

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1978



ENROLLED

HOUSE BILL No. 1005

(By Mr. Speaker, Mr. Kopp)



PASSED February 28, 1978

In Effect July 1, 1978 Passage



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H. B. 1005

(By MR. SPEAKER, MR. KOPP)

[Passed February 28, 1978; in effect July 1, 1978.]

AN ACT to amend and reenact sections nineteen, twenty-two and twenty-six, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to municipal retirement benefits; policemen's pension and relief fund; firemen's pension and relief fund; levy to maintain funds; investment of funds by trustees; judgment in investments, actuarial studies; annual reports and death benefits to members.

Be it enacted by the Legislature of West Virginia:

That sections nineteen, twenty-two and twenty-six, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all 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 is a policemen's pen-
- 2 sion and relief fund or a firemen's pension and relief fund, or
- 3 both, the same shall be maintained as follows: The governing
- 4 body of the municipality shall levy annually and in the manner

5 provided by law for other municipal levies, and include with-
6 in the maximum levy or levies permitted by law, and if
7 necessary in excess of any charter provision, a tax at such
8 rate as will, after crediting (a) the amount of the contributions
9 received during such year from the members of the respective
10 paid police department or paid fire department, and (b) in
11 the case of the policemen's pension and relief fund, the arrest
12 fee of one dollar as provided for in section twenty of this
13 article, provide funds equal to the sum of (1) the full amount
14 of estimated expenditures of the boards of trustees of the
15 respective funds, and (2) an additional amount equal to ten
16 percent of such estimated expenditures, said ten percent
17 amount to be taken, accumulated and invested, if possible,
18 as surplus reserve: *Provided*, That in no event shall such levy
19 for each of the respective boards of trustees be less than one
20 cent nor more than eight cents on each one hundred dollars
21 of all real and personal property as listed for taxation in such
22 municipality.

23 The levies authorized under the provisions of this section,
24 or any part of them, may by the governing body be laid in
25 addition to all other municipal levies, and to that extent, be-
26 yond the limit of levy imposed by the charter of such munic-
27 ipality; and such levies shall supersede and if necessary ex-
28 clude levies for other purposes if such priority or exclusion is
29 necessary under limitations upon taxes or tax levies imposed
30 by law.

31 Such public corporations are authorized to take by gift,
32 grant, devise or bequest, any money or real or personal prop-
33 erty, upon such terms as to the investment and expenditures
34 thereof as may be fixed by the grantor or determined by said
35 trustees.

36 In addition to all other sums provided for pensions in this
37 section, it shall be the duty of every municipality in which
38 any such fund or funds have been or shall be established to
39 assess and collect from each member of the paid police de-
40 partment or paid fire department or both each month, the
41 sum of six percent of the actual salary or compensation of
42 such member; and the amount so collected shall become a
43 regular part of the policemen's pension and relief fund, if

44 collected from a policeman, and of the firemen's pension and
45 relief fund, if collected from a fireman.

46 Any member of a paid police or fire department who is
47 removed or discharged or who before retirement on any re-
48 tirement pension or disability pension severs his connection
49 with said department, provided he has served two full years or
50 more, whether or not consecutive, shall, upon request, be
51 refunded all pension and relief fund deductions made from
52 his salary or compensation, but without interest. In the event
53 such refund is made and such member subsequently reenters
54 the department no credit shall be allowed him for any former
55 service, unless any such member of a paid police or fire de-
56 partment repays to the pension and relief fund all sums
57 refunded to him within one year from the date he reenters
58 the department with interest at the rate of six percent per
59 annum: *Provided*, That any member who, on or before June
60 three, one thousand nine hundred fifty-five, reentered the
61 paid police or fire department shall be allowed credit for any
62 former service in the same department reentered if he within
63 one year from said June three, one thousand nine hundred
64 fifty-five, repaid all sums withdrawn or refunded to him with
65 interest at the rate of six percent per annum, but in no case
66 shall interest be charged for more than three years. Any
67 probationary member of a paid police or fire department who
68 is not given an absolute appointment at the end of his pro-
69 bationary period shall, upon request, be refunded all pension
70 and relief fund deductions made from his salary or compen-
71 sation, but without interest.

**§8-22-22. Investment of funds; exercise of judgment in making
investments; actuarial studies required; annual report.**

1 The board of trustees shall invest any moneys received by
2 it in the following classes of securities and accounts and not
3 otherwise, which securities and accounts mature on such dates
4 as will make available such amount of cash as is required:

5 (a) Obligations of the United States or any agency thereof,
6 which are guaranteed by the United States or for which the
7 full faith and credit of the United States is pledged for the
8 payment of principal and interest, or any obligation of an

9 agency of the United States designated in section nine, article
10 six, chapter twelve of this code.

11 (b) Certificates of deposit secured by (1) obligations as
12 listed in subdivision (a) of this section, (2) general obligation
13 or revenue bonds of the state of West Virginia, (3) general
14 obligation bonds of any other state, (4) general obligation
15 bonds of any county in this state or of any county board of
16 education in this state, or (5) general obligation bonds of any
17 municipality in this state.

18 (c) Interest bearing savings accounts or certificates of de-
19 posit in banking institutions, the accounts of which are insured
20 by the federal deposit insurance corporation, or interest bear-
21 ing savings accounts in federal savings and loan associations,
22 the accounts of which are insured by the federal savings and
23 loan insurance corporation, or interest bearing savings accounts
24 in building and loan associations, the accounts of which are
25 insured by the federal savings and loan insurance corporation:
26 *Provided*, That an investment in any such savings account
27 in excess of the amount thereof which would be insured by the
28 federal deposit insurance corporation or the federal savings
29 and loan insurance corporation, as the case may be, shall not
30 be made unless such banking institution, federal savings and
31 loan association or building and loan association provides ade-
32 quate bond or other adequate security for the amount of the
33 proposed municipal investment in excess of such insurance
34 coverage, the adequacy of any such bond or other security
35 to be determined by the treasurer of such municipality.

36 (d) Any security that is secured by a first lien deed of trust
37 or mortgage on real property situate within this state:
38 *Provided*, That the value of the securing of first lien deed
39 of trust or mortgage shall be at least twice the amount loaned
40 thereon, based on a sound appraisal by a competent appraiser
41 and duly certified by him or federally insured: *Provided*,
42 *however*, That the interest for such loan of money at a
43 rate expressed in terms of dollars upon one hundred dol-
44 lars for a year, shall be not less than the monthly index
45 of long-term government bonds yields for the second
46 preceding calendar month plus an additional one percent

47 a year rounded off to the nearest quarter of one percent
48 a year.

49 Any investment made under this article shall be made with
50 the exercise of that degree of judgment and care, under cir-
51 cumstances then prevailing, which men of experience, pru-
52 dence, discretion and intelligence exercise in the management
53 of their own affairs, not for speculation but for investment,
54 considering the probable safety of their capital as well as the
55 probable income to be derived.

56 The board of trustees shall cause an actuarial study of the
57 fund to be completed before the first day of July, one thousand
58 nine hundred seventy-nine, and each eight years thereafter:
59 *Provided*, That any board which has caused an actuarial
60 study of such fund to be completed within four years prior
61 to the effective date of the article shall be required to have its
62 next actuarial study completed before the first day of July,
63 one thousand nine hundred eighty-four. The actuarial study
64 shall be performed by an actuary who is a member of the
65 society of actuaries.

66 The board of trustees shall make a report to the governing
67 body of the municipality on the condition of its fund on the
68 thirty-first day of December of each year.

§8-22-26. Death benefits.

1 (a) In case:

2 (1) Any member of a paid police or fire department who has
3 been in continuous service for more than five years dies, from
4 any cause other than as specified in subsection (b) of this
5 section before retirement on a disability pension under the
6 provisions of section twenty-four of this article or a retirement
7 pension under the provisions of subsection (a) or both sub-
8 sections (a) and (b) of section twenty-five of this article,
9 leaving in either case surviving a dependent spouse, or any
10 dependent child or children under the age of eighteen years, or
11 dependent father or mother or both, or any dependent brothers
12 or sisters or both under the age of eighteen years; or

13 (2) Any former member of any such department who is on
14 a disability pension under the provisions of section twenty-

15 four of this article, or has attained the age of fifty years and is
16 receiving or is entitled to receive retirement pension benefits
17 under the provisions of subsection (a) or both subsections
18 (a) and (b) of section twenty-five of this article, shall die,
19 from any cause other than as specified in subsection (b) of
20 this section leaving in either case surviving a dependent spouse
21 to whom the marriage took place prior to the date of such
22 member's retirement on a disability pension or a retirement
23 pension, or any dependent child or children under the age
24 of eighteen years who were born prior to or within ten
25 months after the date of such member's retirement on a
26 disability pension or a retirement pension, or dependent
27 father or mother or both, or any dependent brothers or
28 sisters or both under the age of eighteen years; or

29 (3) Any former member of any such department who has
30 retired under the provisions of subsection (a) or both
31 subsections (a) and (b) of section twenty-five of this article,
32 shall die before attaining the age of fifty years, from any
33 cause other than as specified in subsection (b) of this section
34 leaving surviving a dependent spouse, or any dependent child
35 or children under the age of eighteen years, or dependent father
36 or mother or both, or any dependent brothers or sisters or both
37 under the age of eighteen years; then in any of the cases set
38 forth above in (1), (2) and (3), the board of trustees of such
39 pension and relief fund shall, immediately following the
40 death of such member, pay to or for each of such entitled
41 surviving dependents the following pension benefits, viz.: To
42 such dependent spouse, until death or remarriage, a sum per
43 month equal to thirty percent of such member's average
44 monthly salary or compensation received during the three
45 fiscal years, not necessarily consecutive, in which such mem-
46 ber received his highest salary or compensation while a
47 member of the department, hereinafter for convenience re-
48 ferred to in this section as "monthly average," or an amount
49 of one hundred dollars per month, whichever shall be greater;
50 to each such dependent child a sum per month equal to
51 ten percent of such monthly average, or the sum of thirty
52 dollars per month for each such child, whichever shall be
53 greater, until such child shall attain the age of eighteen years
54 or marry, whichever first occurs; to each such dependent

55 orphaned child a sum per month equal to fifteen percent of
56 such monthly average, or the sum of forty-five dollars per
57 month for each such child, whichever shall be greater, until
58 such child shall attain the age of eighteen years or marry,
59 whichever first occurs; to each such dependent father or
60 mother a sum per month for each equal to ten percent of
61 such monthly average, or the sum of thirty dollars per month
62 for each such father and mother, whichever shall be greater;
63 to each such dependent brother or sister the sum of five
64 dollars per month until such individual shall attain the age
65 of eighteen years or marry, whichever first occurs, but in
66 no event shall the aggregate amount paid to such brothers
67 and sisters exceed thirty dollars per month; but if at any
68 time, because of the number of dependents, all such dependents
69 cannot be paid in full as herein provided, then each dependent
70 shall receive his pro rata share of such payments: *Provided*,
71 That in no case shall the payments to the surviving spouse
72 and children be cut below sixty-five percent of the total
73 amount to be paid to all dependents.

74 (b) The dependent spouse, child or children, or dependent
75 father or mother, or dependent brothers or sisters, of any such
76 member who shall die by reason of service rendered in the
77 performance of such member's duties shall, regardless of the
78 length of such member's service and irrespective of whether
79 such member was or was not entitled to receive or was not
80 receiving a disability pension or temporary disability pay-
81 ments at the time of his death, receive the death benefits
82 provided for in subsection (a) of this section, and if such
83 member had less than three years' service at the time of his
84 death, the monthly average shall be computed on the basis
85 of the actual number of years of service.

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

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

James L. Davis
Chairman Senate Committee

Lawrence C. Christian
Chairman House Committee

Originated in the House.

Takes effect July 1, 1978.

J. C. Willoughby
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

W. H. Brubaker
President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within *is approved* this the *11*
day of *March*, 1978.

John D. Raley
Governor

APPROVED AND SIGNED BY THE GOVERNOR

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OFFICE OF THE GOVERNOR

Date March 11, 1978

Time 11:30 A.M.

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GOV. OF STATE

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