WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1968

ENROLLED

SENATE BILL NO. 55

(By Mr. Originating in the Committee on Finance)

PASSED February 7, 1968

In Effect from Passage

Filed in the Office
ROBERT D. BAILEY
SECRETARY OF STATE
This Date 2-14-68
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 55
(Originating in the Committee on Finance)

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

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' RETIREMENT ACT.

§5-10-2. Definitions.

1 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:

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

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

4 (3) "Board of trustees" or "board" means the board of trustees of the West Virginia public employees' retirement system;

5 (4) "Political subdivision" means the state of West Virginia, a county, city or town in the state; a school corporation or corporate unity; 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 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
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, judges of the state court of claims 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 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 compensation received by a member during any period of five consecutive years of his credited service contained within his ten years of credited service immediately preceding the date his employment with a participating public employer last terminated. If he has less than five years of credited service, his final average
salary shall be the average of the annual rate of compensation received by him during his total years of credited service. Final average salary for members of the Legislature means their actual compensation serving as a member of the Legislature multiplied by eight;

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

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

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

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

§5-10-15. Military service credit.

Any member of the retirement system who entered or enters the active service of the armed forces of the United States during any period of compulsory military service shall receive credited service for said time spent in the armed forces of the United States, not to exceed five years if such member 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 accumulated at regular interest.

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

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

(b) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section, and has ten or more years of credited service in force and who has attained age fifty-five as of the date of his separation may, prior to the effective date of his retirement, but not thereafter, elect to receive the actuarial equivalent of his deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his date of separation and his attainment of age sixty-two years and payable throughout his life.

(c) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section, and has twenty or more years of credited service in force may elect to receive the actuarial equivalent of his deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his fifty-fifth birthday and his attainment of age sixty-two years and payable throughout his life.
§5-10-22. Retirement annuity.

1 Upon a member's retirement, as provided in this article, he shall receive a straight life annuity equal to one per cent of his final average salary multiplied by the number of years, and fraction of a year, of his credited service in force at the time of his retirement: Provided, That after March one, one thousand nine hundred sixty-eight, all members retired and all members retiring shall receive a straight life annuity equal to one and five-tenths percent of his final average salary multiplied by the number of years, and fraction of a year, of his credited service in force at the time of his retirement. In either event, upon his retirement he shall have the right to elect an option provided for in section twenty-four hereof. All annuity payments shall commence effective the first of the month following the month in which a member retires or a member dies leaving a beneficiary entitled to benefits and shall continue to the end of the month in which said retirant or beneficiary dies, and said annuity payments shall not be prorated for any portion of a month in which a member retires or retirant or beneficiary dies.
§5-10-25. 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 if 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 physician'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 subsection (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) For those members retiring and those members retired, as of March 1, 1968, 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 thirty-seven and five-tenths percent 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 fifteen percent of his final average salary:

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

§5-10-27. Non-duty death annuities.

(a) In the event any member who has ten or more
years of credited service, or any former member with
ten or more years of credited service and who is entitled
to a deferred annuity, pursuant to section twenty-one
hereof, 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 had an insurable interest in the life
of said member. Prior to the effective date of his retire-
ment 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 bene-
ficiary as provided in this subsection. Upon the death of a
member who has an option A election in force, his benefici-
Enr. Com. Sub. for S. B. No. 55] 14

ary, if living, shall immediately receive an annuity com-
puted in the same manner in all respects as if the same
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 who has ten or more
years of credited service, or any former member with ten
or more years of credited service and who is entitled to
a deferred annuity, pursuant to section twenty-one hereof,
(1) dies, and (2) leaves a widow, or in the case of a female
member leaves a widower, 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 or sixty-two years, as the case may be, (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 who has ten or more years of credited service, or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one hereof (1) dies without leaving surviving him a spouse, but (2) leaves surviving him an infant child or children, and (3) 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 percent of said deceased member's final average salary.

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

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

(b) The contributions of a member to the retirement system shall be a sum of not less than three and five-tenths percent of his annual compensations but not more than four and five-tenths percent of his annual compensations, as determined by the board of trustees. The said contributions shall be made notwithstanding that the minimum salary or wages provided by law for any member shall be thereby changed. Each member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of a member's compensation less said deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever
for services rendered by him to a participating public employer, except as to benefits provided by this article.

(c) The officer or officers responsible for making up the payrolls for payroll units of the state government and for each of the other participating public employers shall cause the contributions, provided for in subsection (b) above, to be deducted from the compensations of each member in the employ of the participating public employer, on each and every payroll, for each and every payroll period, from the date the member enters the retirement system to the date his membership terminates. When deducted, each of said amounts shall be paid by the participating public employer to the retirement system; said payments to be made in such manner and form, and in such frequency, and shall be accompanied by such supporting data, as the board of trustees shall from time to time prescribe. When paid to the retirement system, each of said amounts shall be credited to the members' deposit fund account of the member from whose compensations said contributions were deducted.

(d) In addition to the contributions deducted from the
compensations of a member, as heretofore provided, a member shall deposit in the members' deposit fund, by a single contribution or by an increased rate of contribution as approved by the board of trustees, the amounts he may have withdrawn therefrom and not repaid thereto, together with regular interest from the date of withdrawal to the date of repayment. In no case shall a member be given credit for service rendered prior to the date he withdrew his contributions or accumulated contributions, as the case may be, until he returns to the members' deposit fund all amounts due the said fund by him.

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

(f) In the event an employee's membership in the retirement system terminates and no annuity becomes or will become payable on his account, any accumulated contributions standing to his credit in the members' de-
The employers' accumulation fund, unclaimed by the said employee, or his legal representative, within three years from and after the date his membership terminated, shall be transferred to the income fund.

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

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

(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 retirement 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' contributions to the retirement system shall be determined, according to paragraphs one, two, three and four below, for
the state as the state division, and for the other participating public employers as the public employer division.

(1) The participating public employers' contributions for members' current service shall be a percent 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 annuity reserves for the future service portions of the annuities 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 percent 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 percent 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 one, two and three above, to be paid by any participating public employer exceed seven and five-tenths percent of the total payroll for the members in the employ of such participating public employer for the preceding fiscal year.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompso
Chairman Senate Committee

Clayton E. Daniels
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Elmoro Myers
Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

H. Sabanwinto
Speaker House of Delegates

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

Hallett C. Smith
Governor