

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1971



ENROLLED

HOUSE BILL No. 828

(By Mr. SEREWE AND MR. FANTASIA )



PASSED FEBRUARY 25, 1971

In Effect JULY 1, 1971 Passage



FILED IN THE OFFICE  
JOHN D. ROSEKOPFELLER, IV  
SECRETARY OF STATE  
THIS DATE 3-8-71

828

**ENROLLED**

# **House Bill No. 828**

(By MR. GREWE and MR. FANTASIA)

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

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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 police-  
2 men's pension and relief fund or a firemen's pension  
3 and relief fund, or both, the same shall be maintained  
4 as follows: The governing body of the municipality  
5 shall levy annually and in the manner provided by law  
6 for other municipal levies, and include within the maxi-  
7 mum levy or levies permitted by law, and if necessary  
8 in excess of any charter provision, a tax at such rate  
9 as will, after crediting (a) all interest, if any, to be re-  
10 ceived in such year from the investments of the respec-  
11 tive boards, (b) the amount of the contributions received  
12 during such year from the members of the respective paid  
13 police department or paid fire department, and (c) in  
14 the case of the policemen's pension and relief fund, the  
15 arrest fee of one dollar as provided for in section twenty

16 of this article, provide funds equal to the sum of (1) the  
17 full amount of estimated expenditures of the boards  
18 of trustees of the respective funds, and (2) an addi-  
19 tional amount equal to ten percent of such estimated  
20 expenditures, said ten percent amount to be taken, ac-  
21 cumulated and invested, if possible, as surplus reserve:  
22 *Provided*, That in no event shall such levy for each of  
23 the respective boards of trustees be less than one cent  
24 nor more than eight cents on each one hundred dollars  
25 of all real and personal property as listed for taxation  
26 in such municipality.

27 The levies authorized under the provisions of this  
28 section, or any part of them, may by the governing body  
29 be laid in addition to all other municipal levies, and  
30 to that extent, beyond the limit of levy imposed by  
31 the charter of such municipality; and such levies shall  
32 supersede and if necessary exclude levies for other pur-  
33 poses if such priority or exclusion is necessary under  
34 limitations upon taxes or tax levies imposed by law.

35 Such public corporations are authorized to take by  
36 gift, grant, devise or bequest, any money or real or

37 personal property, upon such terms as to the invest-  
38 ment and expenditure thereof as may be fixed by the  
39 grantor or determined by said trustees.

40 In addition to all other sums provided for pensions  
41 in this section, it shall be the duty of every municipality  
42 in which any such fund or funds have been or shall be  
43 established to assess and collect from each member of  
44 the paid police department or paid fire department or  
45 both each month, the sum of six percent of the actual  
46 salary or compensation of such member; and the amount  
47 so collected shall become a regular part of the police-  
48 men's pension and relief fund, if collected from a police-  
49 man, and of the firemen's pension and relief fund, if col-  
50 lected from a fireman.

51 Any member of a paid police or fire department who  
52 is removed or discharged or who before retirement on  
53 any retirement pension or disability pension severs his  
54 connection with said department, provided he has served  
55 two full years or more, whether or not consecutive, shall,  
56 upon request, be refunded all pension and relief fund  
57 deductions made from his salary or compensation, but

58 without interest. In the event such refund is made  
59 and such member subsequently reenters the department  
60 no credit shall be allowed him for any former service,  
61 unless any such member of a paid police or fire de-  
62 partment repays to the pension and relief fund all sums  
63 refunded to him within one year from the date he  
64 reenters the department with interest at the rate of six  
65 percent per annum: *Provided, however,* That any mem-  
66 ber who, on or before June three, one thousand nine  
67 hundred fifty-five, reentered the paid police or fire de-  
68 partment shall be allowed credit for any former service  
69 in the same department reentered if he within one year  
70 from said June three, one thousand nine hundred fifty-  
71 five, repaid all sums withdrawn or refunded to him  
72 with interest at the rate of six percent per annum, but  
73 in no case shall interest be charged for more than three  
74 years. Any probationary member of a paid police or  
75 fire department who is not given an absolute appoint-  
76 ment at the end of his probationary period shall, upon  
77 request, be refunded all pension and relief fund deduc-

78 tions made from his salary or compensation, but with-  
79 out interest.

**§8-22-24. Disability pensions; temporary disability payments.**

1 (a) If any member of any such paid police or fire  
2 department of any such municipality shall become and  
3 be found upon examination by a majority of a board  
4 of medical examiners, which board shall consist of not  
5 less than three physicians appointed by the board of  
6 trustees, to have become so physically or mentally per-  
7 manently disabled by reason of service rendered in  
8 the performance of his duties in such department, as  
9 to render necessary his retirement from all service in  
10 such department, or if any member who has been such  
11 a member of either of such departments for a period  
12 of not less than five consecutive years preceding his dis-  
13 ability become and be found upon such an examination  
14 to have become so physically or mentally permanently  
15 disabled, from any reason other than as specified above  
16 in this section, as to render necessary his retirement  
17 from all service in such department, such board of trus-  
18 tees shall retire such permanently disabled members

19 from all service in such department; and said board of  
20 trustees of such pension and relief fund shall authorize  
21 the payment to each such permanently disabled mem-  
22 ber monthly from the pension and relief fund a disability  
23 pension, the amount thereof to be determined as speci-  
24 fied in subsection (f) of this section.

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

34 (c) No member shall be eligible for any disability  
35 pension or any temporary disability payments unless  
36 such member shall have presented himself for an ex-  
37 amination at the time of his appointment to the depart-  
38 ment and his condition was then approved by a majority  
39 of a board of medical examiners appointed as aforesaid



40 by such pension board: *Provided*, That this provision  
41 shall not apply to any individual who became a member  
42 of either of said departments on or before March eight,  
43 one thousand nine hundred thirty-five. Any such pen-  
44 sion board may, if it so elects, designate as a member  
45 or members of its board of medical examiners any physi-  
46 cian or physicians appointed by the policemen's civil  
47 service commission or firemen's civil service commission  
48 of such municipality to conduct medical examinations  
49 on behalf of any such commission under the provisions  
50 of article fourteen or article fifteen of this chapter, as  
51 the case may be.

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

61 or temporary disability payments shall be discontinued:  
62 *Provided, however,* That this provision shall not apply  
63 to any member until such member can and shall be re-  
64 stored to his former position in such department.

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

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

**§8-22-25. Retirement pensions.**

1 (a) Any member of a paid police or fire depart-  
2 ment who is entitled to a retirement pension hereunder,  
3 and who has been in the honorable service of such de-  
4 partment for twenty years, may, upon written applica-  
5 tion to the board of trustees, be retired from all ser-  
6 vice in such department without medical examination

7 or disability; and on such retirement the board of trus-  
8 tees shall authorize the payment of annual retirement  
9 pension benefits commencing upon his retirement or  
10 upon his attaining the age of fifty years, whichever is  
11 later, payable in twelve monthly installments for each  
12 year of the remainder of his life, in an amount equal  
13 to sixty percent of such member's average annual sal-  
14 ary or compensation received during the five fiscal years,  
15 not necessarily consecutive, in which such member re-  
16 ceived his highest salary or compensation while a mem-  
17 ber of the department, or an amount of two hundred  
18 dollars per month, whichever shall be greater.

19 (b) Any member of any such department who  
20 is entitled to a retirement pension under the provisions  
21 of subsection (a) of this section and who has been  
22 in the honorable service of such department for more  
23 than twenty years at the time of his retirement, as  
24 herein provided, shall, in addition to the sixty percent  
25 authorized in said subsection (a), receive one additional  
26 percent, to be added to the sixty percent, per each year

27 served in excess of said twenty years, up to a maximum  
28 of five additional percent.

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

36           (d) Any member of a paid police or fire de-  
37 partment shall be retired at the age of sixty-five years in  
38 the manner provided in this subsection. When a mem-  
39 ber of the paid police or fire department shall have  
40 reached the age of sixty-five years, the said board of  
41 trustees shall notify the mayor of this fact, within  
42 thirty days of such member's sixty-fifth birthday; and  
43 the mayor shall cause such sixty-five year old member of  
44 the paid police or fire department to be retired within a  
45 period of not more than thirty additional days. Upon  
46 retirement under the provisions of this subsection (d),  
47 such member, whether he has been employed in said

48 department for twenty years or not, shall receive re-  
49 tirement pension benefits payable in twelve monthly  
50 installments for each year of the remainder of his life,  
51 in an amount equal to sixty percent of such member's  
52 average annual salary or compensation received dur-  
53 ing the five fiscal years, not necessarily consecutive, in  
54 which such member received his highest salary or com-  
55 pensation while a member of the department, or an  
56 amount of two hundred dollars per month, whichever  
57 shall be greater, and if such member has been employed  
58 in said department for more than twenty years, the  
59 provisions of subsection (b) of this section shall apply.

60           (e) It shall be the duty of each member of a  
61 paid police or fire department at the time a fund is here-  
62 after established to furnish the necessary proof of his  
63 date of birth to the said board of trustees, as specified  
64 in section twenty-three of this article, within a reason-  
65 able length of time, said length of time to be determined  
66 by the said board of trustees; and then the board of  
67 trustees and the mayor shall proceed to act in the man-  
68 ner provided in subsection (d) of this section and shall

69 cause all members of the paid police or fire department  
70 who are over the age of sixty-five years to be retired  
71 in not less than sixty days from the date the fund is  
72 established. Upon retirement under the provisions of  
73 this subsection (e), such member, whether he has been  
74 employed in said department for twenty years or not,  
75 shall receive retirement pension benefits payable in  
76 twelve monthly installments for each year of the re-  
77 mainder of his life, in an amount equal to sixty percent  
78 of such member's average annual salary or compensa-  
79 tion received during the five fiscal years, not necessarily  
80 consecutive, in which such member received his highest  
81 salary or compensation while a member of the depart-  
82 ment, or an amount of two hundred dollars per month,  
83 whichever shall be greater, and if such member has  
84 been employed in said department for more than twenty  
85 years, the provisions of subsection (b) of this section  
86 shall apply.

**§8-22-26. Death benefits.**

1 (a) In case:

2 (1) Any member of a paid police or fire department  
3 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

25 member's retirement on a disability pension or a retire-  
26 ment pension, or any dependent child or children under  
27 the age of eighteen years who were born prior to or  
28 within ten months after the date of such member's re-  
29 tirement on a disability pension or a retirement pension,  
30 or dependent father or mother or both, or any dependent  
31 brothers or sisters or both under the age of eighteen  
32 years; or

33 (3) Any former member of any such department  
34 who has retired under the provisions of subsection (a) or  
35 both subsections (a) and (b) of section twenty-five of  
36 this article, shall die before attaining the age of fifty years,  
37 from any cause other than as specified in subsection (b)  
38 of this section twenty-six, leaving surviving a dependent  
39 spouse, or any dependent child or children under the  
40 age of eighteen years, or dependent father or mother or  
41 both, or any dependent brothers or sisters or both under  
42 the age of eighteen years; then in any of the cases set  
43 forth above in (1), (2) and (3), the board of trustees  
44 of such pension and relief fund shall, immediately follow-  
45 ing the death of such member, pay to or for each of



46 such entitled surviving dependents the following pen-  
47 sion benefits, viz.: To such dependent spouse, until death  
48 or remarriage, a sum per month equal to thirty percent  
49 of such member's average monthly salary or compensation  
50 received during the five fiscal years, not necessarily  
51 consecutive, in which such member received his highest  
52 salary or compensation while a member of the department,  
53 hereinafter for convenience referred to in this section  
54 as "monthly average," or an amount of one hundred dol-  
55 lars per month, whichever shall be greater; to each such  
56 dependent child a sum per month equal to ten percent of  
57 such monthly average, or the sum of thirty dollars per  
58 month for each such child, whichever shall be greater,  
59 until such child shall attain the age of eighteen years  
60 or marry, whichever first occurs; to each such dependent  
61 orphaned child a sum per month equal to fifteen percent  
62 of such monthly average, or the sum of forty-five dollars  
63 per month for each such child, whichever shall be greater,  
64 until such child shall attain the age of eighteen years  
65 or marry, whichever first occurs; to each such depen-  
66 dent father or mother a sum per month for each

67 equal to ten percent of such monthly average, or the  
68 sum of thirty dollars per month for each such father  
69 and mother, whichever shall be greater; to each such  
70 dependent brother or sister the sum of five dollars  
71 per month until such individual shall attain the age  
72 of eighteen years or marry, whichever first occurs, but  
73 in no event shall the aggregate amount paid to such  
74 brothers and sisters exceed thirty dollars per month;  
75 but if at any time, because of the number of dependents,  
76 all such dependents cannot be paid in full as herein  
77 provided, then each dependent shall receive his pro rata  
78 share of such payments: *Provided*, That in no case shall  
79 the payments to the surviving spouse and children be cut  
80 below sixty-five percent of the total amount to be paid  
81 to all dependents.

82 (b) The dependent spouse, child or children, or  
83 dependent father or mother, or dependent brothers or  
84 sisters, of any such member who shall die by reason of  
85 service rendered in the performance of such member's  
86 duties shall, regardless of the length of such member's  
87 service and irrespective of whether such member was

88 or was not entitled to receive or was or was not receiv-  
89 ing a disability pension or temporary disability payments  
90 at the time of his death, receive the death benefits pro-  
91 vided for in subsection (a) of this section, and if such  
92 member had less than five years' service at the time of  
93 his death, the monthly average shall be computed on the  
94 basis of the actual number of years of service.

95 (c) The provisions of this section shall not be con-  
96 strued as creating or establishing any contractual or  
97 vested rights in favor of any individual who may be or  
98 become qualified as a beneficiary of the death benefits  
99 herein authorized to be made, all the provisions hereof  
100 and benefits provided for hereunder being expressly sub-  
101 ject to such subsequent legislative enactments as may  
102 provide for any change, modification or elimination of  
103 the beneficiaries or benefits specified herein.

**§8-22-27. General provisions concerning disability pensions,  
retirement pensions and death benefits.**

1 (a) In determining the years of service of a  
2 member in a paid police or fire department for the pur-  
3 pose of ascertaining certain disability pension benefits,

4 all retirement pension benefits and certain death benefits  
5 the following provisions shall be applicable:

6 (1) Absence from the service because of sick-  
7 ness or injury shall not be construed as time out of ser-  
8 vice; and

9 (2) Any member of any paid police or fire de-  
10 partment covered by the provisions of sections sixteen  
11 through twenty-eight of this article who has been re-  
12 quired to or shall at any future time be required to  
13 enter the armed forces of the United States by conscrip-  
14 tion, by reason of being a member of some reserve  
15 unit of the armed forces or a member of the West Vir-  
16 ginia national guard or air national guard, or who en-  
17 lists in one of the armed forces of the United States  
18 during hostilities, and who upon receipt of an honor-  
19 able discharge from such armed forces presents him-  
20 self for resumption of duty to his appointing municipal  
21 official within six months from his date of discharge,  
22 and is accepted by the pension board's board of medical  
23 examiners as being mentally and physically capable of  
24 performing his required duties as a member of such

25 paid police or fire department, shall be given credit for  
26 continuous service in said paid police or fire department,  
27 and his rights shall be governed as herein provided. No  
28 member of a paid police or fire department shall be re-  
29 quired to pay the monthly assessment as now required  
30 by law, during his period of service in the armed forces  
31 of the United States.

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

38 (1) A former member who on June thirtieth,  
39 one thousand nine hundred sixty-two, was receiving dis-  
40 ability pension benefits or retirement pension benefits  
41 from a policemen's or firemen's pension and relief fund,  
42 shall continue to receive pension benefits but on and after  
43 July one, one thousand nine hundred seventy-one, such  
44 pension benefits shall be in the amount of two hundred  
45 dollars per month; and

46           (2) A former member who became entitled to  
47 disability pension benefits or retirement pension benefits  
48 on or after July one, one thousand nine hundred sixty-  
49 two, shall continue to receive pension benefits but on and  
50 after July one, one thousand nine hundred seventy-one,  
51 shall receive the disability pension benefits or retirement  
52 pension benefits provided for in section twenty-four or  
53 section twenty-five of this article, as the case may be.

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

62           (1) A dependent spouse, child or children, or  
63 dependent father or mother, or dependent brothers or  
64 sisters, of any former member, who on June thirty, one  
65 thousand nine hundred sixty-two, was receiving any  
66 death benefits from a policemen's pension and relief

67 fund or firemen's pension and relief fund, shall continue  
68 to receive death benefits but on and after July one, one  
69 thousand nine hundred seventy-one, such death benefits  
70 shall be in the following amounts: To a dependent spouse,  
71 until death or remarriage, the sum of one hundred dollars  
72 per month; to each dependent child the sum of thirty dol-  
73 lars per month, until such child shall attain the age of  
74 eighteen years or marry, whichever first occurs; to each  
75 dependent orphaned child the sum of forty-five dollars  
76 per month, until such child shall attain the age of eighteen  
77 years or marry, whichever first occurs; to each dependent  
78 father and mother the sum of thirty dollars per month  
79 for each; to each dependent brother or sister the sum of  
80 five dollars per month, until such individual shall attain  
81 the age of eighteen years or marry, whichever first occurs,  
82 but in no event shall the aggregate amount paid to such  
83 brothers and sisters exceed thirty dollars per month; but  
84 if at any time, because of the number of dependents, all  
85 such dependents cannot be paid in full as herein pro-  
86 vided, then each dependent shall receive his pro rata  
87 share of such payments: *Provided*, That in no case shall

88 the payments to the surviving spouse and children be  
89 cut below sixty-five percent of the total amount to be paid  
90 to all dependents;

91 (2) A dependent spouse, child or children, or  
92 dependent father or mother, or dependent brothers or  
93 sisters, of any former member, who became eligible for  
94 death benefits on or after July one, one thousand nine  
95 hundred sixty-two, shall continue to receive death bene-  
96 fits but on and after July one, one thousand nine hundred  
97 seventy-one, shall receive the death benefits provided  
98 for in section twenty-six of this article.



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

*Russell G. Bruce*  
Chairman Senate Committee

*Phyllis Rutledge*  
Chairman House Committee

Originated in the House.

Takes effect July 1, 1971.

*Howard Meyer*  
Clerk of the Senate

*C. Blankenship*  
Clerk of the House of Delegates

*Ed Spont*  
President of the Senate

*Ivor N. Bovarsby*  
Speaker House of Delegates

The within *approved* this the *5<sup>th</sup>*  
day of *March*, 1971.

*Arch A. Shawe, Jr.*  
Governor



PRESENTED TO THE  
GOVERNOR

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

RECEIVED

MAR 8 9 34 AM '71

OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA