age sixty-two years.

16 (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  
19 in force and who has attained age fifty-five as of the  
20 date of his separation may, prior to the effective date  
21 of his retirement, but not thereafter, elect to receive the  
22 actuarial equivalent of his deferred retirement annuity  
23 as a reduced annuity commencing on the first day of  
24 any calendar month between his date of separation  
25 and his attainment of age sixty-two years and payable  
26 throughout his life.

27 (c) Any member who qualifies for deferred retire-  
28 ment benefits in accordance with subsection (a) of this  
29 section, and has twenty or more years of credited serv-  
30 ice in force may elect to receive the actuarial equivalent  
31 of his deferred retirement annuity as a reduced an-  
32 nuity commencing on the first day of any calendar  
33 month between his fifty-fifth birthday and his attain-  
34 ment of age sixty-two years and payable throughout  
35 his life.

**§5-10-22. Retirement annuity.**

1 Upon a member's retirement, as provided in this article,  
2 he shall receive a straight life annuity equal to one per  
3 cent of his final average salary multiplied by the number  
4 of years, and fraction of a year, of his credited service in  
5 force at the time of his retirement: *Provided*, That after  
6 March one, one thousand nine hundred sixty-eight, all  
7 members retired and all members retiring shall receive  
8 a straight life annuity equal to one and five-tenths per-  
9 cent of his final average salary multiplied by the number  
10 of years, and fraction of a year, of his credited service  
11 in force at the time of his retirement. In either event,  
12 upon his retirement he shall have the right to elect an  
13 option provided for in section twenty-four hereof. All  
14 annuity payments shall commence effective the first of  
15 the month following the month in which a member retires  
16 or a member dies leaving a beneficiary entitled to bene-  
17 fits and shall continue to the end of the month in which  
18 said retirant or beneficiary dies, and said annuity pay-  
19 ments shall not be prorated for any portion of a month  
20 in which a member retires or retirant or beneficiary dies.

**§5-10-25. Disability retirement.**

1 (a) Upon the application of a member, or his employ-  
2 ing authority, a member who (1) is in the employ of a  
3 participating public employer, (2) has ten or more years  
4 of credited service, and (3) becomes totally and per-  
5 manently incapacitated for duty in the employ of a  
6 participating public employer, by reason of a personal  
7 injury or disease, may be retired by the board of trustees  
8 if after a medical examination of the said member, made  
9 by or under the direction of a medical committee consist-  
10 ing of two physicians, one of whom shall be named by  
11 the board, and one by the said member, the said medical  
12 committee reports, in writing, to the board that (1) the  
13 said member is physically or mentally totally inca-  
14 pacitated for duty in the employ of a participating public  
15 employer, (2) that such incapacity will probably be per-  
16 manent, and (3) that the said member should be retired.  
17 In the event the two above-mentioned physicians do not  
18 agree in their findings, then the board of trustees may,  
19 at its discretion, appoint a third physician to examine

20 said member and, based upon the third physician's report  
21 in writing, the board may retire said member.

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

31 (c) For those members retiring and those members  
32 retired, as of March 1, 1968, he shall receive a straight  
33 life annuity computed according to section twenty-two  
34 hereof and he shall have the right to elect an option pro-  
35 vided for in section twenty-four hereof: *Provided, how-*  
36 *ever,* That his straight life annuity payable to his at-  
37 tainment of age sixty-five years shall not be less than  
38 thirty-seven and five-tenths percent of his final average  
39 salary; and his said straight life annuity payable from  
40 and after his attainment of age sixty-five years shall not

41 be less than fifteen percent of his final average salary:  
42 *Provided further*, That his said annuity shall be subject  
43 to section twenty-six hereof.

**§5-10-27. Non-duty death annuities.**

1 (a) In the event any member who has ten or more  
2 years of credited service, or any former member with  
3 ten or more years of credited service and who is entitled  
4 to a deferred annuity, pursuant to section twenty-one  
5 hereof, may at any time prior to the effective date of his  
6 retirement, by written declaration duly executed and filed  
7 with the board of trustees, in the same manner as if he  
8 were then retiring from the employ of a participating  
9 public employer, elect option A provided for in section  
10 twenty-four hereof, and nominate a beneficiary whom the  
11 board finds to have had an insurable interest in the life  
12 of said member. Prior to the effective date of his retire-  
13 ment a member may revoke his said election of option A  
14 and nomination of beneficiary and he may again prior to  
15 his retirement elect the said option A and nominate a bene-  
16 ficiary as provided in this subsection. Upon the death of a  
17 member who has an option A election in force, his benefi-

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

26 (b) In the event any member who has ten or more  
27 years of credited service, or any former member with ten  
28 or more years of credited service and who is entitled to  
29 a deferred annuity, pursuant to section twenty-one hereof,  
30 (1) dies, and (2) leaves a widow, or in the case of a female  
31 member leaves a widower, the said widow or widower,  
32 as the case may be, shall immediately receive an annuity  
33 computed in the same manner in all respects as if the said  
34 member had (1) retired the day preceding the date of his  
35 death, notwithstanding that he might not have attained  
36 age sixty or sixty-two years, as the case may be, (2)  
37 elected option A provided for in section twenty-four  
38 hereof, and (3) nominated his said widow or widower, as  
39 the case may be, as beneficiary.

40 (c) In the event any member who has ten or more  
41 years of credited service, or any former member with  
42 ten or more years of credited service and who is entitled  
43 to a deferred annuity, pursuant to section twenty-one  
44 hereof (1) dies without leaving surviving him a spouse,  
45 but (2) leaves surviving him an infant child or children,  
46 and (3) does not have a beneficiary nominated as pro-  
47 vided in subsection (a) of this section, said infant child  
48 or children shall be entitled to an annuity to be calculated  
49 as follows: The annuity reserve shall be calculated as  
50 though said member had retired as of the date of his  
51 decease and elected a straight life annuity, and the  
52 amount of said annuity reserve shall be paid in equal  
53 monthly installments to said member's infant child or  
54 children until said child or children attain age twenty-  
55 one or sooner marry or become emancipated; however,  
56 in no event shall any child or children receive more than  
57 two hundred fifty dollars per month each. The said an-  
58 nuity payments shall be computed as of the date of the  
59 death of the said member and the amount of said annuity  
60 shall remain constant during the period of payment. The



61 annual amount of the annuities payable by this section  
62 shall not exceed sixty percent of said deceased member's  
63 final average salary.

**§5-10-29. Members' deposit fund; members' contributions.**

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

7 (b) The contributions of a member to the retirement  
8 system shall be a sum of not less than three and five-tenths  
9 percent of his annual compensations but not more than  
10 four and five-tenths percent of his annual compensations,  
11 as determined by the board of trustees. The said con-  
12 tributions shall be made notwithstanding that the mini-  
13 mum salary or wages provided by law for any member  
14 shall be thereby changed. Each member shall be deemed  
15 to consent and agree to the deductions made and pro-  
16 vided for herein. Payment of a member's compensation  
17 less said deductions shall be a full and complete discharge  
18 and acquittance of all claims and demands whatsoever

19 for services rendered by him to a participating public  
20 employer, except as to benefits provided by this article.

21 (c) The officer or officers responsible for making up  
22 the payrolls for payroll units of the state government  
23 and for each of the other participating public employers  
24 shall cause the contributions, provided for in subsection  
25 (b) above, to be deducted from the compensations of  
26 each member in the employ of the participating public  
27 employer, on each and every payroll, for each and every  
28 payroll period, from the date the member enters the retire-  
29 ment system to the date his membership terminates. When  
30 deducted, each of said amounts shall be paid by the par-  
31 ticipating public employer to the retirement system; said  
32 payments to be made in such manner and form, and in  
33 such frequency, and shall be accompanied by such sup-  
34 porting data, as the board of trustees shall from time to  
35 time prescribe. When paid to the retirement system,  
36 each of said amounts shall be credited to the members'  
37 deposit fund account of the member from whose com-  
38 pensations said contributions were deducted.

39 (d) In addition to the contributions deducted from the

40 compensations of a member, as heretofore provided, a  
41 member shall deposit in the members' deposit fund, by  
42 a single contribution or by an increased rate of contri-  
43 bution as approved by the board of trustees, the  
44 amounts he may have withdrawn therefrom and  
45 not repaid thereto, together with regular interest  
46 from the date of withdrawal to the date of repay-  
47 ment. In no case shall a member be given credit  
48 for service rendered prior to the date he withdrew his  
49 contributions or accumulated contributions, as the case  
50 may be, until he returns to the members' deposit fund  
51 all amounts due the said fund by him.

52 (e) Upon the retirement of a member, or if a survivor  
53 annuity becomes payable on account of his death, in either  
54 event his accumulated contributions standing to his credit  
55 in the members' deposit fund shall be transferred to the  
56 retirement reserve fund.

57 (f) In the event an employee's membership in the  
58 retirement system terminates and no annuity becomes  
59 or will become payable on his account, any accumulated  
60 contributions standing to his credit in the members' de-

61 posit fund, unclaimed by the said employee, or his legal  
62 representative, within three years from and after the  
63 date his membership terminated, shall be transferred to  
64 the income fund.

65 (g) Duly elected members of the Legislature who have  
66 elected to become members of the retirement system,  
67 pursuant to other sections of this article, shall contribute  
68 to the retirement system thirty-six percent of their annual  
69 compensation for serving as a member of the Legislature.

**§5-10-31. Employers' accumulation fund; employers' contributions.**

1 (a) The employers' accumulation fund is hereby  
2 created. It shall be the fund in which shall be ac-  
3 cumulated the contributions made by the participating  
4 public employers to the retirement system, and from  
5 which transfers shall be made as provided in this section.

6 (b) Based upon the provisions of section thirteen of  
7 this article, the participating public employers' contribu-  
8 tions to the retirement system shall be determined, ac-  
9 cording to paragraphs one, two, three and four below, for

10 the state as the state division, and for the other participat-  
11 ing public employers as the public employer division.

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

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

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

38 (4) In no year shall the total of the contributions,  
39 provided for in paragraphs one, two and three above, to  
40 be paid by any participating public employer exceed  
41 seven and five-tenths percent of the total payroll for the  
42 members in the employ of such participating public em-  
43 ployer for the preceding fiscal year.

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

William Tompaz  
Chairman Senate Committee

Clayton C. Davidson  
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Howard Neff  
Clerk of the Senate

W. Blankenship  
Clerk of the House of Delegates

Howard E. Eason  
President of the Senate

H. Labanwhite  
Speaker House of Delegates

The within approved this the 10th  
day of February, 1968.

Street C. Smith  
Governor



PRESENTED TO THE  
GOVERNOR

Date 2/10/68

Time 11:00 a.m.

RECEIVED

FEB 14 4 30 PM '68  
OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA