

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1968



## ENROLLED

HOUSE BILL No. 324

(By Mr. Grove)



PASSED February 8, 1968

In Effect Thirty days from Passage



FILED IN THE OFFICE  
ROBERT D. BAILEY  
SECRETARY OF STATE  
THIS DATE 2-16-68

# 324

**ENROLLED**

# **House Bill No. 324**

(By MR. GREWE)

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[Passed February 8, 1968; in effect ninety days from passage.]

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AN ACT to amend and reenact sections two, five, six, seven, eight, nine and ten, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article fifteen by adding thereto a new section, designated section fourteen, all relating to employees' retirement and benefit funds of municipal corporations having a population in excess of fifteen thousand.

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

That sections two, five, six, seven, eight, nine and ten, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article fifteen be further amended by adding thereto a new section, designated section fourteen, to read as follows:

**ARTICLE 15. EMPLOYEES' RETIREMENT AND BENEFIT FUND.**

**§8-15-2. Definitions.**

1 For the purpose of this article:

2 (a) "Prior service credit" shall mean the number of  
3 years that the member has been in the service of the  
4 city prior to the effective date of the retirement and  
5 benefit fund.

6 (b) "Earned service credits" shall mean the number  
7 of years that the member has contributed to the retire-  
8 ment and benefit fund.

9 (c) "Total service credit" shall mean a total of all  
10 prior service credit and all earned service credit.

11 (d) "Fund" shall mean the employees' retirement and  
12 benefit fund.

13 (e) "Board" shall mean the board of trustees of the  
14 employees' retirement and benefit fund.

15 (f) "Member" shall mean an eligible employee of the  
16 city, who is a member of the employees' retirement and  
17 benefit fund.

18 (g) "Total disability in line of duty" shall mean  
19 total and permanent disablement from performing any

20 work for pay, whether for the municipality or other  
21 employer, that shall be caused by injury sustained in  
22 the course of the operations usual to his employment,  
23 and shall include all operations necessary, incident or  
24 appurtenant thereto, or connected therewith, whether  
25 such operations are conducted at the usual place of  
26 employment or elsewhere in connection with or in  
27 relation to his usual and customary employment.

28 (h) The pronoun "he" shall mean both masculine and  
29 feminine.

30 (i) "Mayor" shall mean the chief executive officer of  
31 the city.

32 (j) The term "actuarial equivalent" shall mean an  
33 annuity of equal value to the accumulated contributions,  
34 annuity or benefit when computed upon the basis of  
35 the actuarial tables in use by the fund.

36 (k) "Salary" shall mean the amount earned by a  
37 member as an employee of a municipality; *Provided*, That  
38 to and including June thirty, one thousand nine hundred  
39 sixty-seven, the maximum amount of salary to be con-  
40 sidered hereunder for purposes of contributions and in

41 the computation of benefits, shall be four hundred dol-  
42 lars per month.

43 (1) "Average salary" shall mean the highest annual  
44 average rate of salary earnable by a member during a  
45 period of five consecutive years within the total service  
46 of the member subject to a maximum amount of four  
47 hundred dollars per month to and including June  
48 thirty, one thousand nine hundred sixty-seven, and no  
49 such maximum rate after such date.

**§8-15-5. Prior, earned and total service credits; service breaks.**

1 (1) For prior service, each participating employee,  
2 on the effective date, shall be credited, as of such date,  
3 with a prior service credit equal to the period or periods  
4 of service that the member has rendered to the city  
5 prior to the effective date of the fund.

6 (2) Until June thirty, one thousand nine hundred  
7 sixty-seven, each member shall pay into the fund, six  
8 percent of his salary up to four hundred dollars a month.  
9 After June thirty, one thousand nine hundred sixty-  
10 seven, each member shall contribute six percent of his  
11 actual salary without limitations.

12     These contributions shall continue until such time as  
13     the member has thirty-five years of earned service  
14     credit; he shall continue to contribute to the fund until  
15     he retires or until he has contributed to the fund for  
16     a period of thirty-five years, that is, has thirty-five years  
17     of "earned service credit."

18     A member who has prior service credit shall be en-  
19     titled to full retirement payment when his prior service  
20     credit and his earned service credit totals thirty-five  
21     years of total service credit, if he has reached com-  
22     pulsory retirement age, or if he prior thereto becomes  
23     so physically or mentally disabled as to render him unfit  
24     for the performance of the duties of the position he  
25     occupies.

26     (3) In order to participate one hundred percent in  
27     the retirement fund the member must have a total  
28     service credit of thirty-five years which may consist of  
29     prior service credit or earned service credit, or both.  
30     At retirement, because of having reached the compulsory  
31     retirement age, the member shall participate in the fund  
32     only to the extent of his total service.

33     A person who is employed by the municipality at the  
34     time of the effective date of the fund and becomes a  
35     member of the fund shall be entitled to prior service  
36     credit even though such prior service was not continu-  
37     ous.

38     A person who is not employed by the municipality  
39     at the time of the effective date of the fund, but who  
40     has been employed in the past shall be entitled to prior  
41     service credit if he returns to the service within two  
42     years from the date of his termination of service and  
43     becomes a member of the fund within such two-year  
44     period.

45     A member upon separation from the service shall be  
46     entitled to withdraw his contributions without interest  
47     in lieu of any benefits to which he may be entitled. If  
48     such employee returns to the service of the municipality  
49     within two years and becomes a member of the fund,  
50     he shall be considered as a new employee and shall have  
51     forfeited all prior service credits unless he shall repay  
52     to the fund in cash at the time of reemployment the  
53     amount of money which he has withdrawn plus four

54 percent interest compounded annually on said amount  
55 during the time he was separated from the service.

56 If however, the break in service of such member is  
57 more than two years, he shall not be entitled to any  
58 prior service credits nor shall he be entitled to redeposit  
59 withdrawals but he shall reenter the fund as a new  
60 member.

**§8-15-6. Retirement age and benefits.**

1 After the effective date of the fund any member of  
2 the fund who has at least ten years of total service  
3 credit shall receive a vested right in a retirement pay-  
4 ment which he may exercise upon or after attainment  
5 of age sixty. When he has reached the age of sixty years  
6 he may, at his option, apply for a retirement payment  
7 as hereinafter provided.

8 Retirement for all members of the fund shall be com-  
9 pulsory at the age of sixty-five, subject to the following  
10 conditions:

11 The employee may be permitted to continue in the  
12 service if he so desires; if his services are still valuable  
13 to the municipality.



14 Whether an employee's services are valuable at the  
15 age of sixty-five shall be determined by the appointing  
16 officer of the municipality. If he determines that such  
17 services are valuable, his determination must be certi-  
18 fied to the board for approval. If the board approves,  
19 the employee may continue in the service of the munici-  
20 pality. The appointing officer shall annually certify  
21 to the board relative to the ability and competency of  
22 all employees over age sixty-five. A member of the  
23 fund, upon retirement, shall be entitled to the following  
24 retirement payment:

25 For thirty-five years of total service credits to and  
26 including twenty-four years of total service credits,  
27 fifty percent of average salary plus one and two-thirds  
28 percent of average salary per year of service for each  
29 year above twenty-three years.

30 Twenty-three years of total service credits, fifty  
31 percent of average salary: *Provided*, That if a mem-  
32 ber has twenty-three years of total service credits he  
33 shall be entitled to a minimum retirement payment  
34 of one hundred dollars per month.

