WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1971

ENROLLED

COMMITTEE SUBSTITUTE FOR

HOUSE BILL No. 647

ORIGINATING IN THE COMMITTEE ON THE JUDICIARY
(By Mr. ________________________________ )

PASSED                FEBRUARY 10                1971

In Effect            FROM                        Passage

FILED IN THE OFFICE
JOHN D. EDWARDS, JR.
SECRETARY OF STATE
THIS DATE 2-12-71
AN ACT to amend and reenact sections two, seventeen, twenty-two and twenty-nine, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia public employees retirement act generally and particularly to those provisions of said act concerning or involving members or former members of the Legislature; redefining the term “final average salary” as used in said act; establishing procedures for determining average compensation of members or former members of the Legislature; and relating to the membership of the public employees retire-
ment system, membership status thereunder, retirement annuities under said system, the increase of certain of said retirement annuities from time to time, the members' deposit fund of said system and the contributions to be made by members to said fund generally and particularly with respect to members of the Legislature.

Be it enacted by the Legislature of West Virginia:

That sections two, seventeen, twenty-two and twenty-nine, 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:

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

5 (2) “Retirement system” or “system” means the West Virginia public employees retirement system created and established by this article;

8 (3) “Board of trustees” or “board” means the board
of trustees of the West Virginia public employees retirement system;

(4) "Political subdivision" means the state of West Virginia, a county, city or town in the state; a school corporation or corporate unit; 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 jurisdiction is coextensive with one or more counties, cities or towns, any agency or organization established by, or approved by the department of mental health for the provision of community health or mental retardation services, and which is supported in part by state, county or municipal funds;

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

(6) "Employee" means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable in whole or in part by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia national guard whose compensation in whole or in part is paid by the federal government: Provided, That members of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate, members of the legislative body of any political subdivision and 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 mem-
ber'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 a 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 either (a) the average of the highest annual compensation received by a member (including a member of the Legislature who participates in the retirement system in the year one thousand nine hundred seventy-one or thereafter) during any period of three 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, or (b) if he has less than five years of credited service, the average of the annual rate of compensation received by him during his total years of
credited service; and in determining the annual compensation, under either (a) or (b) of this subdivision (15), of a member of the Legislature who participates in the retirement system as a member of the Legislature in the year one thousand nine hundred seventy-one or in any year thereafter, his actual legislative compensation (the total of all compensation paid under sections two, three, four and five, article two-a, chapter four of this code) in the year one thousand nine hundred seventy-one or in any year thereafter, plus any other compensation he receives in any such year from any other participating public employer including the state of West Virginia, without any multiple in excess of one times his actual legislative compensation as aforesaid and other compensation, shall be used: Provided, That “final average salary” for any former member of the Legislature or for any member of the Legislature in the year one thousand nine hundred seventy-one who, in either event, was a member of the Legislature on November thirty, one thousand nine hundred sixty-eight, or November thirty, one thousand nine hundred
sixty-nine, or November thirty, one thousand nine hundred seventy, or on November thirty in any one or more of said three years, and who participated in the retirement system as a member of the Legislature in any one or more of such years of one thousand nine hundred sixty-eight, one thousand nine hundred sixty-nine or one thousand nine hundred seventy, means (i) either [notwithstanding the provisions of this subdivision (15) preceding this proviso] one thousand five hundred dollars multiplied by eight, plus the highest other compensation such former member or member received in any one of said three years from any other participating public employer including the state of West Virginia, or (ii) "final average salary" determined in accordance with (a) or (b) of this subdivision (15), whichever computation shall produce the higher final average salary [and in determining the annual compensation under (ii) of this proviso, the legislative compensation of any such former member shall be computed on the basis of one thousand five hundred dollars multiplied by eight, and the legislative compensation
of any such member shall be computed on the basis set forth in the provisions of this subdivision (15) immediately preceding this proviso or on the basis of one thousand five hundred dollars multiplied by eight, whichever computation as to such member shall produce the higher annual compensation];

(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; and

(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.

§5-10-17. Retirement system membership.

1 The membership of the retirement system shall consist of the following persons:

2 (a) All employees, as defined in section two of this article, who are in the employ of a political subdivision the day preceding the date it becomes a participating public employer and who continue in the employ of the
said participating public employer on or after the said
date shall become members of the retirement system;
and all persons who become employees of a participating
public employer on or after the said date shall thereupon
become members of the system; except as provided in
subdivisions (b) and (c) of this section.

(b) The membership of the retirement system shall
not include any person who is a member of, or who has
been retired by, the state teachers' retirement system,
the judges' retirement system, the retirement system of
the department of public safety, or any municipal retire-
ment system for either, or both, policemen or firemen;
and the West Virginia department of employment se-
curity, by the commissioner of such department, may
elect whether its employees will accept coverage under
this article or be covered under the authorization of a
separate enactment: Provided, That such exclusions of
membership shall not apply to any member of the state
Legislature, the clerk of the House of Delegates, the
clerk of the state Senate or to any member of the legis-
lative body of any political subdivision provided he once
becomes a contributing member of the retirement sys-

tem.

(c) Any member of the state Legislature, the clerk

of the House of Delegates, the clerk of the state Senate

or any member of the legislative body of any other politi-
cal subdivision shall become a member of the retirement

system provided he notifies the retirement system in writ-
ing of his intention to be a member of the system and

files a membership enrollment form as the board of

trustees shall prescribe, and each person, upon filing his

written notice to participate in the retirement system,

shall by said act authorize the clerk of the House of Dele-
gates or the clerk of the state Senate or such person as

the legislative body of any other political subdivision

shall designate to deduct said member's contribution, as

provided in section twenty-nine-b of this article, and

after said deductions have been made from said mem-
ber's compensation, such deductions shall be forwarded to

the retirement system.

(d) Should any question arise regarding the mem-
bership status of any employee, the board of trustees has
the final power to decide the question.
§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 and
3. five-tenths percent of his final average salary multiplied
4. by the number of years, and fraction of a year, of his
5. credited service in force at the time of his retirement:
6. Provided, That after March one, one thousand nine hun-
7. dred seventy, all members retired and all members
8. retiring shall receive a straight life annuity equal to
9. two percent of his final average salary multiplied by
10. the number of years, and fraction of a year, of his
11. credited service in force at the time of his retirement.
12. In either event, upon his retirement he shall have the
13. right to elect an option provided for in section twenty-
14. four of this article. All annuity payments shall com-
15. mence effective the first of the month following the
16. month in which a member retires or a member dies
17. leaving a beneficiary entitled to benefits and shall con-
18. tinue to the end of the month in which said retirant
19. or beneficiary dies, and said annuity payments shall not
20. be prorated for any portion of a month in which a
21. member retires or retirant or beneficiary dies.
The annuity of any member of the Legislature who participates in the retirement system as a member of the Legislature and who retires under this article or of any former member of the Legislature who has retired under this article (including any former member of the Legislature who has retired under this article and whose annuity was readjusted as of March one, one thousand nine hundred seventy, under the former provisions of this section) shall be increased from time to time during the period of his retirement when and if the legislative compensation paid under section two, article two-a, chapter four of this code to a member of the Legislature shall be increased to the point where a higher annuity would be payable to the retirant if he were retiring as of the effective date of the latest increase in such legislative compensation, but on the basis of his years of credited service to the date of his actual retirement.

§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 compensation 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 (including any member of the Legislature, except as otherwise provided in subsection (g) of this section) 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,
45 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.

56 (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.

61 (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' deposit 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) Any member of the Legislature who is a member
of the retirement system and with respect to whom
the term "final average salary" includes a multiple of
eight, pursuant to the provisions of subdivision (15),
section two of this article, shall contribute to the retire-
ment system on the basis of his legislative compensation
the sum of five hundred forty dollars each year he par-
ticipates in the retirement system as a member of the
Legislature.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the House.

Takes effect from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within approved this the 12th day of February, 1971.

[Signature]
Governor
PRESENTED TO THE
GOVERNOR

Date 2/12/71

Time 9:50 A.M.

RECEIVED

Feb 12 9:50 PM '71

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA