

No: 440

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985



ENROLLED

Committee Substitute for
SENATE BILL NO. 440

(By Mr. Boettner)



PASSED April 13, 1985

In Effect ninety days from Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 440

(MR. BOETTNER, *original sponsor*)

(Originating in the Committee on Government Organization.)

[Passed April 13, 1985; in effect ninety 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.

§8-22-24. Disability pensions.

1 (a) The monthly sum to be paid to each member eligible
2 for disability under the provisions of section twenty-three-
3 a of this article, shall be equal to sixty percent of the
4 monthly salary being received by such member, at the time
5 he is so disabled, or the sum of five hundred dollars per
6 month, whichever shall be greater: *Provided*, That the
7 limitation provided in subsection (b) of this section is not
8 exceeded.

9 (b) Effective for any member who becomes eligible for
10 disability benefits on or after the first day of July, one
11 thousand nine hundred eighty-one, under the provisions of
12 section twenty-three-a of this article, as a proximate result
13 of service rendered in the performance of his duties within
14 such departments, his monthly disability payment as
15 provided in subsection (a) of this section shall not, when
16 aggregated with the monthly amount of state workers'
17 compensation, result in such disabled member receiving a
18 total monthly income from such sources in excess of one
19 hundred percent of the basic compensation which is paid to
20 members holding the same position which such member
21 held within such department at the time of his disability.
22 Lump sum payments of state workers' compensation
23 benefits shall not be considered for purposes of this
24 subsection unless such lump sum payments represent
25 commuted values of monthly state workers' compensation
26 benefits.

§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. 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 of employment
15 with such department in which such member received his
16 highest salary or compensation while a member of the
17 department, or an amount of five hundred dollars per
18 month, whichever is greater.

19 (b) Any member of any such department who is entitled
20 to a retirement pension under the provisions of subsection
21 (a) of this section and who has been in the honorable service
22 of such department for more than twenty years at the time
23 of his retirement shall receive, in addition to the sixty
24 percent authorized in said subsection (a):

25 (1) Two additional percent, to be added to the sixty
26 percent, for each of the first five additional years of service
27 completed at the time of retirement in excess of twenty
28 years of service up to a maximum of seventy percent; and

29 (2) One additional percent, to be added to such
30 maximum of seventy percent, for each of the first five
31 additional years of service completed at the time of
32 retirement in excess of twenty-five years of service up to a
33 maximum of seventy-five percent.

34 The total additional credit provided for in this subsection
35 may not exceed fifteen additional percent.

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

44 Any member or previously retired member of any such

45 department who has served in active duty with the armed
46 forces of the United States as described in section twenty-
47 seven of this article, whether prior to or subsequent to
48 becoming a member of a paid police or fire department
49 covered by the provisions of this article, shall receive, in
50 addition to the sixty percent authorized in subsection (a) of
51 this section and the additional percent credit authorized in
52 subsection (b) of this section, one additional percent for
53 each year so served in active military duty, up to a
54 maximum of four additional percent. In no event, however,
55 may the total benefit granted to any member exceed
56 seventy-five percent of the member's annual average salary
57 calculated in accordance with subsection (a) of this section.

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

79 (e) It shall be the duty of each member of a paid police or
80 fire department at the time a fund is hereafter established to
81 furnish the necessary proof of his date of birth to the said
82 board of trustees, as specified in section twenty-three of
83 this article, within a reasonable length of time, said length
84 of time to be determined by the said board of trustees. Then
85 the board of trustees and the mayor shall proceed to act in
86 the manner provided in subsection (d) of this section and

87 shall cause all members of the paid police or fire
 88 department who are over the age of sixty-five years to retire
 89 in not less than sixty days from the date the fund is
 90 established. Upon retirement under the provisions of this
 91 subsection (e), such member, whether he has been employed
 92 in said department for twenty years or not, shall receive
 93 retirement pension benefits payable in twelve monthly
 94 installments for each year of the remainder of his life in an
 95 amount equal to sixty percent of such member's average
 96 annual salary or compensation received during the three
 97 twelve-consecutive-month periods of employment with
 98 such department in which such member received his
 99 highest salary or compensation while a member of the
 100 department, or an amount of five hundred dollars per
 101 month, whichever is greater. If such member has been
 102 employed in said department for more than twenty years,
 103 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 spouse, or any dependent child or children
 14 under the age of eighteen years, or dependent father or
 15 mother or both, or any dependent brothers or sisters or both
 16 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, dies from any cause other
26 than as specified in subsection (b) of this section leaving in
27 either case surviving a spouse or any dependent child or
28 children under the age of eighteen years or dependent
29 father or mother or both, or any dependent brothers or
30 sisters or both under the age of eighteen years; then in any of
31 the cases set forth above in (1) and (2) the board of trustees
32 of such pension and relief fund shall, immediately following
33 the death of such member, pay to or for each of such entitled
34 surviving dependents the following pension benefits: To
35 such spouse, until death or remarriage, a sum per month
36 equal to sixty percent of such member's pension or, in the
37 event such member was not receiving a pension at the time
38 of his death, a sum per month equal to sixty percent of the
39 monthly retirement pension such member would have been
40 entitled to receive pursuant to section twenty-five of this
41 article on the date of his death if such member had then
42 been eligible for a retirement pension thereunder, or the
43 sum of three hundred dollars per month, whichever is
44 greater; to each such dependent child, a sum per month
45 equal to ten percent of such member's pension or, in the
46 event such member was not receiving a pension on the date
47 of his death, a sum per month equal to ten percent of the
48 monthly retirement pension such member would have been
49 entitled to receive pursuant to section twenty-five of this
50 article on the date of his death if such member had then
51 been eligible for a retirement pension thereunder, or until
52 such child attains the age of eighteen years or marries,
53 whichever first occurs; to each such dependent orphaned
54 child, a sum per month equal to twenty-five percent of such
55 member's pension or, in the event such member was not
56 receiving a pension at the time of his death, a sum per month
57 equal to twenty-five percent of the monthly retirement
58 pension such member would have been entitled to receive
59 pursuant to section twenty-five of this article on the date of
60 his death if such member had then been eligible for a
61 retirement pension thereunder, until such child attains the
62 age of eighteen years or marries, whichever first occurs; to
63 each such dependent father or mother, a sum per month for
64 each equal to ten percent of such member's pension or, in
65 the event such member was not receiving a pension on the

66 date of his death, a sum per month equal to ten percent of
67 the monthly retirement pension such member would have
68 been entitled to receive pursuant to section twenty-five of
69 this article on the date of his death if such member had then
70 been eligible for a retirement pension thereunder; to each
71 such dependent brother or sister, the sum of fifty dollars per
72 month until such individual attains the age of eighteen
73 years or marries, whichever first occurs, but in no event
74 shall the aggregate amount paid to such brothers and sisters
75 exceed one hundred dollars per month. If at any time,
76 because of the number of dependents, all such dependents
77 cannot be paid in full as herein provided, then each
78 dependent shall receive his pro rata share of such payments.
79 In no case shall the payments to the surviving spouse and
80 children be cut below sixty-five percent of the total amount
81 paid to all dependents.

82 (b) The surviving spouse, child or children, or
83 dependent father or mother, or dependent brothers or
84 sisters, of any such member who dies by reason of service
85 rendered in the performance of such member's duties shall,
86 regardless of the length of such member's service and
87 irrespective of whether such member was or was not
88 entitled to receive, or was or was not receiving, disability
89 pension or temporary disability payments at the time of his
90 death, receive the death benefits provided for in subsection
91 (a) of this section. If such member had less than three years'
92 service at the time of his death, the member's pension shall
93 be computed on the basis of the actual number of years of
94 service.

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

103 (d) The provisions of this section shall not be construed
104 as creating or establishing any contractual or vested rights
105 in favor of any individual who may be or become qualified
106 as a beneficiary of the death benefits herein authorized to
107 be made, all the provisions hereof and benefits provided for

108 hereunder being expressly subject to such subsequent
109 legislative enactments as may provide for any change,
110 modification or elimination of the beneficiaries or benefits
111 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 first day of July, one
36 thousand nine hundred eighty-five, the following

37 provisions shall govern and control the amount of such
38 pension benefits:

39 (1) A former member who on June thirtieth, one
40 thousand nine hundred sixty-two, was receiving disability
41 pension benefits or retirement pension benefits from a
42 policemen's or firemen's pension and relief fund, shall
43 continue to receive pension benefits, but on and after July
44 one, one thousand nine hundred eighty-five, such pension
45 benefits shall be no less than the amount of five hundred
46 dollars per month; and

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

55 (c) As to any surviving spouse, dependent child or
56 children, or dependent father or mother, or dependent
57 brothers or sisters, of any former member of a paid police or
58 fire department receiving any death benefits from a
59 policemen's pension and relief fund or firemen's pension
60 and relief fund, on the first day of July, one thousand nine
61 hundred eighty-five, the following provisions shall govern
62 and control the amount of such death benefits:

63 (1) A surviving spouse, dependent child or children, or
64 dependent father or mother, or dependent brothers or
65 sisters of any former member, who on June thirty, one
66 thousand nine hundred sixty-two, was receiving any death
67 benefits from a policemen's pension and relief fund or
68 firemen's pension and relief fund, shall continue to receive
69 death benefits, but on and after July one, one thousand nine
70 hundred eighty-five, such death benefits shall be no less
71 than the following amounts: To a surviving spouse, until
72 death or remarriage, the sum of three hundred dollars per
73 month; to each dependent child, the sum of thirty dollars
74 per month, until such child attains the age of eighteen years
75 or marries, whichever first occurs; to each dependent
76 orphaned child, the sum of forty-five dollars per month,
77 until such child attains the age of eighteen years or marries,
78 whichever first occurs; to each dependent father or mother,

79 the sum of thirty dollars per month for each; to each
80 dependent brother or sister, the sum of fifty dollars per
81 month, until such individual attains the age of eighteen
82 years or marries, whichever first occurs, but in no event
83 shall the aggregate amount paid to such brothers and sisters
84 exceed one hundred dollars per month. If at any time,
85 because of the number of dependents, all such dependents
86 cannot be paid in full as herein provided, then each
87 dependent shall receive his pro rata share of such payments.
88 In no case shall the payments to the surviving spouse and
89 children be cut below sixty-five percent of the total amount
90 paid to all dependents; and

91 (2) A surviving spouse, dependent 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 benefits,
96 but on and after July one, one thousand nine hundred
97 eighty-five, shall receive the death benefits provided for in
98 section twenty-six of this article.

99 (d) A former member who is receiving disability pension
100 benefits on the first day of July, one thousand nine hundred
101 eighty-five, shall continue to receive disability pension
102 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.

Nassir E. Elshu
.....
Chairman Senate Committee

Floyd Fuller
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Fred C. Smith
.....
Clerk of the Senate

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

David Tomlinson
.....
President of the Senate

Joseph P. Allright
.....
Speaker House of Delegates

The within *approved* this the *1st*
May day of 1985.

Arthur A. Shaughnessy
.....
Governor



PRESENTED TO THE

GOVERNOR

Date 4/19/85

Time 8:15 a.m.

RECEIVED

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SECRETARY OF STATE