WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1971

ENROLLED

HOUSE BILL NO. 828

(By Mr. SERWES and Mr. FANTASIA)

PASSED FEBRUARY 25, 1971

In Effect JULY 1, 1971

Filed in the Office
JOHN D. ROONEY, IV
SECRETARY OF STATE
THIS DATE 3-8-71
ENROLLED

House Bill No. 828
(By Mr. Grewe and Mr. Fantasia)

[Passed February 25, 1971; in effect July 1, 1971.]

AN ACT to amend and reenact sections nineteen, twenty-four, twenty-five, twenty-six and twenty-seven, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal policemen’s pension and relief funds and municipal firemen’s pension and relief funds generally; relating to the contributions thereto by municipalities, policemen and firemen and the amount thereof; relating to levies in connection therewith; and relating to the computation and amount of disability, retirement and death benefits payable from such funds.

Be it enacted by the Legislature of West Virginia:

That sections nineteen, twenty-four, twenty-five, twenty-six and twenty-seven, article twenty-two, chapter eight of
the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-19. Levy to maintain fund; gifts, etc.; assessments on members of departments; return of assessments.

1 In every municipality in which there shall be a policemen's pension and relief fund or a firemen's pension and relief fund, or both, the same shall be maintained as follows: The governing body of the municipality shall levy annually and in the manner provided by law for other municipal levies, and include within the maximum levy or levies permitted by law, and if necessary in excess of any charter provision, a tax at such rate as will, after crediting (a) all interest, if any, to be received in such year from the investments of the respective boards, (b) the amount of the contributions received during such year from the members of the respective paid police department or paid fire department, and (c) in the case of the policemen's pension and relief fund, the arrest fee of one dollar as provided for in section twenty
of this article, provide funds equal to the sum of (1) the full amount of estimated expenditures of the boards of trustees of the respective funds, and (2) an additional amount equal to ten percent of such estimated expenditures, said ten percent amount to be taken, accumulated and invested, if possible, as surplus reserve: Provided, That in no event shall such levy for each of the respective boards of trustees be less than one cent nor more than eight cents on each one hundred dollars of all real and personal property as listed for taxation in such municipality.

The levies authorized under the provisions of this section, or any part of them, may by the governing body be laid in addition to all other municipal levies, and to that extent, beyond the limit of levy imposed by the charter of such municipality; and such levies shall supersede and if necessary exclude levies for other purposes if such priority or exclusion is necessary under limitations upon taxes or tax levies imposed by law. Such public corporations are authorized to take by gift, grant, devise or bequest, any money or real or
personal property, upon such terms as to the investment and expenditure thereof as may be fixed by the grantor or determined by said trustees.

In addition to all other sums provided for pensions in this section, it shall be the duty of every municipality in which any such fund or funds have been or shall be established to assess and collect from each member of the paid police department or paid fire department or both each month, the sum of six percent of the actual salary or compensation of such member; and the amount so collected shall become a regular part of the policemen’s pension and relief fund, if collected from a policeman, and of the firemen’s pension and relief fund, if collected from a fireman.

Any member of a paid police or fire department who is removed or discharged or who before retirement on any retirement pension or disability pension severs his connection with said department, provided he has served two full years or more, whether or not consecutive, shall, upon request, be refunded all pension and relief fund deductions made from his salary or compensation, but
without interest. In the event such refund is made
and such member subsequently reenters the department
no credit shall be allowed him for any former service,
unless any such member of a paid police or fire de-
partment repays to the pension and relief fund all sums
refunded to him within one year from the date he
reenters the department with interest at the rate of six
percent per annum: Provided, however, That any mem-
ber who, on or before June three, one thousand nine
hundred fifty-five, reentered the paid police or fire de-
partment shall be allowed credit for any former service
in the same department reentered if he within one year
from said June three, one thousand nine hundred fifty-
five, repaid all sums withdrawn or refunded to him
with interest at the rate of six percent per annum, but
in no case shall interest be charged for more than three
years. Any probationary member of a paid police or
fire department who is not given an absolute appoint-
ment at the end of his probationary period shall, upon
request, be refunded all pension and relief fund deduc-

(a) If any member of any such paid police or fire department of any such municipality shall become and be found upon examination by a majority of a board of medical examiners, which board shall consist of not less than three physicians appointed by the board of trustees, to have become so physically or mentally permanently disabled by reason of service rendered in the performance of his duties in such department, as to render necessary his retirement from all service in such department, or if any member who has been such a member of either of such departments for a period of not less than five consecutive years preceding his disability become and be found upon such an examination to have become so physically or mentally permanently disabled, from any reason other than as specified above in this section, as to render necessary his retirement from all service in such department, such board of trustees shall retire such permanently disabled members
from all service in such department; and said board of 
trustees of such pension and relief fund shall authorize 
the payment to each such permanently disabled mem-
ber monthly from the pension and relief fund a disability 
pension, the amount thereof to be determined as speci-
fied in subsection (f) of this section.

