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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984

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ENROLLED

SENATE BILL NO. 285

(By Mr. BOEHNER)

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ok
Donald L. Rupp, Clerk
By M. Gray
Assistant Clerk
Baltimore

PASSED March 10, 1984
In Effect ^{ninety days} from Passage



ENROLLED
Senate Bill No. 285

(BY MR. BOETTNER)

[Passed March 10, 1984; in effect ^{from passage.} *thirty days*]

AN ACT to amend and reenact sections 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; all relating to municipal policemen's and firemen's pension and relief funds generally; providing for additional benefit credit for members who have served in the armed forces; increasing the minimum amount of benefits payable to retirees; increasing the minimum amount of death benefits payable to dependent spouses.

Be it enacted by the Legislature of West Virginia:

That sections 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, 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.

§8-22-25. Retirement pensions.

- 1 (a) Any member of a paid police or fire department who
- 2 is entitled to a retirement pension hereunder, and who has
- 3 been in the honorable service of such department for twenty
- 4 years, may, upon written application to the board of

5 trustees, be retired from all service in such department
6 without medical examination or disability; and on such
7 retirement the board of trustees shall authorize the
8 payment of annual retirement pension benefits
9 commencing upon his retirement or upon his attaining the
10 age of fifty years, whichever is later, payable in twelve
11 monthly installments for each year of the remainder of his
12 life, in an amount equal to sixty percent of such member's
13 average annual salary or compensation received during the
14 three twelve-consecutive-month periods, not necessarily
15 consecutive, each of such three periods beginning with the
16 same calendar month of different years and all such three
17 periods falling within the member's final five years of
18 employment with such department, in which such member
19 received his highest salary or compensation while a member
20 of the department, or an amount of two hundred dollars per
21 month, whichever shall be greater.

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

31 (c) Any member of any such department whose service
32 has been interrupted by duty with the armed forces of the
33 United States as provided in section twenty-seven of this
34 article prior to the first day of July, one thousand nine
35 hundred eighty-one, shall be eligible for retirement pension
36 benefits immediately upon retirement, regardless of his age,
37 if he shall otherwise be eligible for such retirement pension
38 benefits.

39 Any member of any such department who has served in
40 active duty with the armed forces of the United States as
41 described in section twenty-seven of this article, whether
42 prior to or subsequent to becoming a member of a paid
43 police or fire department covered by the provisions of this
44 article, shall receive, in addition to the sixty percent
45 authorized in subsection (a) of this section and the
46 additional percent credit authorized in subsection (b) of

47 this section, one additional percent per each year so served
48 in active military duty, up to a maximum of four additional
49 percent. In no event, however, may the total benefit granted
50 to any member exceed seventy-five percent of the member's
51 annual average salary calculated in accordance with
52 subsection (a) of this section.

53 (d) Any member of a paid police or fire department shall
54 be retired at the age of sixty-five years in the manner
55 provided in this subsection. When a member of the paid
56 police or fire department shall have reached the age of
57 sixty-five years, the said board of trustees shall notify the
58 mayor of this fact, within thirty days of such member's
59 sixty-fifth birthday; and the mayor shall cause such sixty-
60 five-year-old member of the paid police or fire department
61 to be retired within a period of not more than thirty
62 additional days. Upon retirement under the provisions of
63 this subsection (d), such member shall receive retirement
64 pension benefits payable in twelve monthly installments for
65 each year of the remainder of his life, in an amount equal to
66 sixty percent of such member's average annual salary or
67 compensation received during the three twelve-
68 consecutive-month periods, not necessarily consecutive,
69 each of such three periods beginning with the same
70 calendar month of different years and all such three periods
71 falling within the member's final five years of employment
72 with such department, in which such member received his
73 highest salary or compensation while a member of the
74 department, or an amount of three hundred dollars per
75 month, whichever is greater. If such member has been
76 employed in said department for more than twenty years,
77 the provisions of subsection (b) of this section shall apply.

78 (e) It shall be the duty of each member of a paid police or
79 fire department at the time a fund is hereafter established to
80 furnish the necessary proof of his date of birth to the said
81 board of trustees, as specified in section twenty-three of
82 this article, within a reasonable length of time, said length
83 of time to be determined by the said board of trustees; and
84 then the board of trustees and the mayor shall proceed to act
85 in the manner provided in subsection (d) of this section and
86 shall cause all members of the paid police or fire
87 department who are over the age of sixty-five years to be
88 retired in not less than sixty days from the date the fund is
89 established. Upon retirement under the provisions of this

90 subsection (e), such member, whether he has been employed
91 in said department for twenty years or not, shall receive
92 retirement pension benefits payable in twelve monthly
93 installments for each year of the remainder of his life, in an
94 amount equal to sixty percent of such member's average
95 annual salary or compensation received during the three
96 twelve-consecutive-month periods, not necessarily
97 consecutive, each of such three periods beginning with the
98 same calendar month of different years and all such three
99 periods falling within the member's final five years of
100 employment with such department, in which such member
101 received his highest salary or compensation while a member
102 of the department, or an amount of two hundred dollars per
103 month, whichever shall be greater: If such member has been
104 employed in said department for more than twenty years,
105 the provisions of subsection (b) of this section shall apply.

§8-22-26. Death benefits.

1 (a) In case:

2 (1) Any member of a paid police or fire department who
3 has been in continuous service for more than five years dies
4 from any cause other than as specified in subsection (b) of
5 this section before retirement on a disability pension under
6 the provisions of, prior to the first day of July, one thousand
7 nine hundred eighty-one, section twenty-four of this article
8 or, after the thirtieth day of June, one thousand nine
9 hundred eighty-one, sections twenty-three-a and twenty-
10 four of this article or a retirement pension under the
11 provisions of subsection (a) or both subsections (a) and (b),
12 section twenty-five of this article, leaving in either case
13 surviving a dependent spouse, or any dependent child or
14 children under the age of eighteen years, or dependent
15 father or mother or both, or any dependent brothers or
16 sisters or both under the age of eighteen years; or

17 (2) Any former member of any such department who is
18 on a disability pension prior to the first day of July, one
19 thousand nine hundred eighty-one, under section twenty-
20 four of this article, or after the thirtieth day of June, one
21 thousand nine hundred eighty-one, under sections twenty-
22 three-a and twenty-four of this article, or is receiving or is
23 entitled to receive retirement pension benefits under the
24 provisions of subsection (a) or both subsections (a) and (b),
25 section twenty-five of this article, shall die from any cause

26 other than as specified in subsection (b) of this section
27 leaving in either case surviving a dependment spouse to
28 whom the marriage took place prior to the date of such
29 member's retirement on a disability pension or a retirement
30 pension, or any dependent child or children under the age of
31 eighteen years who were born prior to or within ten months
32 after the date of such member's retirement on a disability
33 pension or a retirement pension, or dependent father or
34 mother or both, or any dependent brothers or sisters or both
35 under the age of eighteen years; then in any of the cases set
36 forth above in (1) and (2) the board of trustees of such
37 pension and relief fund shall, immediately following the
38 death of such member, pay to or for each of such entitled
39 surviving dependents the following pension benefits viz.:
40 To such dependent spouse, until death or remarriage, a sum
41 per month equal to thirty percent of such member's average
42 monthly salary or compensation received during the three
43 twelve-consecutive-month periods, not necessarily
44 consecutive, each of such three periods beginning with the
45 same calendar month of different years and all such three
46 periods falling within the member's final five years of
47 employment with such department, in which such member
48 received his highest salary or compensation while a member
49 of the department, hereinafter referred to in this section as
50 "monthly average," or an amount of two hundred dollars
51 per month, whichever is greater. To each such dependent
52 child a sum per month equal to ten percent of such monthly
53 average, or the sum of thirty dollars per month for each such
54 child, whichever shall be greater, until such child shall
55 attain the age of eighteen years or marry, whichever first
56 occurs; to each such dependent orphaned child a sum per
57 month equal to fifteen percent of such monthly average, or
58 the sum of forty-five dollars per month for each such child,
59 whichever shall be greater, until such child shall attain the
60 age of eighteen years or marry, whichever first occurs; to
61 each such dependent father or mother a sum per month for
62 each equal to ten percent of such monthly average, or the
63 sum of thirty dollars per month for each such father and
64 mother, whichever shall be greater; to each such dependent
65 brother or sister the sum of five dollars per month until such
66 individual shall attain the age of eighteen years or marry,
67 whichever first occurs, but in no event shall the aggregate
68 amount paid to such brothers and sisters exceed thirty

69 dollars per month; but if at any time, because of the number
70 of dependents, all such dependents cannot be paid in full as
71 herein provided, then each dependent shall receive his pro
72 rata share of such payments: *Provided*, That in no case shall
73 the payments to the surviving spouse and children be cut
74 below sixty-five percent of the total amount to be paid to all
75 dependents.

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

89 (c) If a member dies without leaving a dependent
90 spouse, child or children, or dependent father or mother, or
91 dependent brothers or sisters, his contributions to the fund
92 plus six percent interest shall be refunded to his named
93 beneficiary or, if no beneficiary has been named, to his
94 estate to the extent that such contributions plus interest
95 exceed any disability or retirement benefits that he may
96 have received before his death.

97 (d) The provisions of this section shall not be construed
98 as creating or establishing any contractual or vested rights
99 in favor of any individual who may be or become qualified
100 as a beneficiary of the death benefits herein authorized to
101 be made, all the provisions hereof and benefits provided for
102 hereunder being expressly subject to such subsequent
103 legislative enactments as may provide for any change,
104 modification or elimination of the beneficiaries or benefits
105 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 member in a
2 paid police or fire department for the purpose of

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

6 (1) Absence from the service because of sickness or
7 injury for a period of two years or less shall not be construed
8 as time out of service; and

9 (2) Any member of any paid police or fire department
10 covered by the provisions of sections sixteen through
11 twenty-eight of this article who has been required to or
12 shall at any future time be required to enter the armed
13 forces of the United States by conscription, by reason of
14 being a member of some reserve unit of the armed forces or a
15 member of the West Virginia national guard or air national
16 guard, whose reserve unit or guard unit is called into active
17 duty for one year or more, or who enlists in one of the armed
18 forces of the United States during hostilities, and who upon
19 receipt of an honorable discharge from such armed forces
20 presents himself for resumption of duty to his appointing
21 municipal official within six months from his date of
22 discharge, and is accepted by the pension board's board of
23 medical examiners as being mentally and physically
24 capable of performing his required duties as a member of
25 such 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 required
29 to pay the monthly assessment as now required by law,
30 during his period of service in the armed forces of the
31 United States.

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

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

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

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

62 (1) A dependent spouse, child or children, or dependent
63 father or mother, or dependent brothers or sisters, of any
64 former member, who on June thirty, one thousand nine
65 hundred sixty-two, was receiving any death benefits from a
66 policemen's pension and relief fund or firemen's pension
67 and relief fund, shall continue to receive death benefits but
68 on and after July one, one thousand nine hundred seventy-
69 one, such death benefits shall be in the following amounts:
70 To a dependent spouse, until death or remarriage, the sum
71 of two hundred dollars per month, to each dependent child
72 the sum of thirty dollars per month, until such child shall
73 attain the age of eighteen years or marry, whichever first
74 occurs; to each dependent orphaned child the sum of forty-
75 five dollars per month, until such child shall attain the age
76 of eighteen years or marry, whichever first occurs; to each
77 dependent father and mother the sum of thirty dollars per
78 month for each; to each dependent brother or sister the sum
79 of five dollars per month, until such individual shall attain
80 the age of eighteen years or marry, whichever first occurs,
81 but in no event shall the aggregate amount paid to such
82 brothers and sisters exceed thirty dollars per month; but if
83 at any time, because of the number of dependents, all such
84 dependents cannot be paid in full as herein provided, then
85 each dependent shall receive his pro rata share of such
86 payments: *Provided*, That in no case shall the payments to
87 the surviving spouse and children be cut below sixty-five
88 percent of the total amount to be paid to all dependents;

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

97 (d) A former member who is receiving disability pension
98 benefits on the thirtieth day of June, one thousand nine
99 hundred eighty-one, shall continue to receive disability
100 pension benefits provided for in section twenty-four of this
101 article.

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

Harrell E. Holmes
.....
Chairman Senate Committee

Donald Anello
.....
Chairman House Committee

Originated in the Senate.

minuty days

In effect from passage.

Todd C. Nishi
.....
Clerk of the Senate

Donald L. Dugg
.....
Clerk of the House of Delegates

Walter R. N. Brown
.....
President of the Senate

W. M. Lee, Jr.
.....
Speaker House of Delegates

The within *is approved* this the *30*
day of *March*, 198*8*

Paul J. [Signature]
.....
Governor

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