WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985

ENROLLED
Committee Substitute for
SENATE BILL NO. 440

(By Mr. Boettner)

PASSED April 13, 1985
In Effect seventy days from Passage
AN ACT to amend and reenact sections 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; all relating to municipal policemen's and firemen's pension and relief funds generally; calculation of monthly disability pensions; maximum aggregate monthly payments from disability pension and workers' compensation benefits; increasing the minimum amount of monthly disability and retirement pensions; calculation of monthly retirement benefits; providing an additional benefit credit on retirement pensions for members with more than twenty years of service; retirement pensions for members who served in the armed forces; requiring retirement of members at age sixty-five; requiring members to furnish proof of birth date to the board of trustees; providing for death benefits to surviving dependents of deceased members and calculation thereof; calculation of years of service of members; and monthly disability, retirement and death benefits.

Be it enacted by the Legislature of West Virginia:

That sections 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, 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.

1 (a) The monthly sum to be paid to each member eligible for disability under the provisions of section twenty-three-a of this article, shall be equal to sixty percent of the monthly salary being received by such member, at the time he is so disabled, or the sum of five hundred dollars per month, whichever shall be greater: Provided, That the limitation provided in subsection (b) of this section is not exceeded.
2 (b) Effective for any member who becomes eligible for disability benefits on or after the first day of July, one thousand nine hundred eighty-one, under the provisions of section twenty-three-a of this article, as a proximate result of service rendered in the performance of his duties within such departments, his monthly disability payment as provided in subsection (a) of this section shall not, when aggregated with the monthly amount of state workers' compensation, result in such disabled member receiving a total monthly income from such sources in excess of one hundred percent of the basic compensation which is paid to members holding the same position which such member held within such department at the time of his disability. Lump sum payments of state workers' compensation benefits shall not be considered for purposes of this subsection unless such lump sum payments represent commuted values of monthly state workers' compensation benefits.

1 (a) Any member of a paid police or fire department who is entitled to a retirement pension hereunder, and who has been in the honorable service of such department for twenty
years, may, upon written application to the board of trustees, be retired from all service in such department without medical examination or disability. 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 three twelve-consecutive-month periods of employment with such department in which such member received his highest salary or compensation while a member of the department, or an amount of five hundred dollars per month, whichever is 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 shall receive, in addition to the sixty percent authorized in said subsection (a):

(1) Two additional percent, to be added to the sixty percent, for each of the first five additional years of service completed at the time of retirement in excess of twenty years of service up to a maximum of seventy percent; and
(2) One additional percent, to be added to such maximum of seventy percent, for each of the first five additional years of service completed at the time of retirement in excess of twenty-five years of service up to a maximum of seventy-five percent.

The total additional credit provided for in this subsection may not exceed fifteen 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 prior to the first day of July, one thousand nine hundred eighty-one, shall be eligible for retirement pension benefits immediately upon retirement, regardless of his age, if he shall otherwise be eligible for such retirement pension benefits.

Any member or previously retired member of any such
department who has served in active duty with the armed
forces of the United States as described in section twenty-
seven of this article, whether prior to or subsequent to
becoming a member of a paid police or fire department
covered by the provisions of this article, shall receive, in
addition to the sixty percent authorized in subsection (a) of
this section and the additional percent credit authorized in
subsection (b) of this section, one additional percent for
each year so served in active military duty, up to a
maximum of four additional percent. In no event, however,
may the total benefit granted to any member exceed
seventy-five percent of the member’s annual average salary
calculated in accordance with subsection (a) of this section.
(d) Any member of a paid police or fire department shall
be retired at the age of sixty-five years in the manner
provided in this subsection. When a member of the paid
police or fire department reaches 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.
The mayor shall cause such sixty-five-year-old member of
the paid police or fire department to retire within a period
of not more than thirty additional days. Upon retirement
under the provisions of this subsection, such member shall
receive retirement pension benefits 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
three twelve-consecutive-month periods of employment
with such department in which such member received his
highest salary or compensation while a member of the
department, or an amount of five hundred dollars per
month, whichever is greater. 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. 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 retire
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 remainder of his life in an
amount equal to sixty percent of such member's average
annual salary or compensation received during the three
twelve-consecutive-month periods of employment with
such department in which such member received his
highest salary or compensation while a member of the
department, or an amount of five hundred dollars per
month, whichever is greater. If such member has been
employed in said department for more than twenty years,
the provisions of subsection (b) of this section shall apply.


(a) In case:

(1) Any member of a paid police or fire department who
has been in continuous service for more than five years dies
from any cause other than as specified in subsection (b) of
this section before retirement on a disability pension under
the provisions of, prior to the first day of July, one thousand
nine hundred eighty-one, section twenty-four of this article
or, after the thirtieth day of June, one thousand nine
hundred eighty-one, sections twenty-three-a and twenty-
four of this article or a retirement pension under the
provisions of subsection (a) or both subsections (a) and (b),
section twenty-five of this article, leaving in either case
surviving a 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; or

(2) Any former member of any such department who is
on a disability pension prior to the first day of July, one
 thousand nine hundred eighty-one, under section twenty-
four of this article, or after the thirtieth day of June, one
 thousand nine hundred eighty-one, under sections twenty-
three-a and twenty-four of this article, or is receiving or is
titled to receive retirement pension benefits under the
provisions of subsection (a) or both subsections (a) and (b), section twenty-five of this article, dies from any cause other than as specified in subsection (b) of this section leaving in either case surviving a 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) and (2) 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 pension benefits: To such spouse, until death or remarriage, a sum per month equal to sixty percent of such member's pension or, in the event such member was not receiving a pension at the time of his death, a sum per month equal to sixty percent of the monthly retirement pension such member would have been entitled to receive pursuant to section twenty-five of this article on the date of his death if such member had then been eligible for a retirement pension thereunder, or the sum of three hundred dollars per month, whichever is greater; to each such dependent child, a sum per month equal to ten percent of such member's pension or, in the event such member was not receiving a pension on the date of his death, a sum per month equal to ten percent of the monthly retirement pension such member would have been entitled to receive pursuant to section twenty-five of this article on the date of his death if such member had then been eligible for a retirement pension thereunder, or until such child attains the age of eighteen years or marries, whichever first occurs; to each such dependent orphaned child, a sum per month equal to twenty-five percent of such member's pension or, in the event such member was not receiving a pension at the time of his death, a sum per month equal to twenty-five percent of the monthly retirement pension such member would have been entitled to receive pursuant to section twenty-five of this article on the date of his death if such member had then been eligible for a retirement pension thereunder, or until such child attains the age of eighteen years or marries, whichever first occurs; to each such dependent father or mother, a sum per month for each equal to ten percent of such member's pension or, in the event such member was not receiving a pension on the
date of his death, a sum per month equal to ten percent of
the monthly retirement pension such member would have
been entitled to receive pursuant to section twenty-five of
this article on the date of his death if such member had then
been eligible for a retirement pension thereunder; to each
such dependent brother or sister, the sum of fifty dollars per
month until such individual attains the age of eighteen
years or marries, whichever first occurs, but in no event
shall the aggregate amount paid to such brothers and sisters
exceed one hundred dollars per month. 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.
In no case shall the payments to the surviving spouse and
children be cut below sixty-five percent of the total amount
paid to all dependents.

(b) The surviving spouse, child or children, or
dependent father or mother, or dependent brothers or
sisters, of any such member who dies 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, disability
pension or temporary disability payments at the time of his
death, receive the death benefits provided for in subsection
(a) of this section. If such member had less than three years'
service at the time of his death, the member's pension shall
be computed on the basis of the actual number of years of
service.

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

(d) 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.

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

(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 for a period of two years or less 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, whose reserve unit or guard unit is called into active
duty for one year or more, 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 required
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 first day of July, one
thousand nine hundred eighty-five, 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 disability 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 eighty-five, such pension benefits shall be no less than the amount of five 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 eighty-five, 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 surviving spouse, dependent 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 first day of July, one thousand nine hundred eighty-five, the following provisions shall govern and control the amount of such death benefits:

(1) A surviving spouse, dependent 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 eighty-five, such death benefits shall be no less than the following amounts: To a surviving spouse, until death or remarriage, the sum of three hundred dollars per month; to each dependent child, the sum of thirty dollars per month, until such child attains the age of eighteen years or marries, whichever first occurs; to each dependent orphaned child, the sum of forty-five dollars per month, until such child attains the age of eighteen years or marries, whichever first occurs; to each dependent father or mother,
the sum of thirty dollars per month for each; to each
dependent brother or sister, the sum of fifty dollars per
month, until such individual attains the age of eighteen
years or marries, whichever first occurs, but in no event
shall the aggregate amount paid to such brothers and sisters
exceed one hundred dollars per month. 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.
In no case shall the payments to the surviving spouse and
children be cut below sixty-five percent of the total amount
paid to all dependents; and
(2) A surviving spouse, dependent 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 benefits,
but on and after July one, one thousand nine hundred
eighty-five, shall receive the death benefits provided for in
section twenty-six of this article.
(d) A former member who is receiving disability pension
benefits on the first day of July, one thousand nine hundred
eighty-five, shall continue to receive disability pension
benefits provided for in section twenty-four 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 Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within [Approved] the 1st day of May, 1985.

Governor