(b) If any member of any such department shall 
at any time be injured or become sick, regardless of the 
cause therefor, so as to render such member temporarily 
disabled, he shall be paid, during such disability for 
not exceeding twenty-six weeks, from said pension and 
relief fund temporary disability payments, the amount 
thereof to be determined as specified in said subsection 
(f) for the determination of payments under a disability 
pension.

(c) No member shall be eligible for any disability 
pension or any temporary disability payments unless 
such member shall have presented himself for an ex-
amination at the time of his appointment to the depart-
ment and his condition was then approved by a majority 
of a board of medical examiners appointed as aforesaid
by such pension board: Provided, That this provision shall not apply to any individual who became a member of either of said departments on or before March eight, one thousand nine hundred thirty-five. Any such pension board may, if it so elects, designate as a member or members of its board of medical examiners any physician or physicians appointed by the policemen's civil service commission or firemen's civil service commission of such municipality to conduct medical examinations on behalf of any such commission under the provisions of article fourteen or article fifteen of this chapter, as the case may be.

(d) Any member who has been heretofore, or shall hereafter be, allowed a disability pension or temporary disability payments under the provisions of sections sixteen through twenty-eight of this article may be required by such board to be reexamined at any time and if he is then not disabled as aforesaid he shall be ordered by the mayor of the municipality to return to duty in his former position in the paid police or fire department, as the case may be, and his disability pension
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or temporary disability payments shall be discontinued:

Provided, however, That this provision shall not apply
to any member until such member can and shall be re-
stored to his former position in such department.

(e) All medical examinations conducted under the
provisions of this section shall be ordered by the pen-
sion board.

(f) The monthly sum to be paid to each permanently
disabled member of a paid police or fire department
entitled thereto shall be equal to sixty percent of the
monthly salary or compensation being received by such
member, at the time he is so disabled, or the sum of
two hundred dollars per month, whichever shall be
greater.


1 (a) Any member of a paid police or fire depart-
ment who is entitled to a retirement pension hereunder,
and who has been in the honorable service of such de-
partment for twenty years, may, upon written applica-
tion to the board of trustees, be retired from all ser-
vice in such department without medical examination
or disability; and on such retirement the board of trustees shall authorize the payment of annual retirement pension benefits commencing upon his retirement or upon his attaining the age of fifty years, whichever is later, payable in twelve monthly installments for each year of the remainder of his life, in an amount equal to sixty percent of such member's average annual salary or compensation received during the five fiscal years, not necessarily consecutive, in which such member received his highest salary or compensation while a member of the department, or an amount of two hundred dollars per month, whichever shall be greater.

(b) Any member of any such department who is entitled to a retirement pension under the provisions of subsection (a) of this section and who has been in the honorable service of such department for more than twenty years at the time of his retirement, as herein provided, shall, in addition to the sixty percent authorized in said subsection (a), receive one additional percent, to be added to the sixty percent, per each year
served in excess of said twenty years, up to a maximum
of five additional percent.

(c) Any member of any such department whose
service has been interrupted by duty with the armed
forces of the United States as provided in section
twenty-seven of this article, shall be eligible for retire-
ment pension benefits immediately upon retirement,
regardless of his age, if he shall otherwise be eligible
for such retirement pension benefits.

(d) Any member of a paid police or fire de-
partment shall be retired at the age of sixty-five years in
the manner provided in this subsection. When a mem-
ber of the paid police or fire department shall have
reached the age of sixty-five years, the said board of
trustees shall notify the mayor of this fact, within
thirty days of such member's sixty-fifth birthday; and
the mayor shall cause such sixty-five year old member of
the paid police or fire department to be retired within a
period of not more than thirty additional days. Upon
retirement under the provisions of this subsection (d),
such member, whether he has been employed in said
department for twenty years or not, shall receive retirement pension benefits payable in twelve monthly installments for each year of the reminder of his life, in an amount equal to sixty percent of such member’s average annual salary or compensation received during the five fiscal years, not necessarily consecutive, in which such member received his highest salary or compensation while a member of the department, or an amount of two hundred dollars per month, whichever shall be greater, and if such member has been employed in said department for more than twenty years, the provisions of subsection (b) of this section shall apply.