35 Twenty-two years of total service credits, forty-nine  
36 percent of average salary.

37 Twenty-one years of total service credits, forty-eight  
38 percent of average salary.

39 Twenty years of total service credits, forty-seven per-  
40 cent of average salary.

41 Nineteen years of total service credits, forty-five per-  
42 cent of average salary.

43 Eighteen years of total service credits, forty-three per-  
44 cent of average salary.

45 Seventeen years of total service credits, forty-one per-  
46 cent of average salary.

47 Sixteen years of total service credits, thirty-nine per-  
48 cent of average salary.

49 Fifteen years of total service credits, thirty-six per-  
50 cent of average salary.

51 Fourteen years of total service credits, thirty-three  
52 percent of average salary.

53 Thirteen years of total service credits, thirty-one per-  
54 cent of average salary.

55 Twelve years of total service credits, twenty-nine per-  
56 cent of average salary.

57 Eleven years of total service credits, twenty-seven  
58 percent of average salary.

59 Ten years of total service credits, twenty-five percent  
60 of average salary.

61 With the condition that no optional benefit shall  
62 be effective if a member dies within thirty days  
63 after the filing of an application for retirement pay-  
64 ment, a member may elect at least one year prior to  
65 retirement to receive a lesser retirement payment, on  
66 a joint and last survivor basis, in order to provide, on  
67 an actuarial equivalent basis, an annuity to a designated  
68 beneficiary under any of the following two options:

69 Option 1. Upon his death while on retirement, his  
70 lesser retirement payment shall be continued through-  
71 out the life of and paid to such person having an insur-  
72 able interest in his life, as he shall have named in a  
73 written designation duly acknowledged and filed with  
74 the board.

75 Option 2. Upon his death while on retirement, one-

76 half of his lesser retirement payment shall be continued  
77 throughout the life of and paid to such person having  
78 an insurable interest in his life as he shall have named in  
79 a written designation duly acknowledged and filed with  
80 the board.

81 The rate of retirement payment shall be prorated for  
82 any fractional part of the total service credit of an  
83 employee of less than a full year.

**§8-15-7. Disability retirement payments.**

1 (1) If a member becomes disabled by bodily injury  
2 effected independently of all other causes and directly  
3 through accidental means while engaged in the course  
4 of his employment with the city and while in line of  
5 duty, and is totally and permanently disabled from per-  
6 forming any work for pay, whether for the municipality  
7 by which employed at date of disability or any other  
8 employer, he shall be entitled during the time of his  
9 disability to a retirement payment equal to fifty per-  
10 cent of the rate of salary of the member at date of  
11 disability: *Provided*, That the minimum payment shall  
12 be one hundred dollars per month.

13     (2) If a member becomes disabled while an em-  
14 ployee of the municipality after he has had at least ten  
15 years of total service credits, and before he has reached  
16 age sixty, but such disability is not incurred in the line  
17 of duty during the course of his employment, he shall  
18 be entitled to one-half of the retirement payment pro-  
19 vided for service retirement during the time of his dis-  
20 ability: *Provided*, That he shall be entitled to a minimum  
21 payment of fifty dollars per month and a maximum  
22 payment of one hundred dollars per month.

23     (3) When a member has reached the retirement age  
24 or has become so physically or mentally disabled as to  
25 render him unfit for the performance of the duties of  
26 the position he occupies and who has less than ten years'  
27 service credits, he shall be entitled to an annuity which  
28 shall be the actuarial equivalent of his total accumula-  
29 tion account at the time of his retirement.

30     (4) The board of trustees of the employees' retire-  
31 ment and benefit fund shall order a periodic reexamina-  
32 tion of members of the fund receiving disability retire-  
33 ment payment prior to age sixty and if the disability

34 no longer exists the payments shall be discontinued.

**§8-15-8. Death benefits.**

1     (1) The beneficiaries of a member who dies after he  
2 has had ten or more years' total service credits, as herein-  
3 after described, shall be entitled, for a period not to  
4 exceed ten years, to a retirement payment in accordance  
5 to the table contained in section six of this article. The  
6 payments shall be made to the person having an insur-  
7 able interest in his life, as he shall have nominated in a  
8 designation filed with the board. If the beneficiary is a  
9 widow, the marriage must have occurred at least one year  
10 prior to the death of the member in order that the  
11 widow may be eligible for a benefit under this para-  
12 graph.

13     Upon death of a member prior to the completion of  
14 ten years of total service, the designated beneficiary of  
15 the member, or the estate of the member, shall be en-  
16 titled to a return of his total contributions to the fund,  
17 without interest.