(e) It shall be the duty of each member of a paid police or fire department at the time a fund is hereafter established to furnish the necessary proof of his date of birth to the said board of trustees, as specified in section twenty-three of this article, within a reasonable length of time, said length of time to be determined by the said board of trustees; and then the board of trustees and the mayor shall proceed to act in the manner provided in subsection (d) of this section and shall
cause all members of the paid police or fire department
who are over the age of sixty-five years to be retired
in not less than sixty days from the date the fund is
established. Upon retirement under the provisions of
this subsection (e), such member, whether he has been
employed in said department for twenty years or not,
shall receive retirement pension benefits payable in
twelve monthly installments for each year of the re-
mainder of his life, in an amount equal to sixty percent
of such member's average annual salary or compensa-
tion received during the five fiscal years, not necessarily
consecutive, in which such member received his highest
salary or compensation while a member of the depart-
ment, or an amount of two hundred dollars per month,
whichever shall be greater, and if such member has
been employed in said department for more than twenty
years, the provisions of subsection (b) of this section
shall apply.


1 (a) In case:

2 (1) Any member of a paid police or fire department

who has been in continuous service for more than five
4 years shall die, from any cause other than as specified
5 in subsection (b) of this section twenty-six, before re-
6 tirement on a disability pension under the provisions of
7 section twenty-four of this article or a retirement pen-
8 sion under the provisions of subsection (a) or both sub-
9 section (a) and (b) of section twenty-five of this article,
10 leaving in either case surviving a dependent spouse, or
11 any dependent child or children under the age of eighteen
12 years, or dependent father or mother or both, or any
13 dependent brothers or sisters or both under the age of
14 eighteen years; or
15 (2) Any former member of any such department
16 who is on a disability pension under the provisions of
17 said section twenty-four, or has attained the age of fifty
18 years and is receiving or is entitled to receive retire-
19 ment pension benefits under the provisions of subsection
20 (a) or both subsections (a) and (b) of section twenty-
21 five of this article, shall die, from any cause other than
22 as specified in subsection (b) of this section twenty-six,
23 leaving in either case surviving a dependent spouse to
24 whom the marriage took place prior to the date of such
member's retirement on a disability pension or a retirement pension, or any dependent child or children under the age of eighteen years who were born prior to or within ten months after the date of such member's retirement on a disability pension or a retirement pension, or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years; or

(3) Any former member of any such department who has retired under the provisions of subsection (a) or both subsections (a) and (b) of section twenty-five of this article, shall die before attaining the age of fifty years, from any cause other than as specified in subsection (b) of this section twenty-six, leaving surviving a dependent spouse, or any dependent child or children under the age of eighteen years, or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years; then in any of the cases set forth above in (1), (2) and (3), the board of trustees of such pension and relief fund shall, immediately following the death of such member, pay to or for each of
such entitled surviving dependents the following pen-
sion benefits, viz.: To such dependent spouse, until death
or remarriage, a sum per month equal to thirty percent
of such member’s average monthly salary or compensation
received during the five fiscal years, not necessarily
consecutive, in which such member received his highest
salary or compensation while a member of the department,
hereinafter for convenience referred to in this section
as “monthly average,” or an amount of one hundred dol-
lars per month, whichever shall be greater; to each such
dependent child a sum per month equal to ten percent of
such monthly average, or the sum of thirty dollars per
month for each such child, whichever shall be greater,
until such child shall attain the age of eighteen years
or marry, whichever first occurs; to each such dependent
orphaned child a sum per month equal to fifteen percent
of such monthly average, or the sum of forty-five dollars
per month for each such child, whichever shall be greater,
until such child shall attain the age of eighteen years
or marry, whichever first occurs; to each such depen-
dent father or mother a sum per month for each
equal to ten percent of such monthly average, or the
sum of thirty dollars per month for each such father
and mother, whichever shall be greater; to each such
dependent brother or sister the sum of five dollars
per month until such individual shall attain the age
of eighteen years or marry, whichever first occurs, but
in no event shall the aggregate amount paid to such
brothers and sisters exceed thirty dollars per month;
but if at any time, because of the number of dependents,
all such dependents cannot be paid in full as herein
provided, then each dependent shall receive his pro rata
share of such payments: Provided, That in no case shall
the payments to the surviving spouse and children be cut
below sixty-five percent of the total amount to be paid
to all dependents.

(b) The dependent spouse, child or children, or
dependent father or mother, or dependent brothers or
sisters, of any such member who shall die by reason of
service rendered in the performance of such member's
duties shall, regardless of the length of such member's
service and irrespective of whether such member was
or was not entitled to receive or was or was not receiving a disability pension or temporary disability payments at the time of his death, receive the death benefits provided for in subsection (a) of this section, and if such member had less than five years' service at the time of his death, the monthly average shall be computed on the basis of the actual number of years of service.

(c) The provisions of this section shall not be construed as creating or establishing any contractual or vested rights in favor of any individual who may be or become qualified as a beneficiary of the death benefits herein authorized to be made, all the provisions hereof and benefits provided for hereunder being expressly subject to such subsequent legislative enactments as may provide for any change, modification or elimination of the beneficiaries or benefits specified herein.


(a) In determining the years of service of a member in a paid police or fire department for the purpose of ascertaining certain disability pension benefits,
all retirement pension benefits and certain death benefits
the following provisions shall be applicable:

(1) Absence from the service because of sickness or injury shall not be construed as time out of service; and

(2) Any member of any paid police or fire department covered by the provisions of sections sixteen through twenty-eight of this article who has been required to or shall at any future time be required to enter the armed forces of the United States by conscription, by reason of being a member of some reserve unit of the armed forces or a member of the West Virginia national guard or air national guard, or who enlists in one of the armed forces of the United States during hostilities, and who upon receipt of an honorable discharge from such armed forces presents himself for resumption of duty to his appointing municipal official within six months from his date of discharge, and is accepted by the pension board's board of medical examiners as being mentally and physically capable of performing his required duties as a member of such
paid police or fire department, shall be given credit for
continuous service in said paid police or fire department,
and his rights shall be governed as herein provided. No
member of a paid police or fire department shall be re-
quired to pay the monthly assessment as now required
by law, during his period of service in the armed forces
of the United States.

(b) As to any former member of a paid police
or fire department receiving disability pension benefits
or retirement pension benefits from a policemen’s or
firemen’s pension and relief fund, on the effective date
of this article, the following provisions shall govern
and control the amount of such pension benefits:

(1) A former member who on June thirtieth,
one thousand nine hundred sixty-two, was receiving dis-
ability pension benefits or retirement pension benefits
from a policemen’s or firemen’s pension and relief fund,
shall continue to receive pension benefits but on and after
July one, one thousand nine hundred seventy-one, such
pension benefits shall be in the amount of two hundred
dollars per month; and
(2) A former member who became entitled to disability pension benefits or retirement pension benefits on or after July one, one thousand nine hundred sixty-two, shall continue to receive pension benefits but on and after July one, one thousand nine hundred seventy-one, shall receive the disability pension benefits or retirement pension benefits provided for in section twenty-four or section twenty-five of this article, as the case may be.

(c) As to any dependent spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any former member of a paid police or fire department, receiving any death benefits from a policemen's pension and relief fund or firemen's pension and relief fund, on the effective date of this article, the following provisions shall govern and control the amount of such death benefits:

(1) A dependent spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any former member, who on June thirty, one thousand nine hundred sixty-two, was receiving any death benefits from a policemen's pension and relief
fund or firemen's pension and relief fund, shall continue to receive death benefits but on and after July one, one thousand nine hundred seventy-one, such death benefits shall be in the following amounts: To a dependent spouse, until death or remarriage, the sum of one hundred dollars per month; to each dependent child the sum of thirty dollars per month, until such child shall attain the age of eighteen years or marry, whichever first occurs; to each dependent orphaned child the sum of forty-five dollars per month, until such child shall attain the age of eighteen years or marry, whichever first occurs; to each dependent father and mother the sum of thirty dollars per month; to each dependent brother or sister the sum of five dollars per month, until such individual shall attain the age of eighteen years or marry, whichever first occurs, but in no event shall the aggregate amount paid to such brothers and sisters exceed thirty dollars per month; but if at any time, because of the number of dependents, all such dependents cannot be paid in full as herein provided, then each dependent shall receive his pro rata share of such payments: Provided, That in no case shall
the payments to the surviving spouse and children be
cut below sixty-five percent of the total amount to be paid
to all dependents;

(2) A dependent spouse, child or children, or
dependent father or mother, or dependent brothers or
sisters, of any former member, who became eligible for
death benefits on or after July one, one thousand nine
hundred sixty-two, shall continue to receive death bene-
fits but on and after July one, one thousand nine hundred
seventy-one, shall receive the death benefits provided
for in section twenty-six of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.

Takes effect July 1, 1971.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 5th day of March, 1971.

Governor
PRESENTED TO THE GOVERNOR

Date: 3/2/71
Time: 10:35 a.m.

RECEIVED

Mar. 8, 1971

OFFICE OF THE SECRETARY
STATE OF WEST VIRGINIA