18     (2) Death benefits after retirement shall be the same  
19 as death benefits before retirement except a widow shall

20 not be entitled to benefits unless she was married to the  
21 member before the date of his retirement. Payment shall  
22 be made for the remaining period of ten years dating from  
23 the date of the member's retirement. If a widow of a  
24 member remarries, her retirement payments shall be  
25 terminated and shall not be resumed upon subsequent  
26 change in her marital status.

27 (3) If a member dies as a result of personal injury  
28 or disease arising out of and in the course of his employ-  
29 ment with the city, or as the result of total disability  
30 in line of duty, the surviving widow shall be entitled  
31 during her widowhood to a benefit equal to thirty-three  
32 and one-third percent of the final rate of salary of the  
33 member, subject to the maximum rate herein prescribed,  
34 but not to exceed one hundred and twenty-five dollars  
35 per month. In the event there be no widow, or if re-  
36 marriage occurs before the youngest child attains age  
37 eighteen, each child shall be entitled to twenty percent of  
38 the member's final rate of salary, subject to a total pay-  
39 ment to all children of fifty percent of salary, or one  
40 hundred twenty-five dollars per month, whichever is

41 the lesser. If there be no widow or minor children, the  
42 dependent father and/or mother, as the board shall de-  
43 termine, shall each be entitled to one-sixth of the de-  
44 ceased employee's final salary, but the payment to either  
45 parent shall not exceed fifty dollars per month.

**§8-15-9. Contributions by the municipality.**

1 The council or other governing body shall annually  
2 provide sufficient funds in the budget, on an actuarially  
3 funded basis, to provide for the funded requirements of  
4 the employees' retirement and benefit fund for current  
5 service of the employees over and above the amount  
6 contributed by the members, plus an amount to pay the  
7 cost of administration of the fund.

8 The municipality shall also contribute an amount re-  
9 quired, at three and one-half percent interest per annum,  
10 to amortize, over a period not to exceed forty years from  
11 July one, one thousand nine hundred sixty-seven, any  
12 unfunded accrued liability at that date.

**§8-15-10. Investment of funds.**

1 The board shall keep as an available sum for the pur-  
2 pose of making payments for retirement and other



3 benefits and administration expense an amount estimated  
4 to meet such payments for a period not to exceed ninety  
5 days. It shall have full power in its sole discretion to  
6 invest and reinvest any moneys received by it in the  
7 following types of securities: (a) Direct obligations of  
8 the United States government or of the state of West  
9 Virginia; (b) direct obligations of any county, school  
10 district, or any municipality in the state of West Vir-  
11 ginia; (c) bonds or debentures of any utility corpora-  
12 tion, industrial corporation or railroad corporation or-  
13 ganized under the laws of any state of the United States,  
14 rated "A" or better by any two security rating concerns  
15 provided interest shall have been paid by the corpora-  
16 tion on its indebtedness for at least the ten years last  
17 past; and (d) federally insured mortgages under sections  
18 two hundred three and two hundred seven of the national  
19 housing act.

**§8-15-14. Action by city required before new provisions are  
applicable.**

1 Notwithstanding any other provision in this article  
2 to the contrary, the provisions of this article as amended  
3 and reenacted at the regular session of the Legislature

4 in the year one thousand nine hundred sixty-nine shall  
5 not be applicable to any fund established by any city  
6 prior to the effective date of this section, unless and  
7 until such city shall by ordinance provide for the appli-  
8 cation thereof. In the absence of any such ordinance,  
9 any such fund shall be governed and controlled by and  
10 administered in accordance with the provisions of this  
11 article as they existed prior to the effective date of this  
12 section.

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

William Tempa  
Chairman Senate Committee

Clayton C. Davidson  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard Keyes  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

Howard W. Carson  
President of the Senate

H. Laban White  
Speaker of the House of Delegates

The within approved this the 14  
day of February, 1968.

Street C. Smith  
Governor



PRESENTED TO THE  
GOVERNOR

Date 2/13/68

Time 2:20 P.M.