WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987

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ENROLLED

HOUSE BILL No. 2850

(By Delegate Schifano)

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Passed MARCH 12, 1987

In Effect Ninety Days from Passage
AN ACT to amend and reenact sections three, five, six, seven, eight, nine, ten and thirteen, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to general retirement systems for Class I, II and III cities and enabling cities to improve benefits in the following areas: Calculation of average salary, participation of employees hired after age sixty, pretax employee contributions, additional service credit for members who served in the armed forces, crediting of interest on contributions, early retirement at age fifty-five, timing of election of options, ad hoc cost-of-living increases, workers' compensation offsets for disability and death benefits, elimination of maximum disability pension and elimination of maximum survivor pension.

Be it enacted by the Legislature of West Virginia:

That sections three, five, six, seven, eight, nine, ten and thirteen, 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.
PART II. GENERAL RETIREMENT SYSTEMS FOR CLASS I, II AND III CITIES.


1 For the purpose of sections two through fifteen of this article:

(a) "Prior service credit" shall mean the number of years that the member has been in the service of the city prior to the effective date of the employees retirement and benefit fund;

(b) "Earned service credit" shall mean the number of years that the member has contributed to the employees retirement and benefit fund;

(c) "Total service credit" shall mean the total of all prior service credit and all earned service credit;

(d) "Fund" shall mean the employees retirement and benefit fund;

(e) "Board" shall mean the board of trustees of the fund;

(f) "Member" shall mean an eligible employee of the city, who is a member of the fund;

(g) "Total disability in line of duty" shall mean total and permanent disablement from performing any work for pay, whether for the city by which employed at date of disability or other employer, which shall be caused by accidental injury sustained in the course of the operations usual to his employment and while in line of duty, and shall include all operations necessary, incidental or appurtenant thereto, or connected therewith, whether such operations are conducted at the usual place of employment or elsewhere in connection with or in relation to his usual and customary employment;

(h) "Total disability not in line of duty" shall mean total and permanent disablement from performing any work for pay, whether for the city by which employed at date of disability or other employer, from any cause other than that set forth in subdivision (g) of this section;
(i) The term "actuarial equivalent" shall mean any annuity of equal value to the accumulated contributions, annuity or benefit when computed upon the basis of the actuarial tables in use by the fund;

(j) "Monthly salary" shall mean the amount earned each month by a member as an employee of the city: Provided, That to and including June thirty, one thousand nine hundred sixty-seven, the maximum amount of salary to be considered hereunder for purposes of contributions and in the computation of benefits shall be four hundred dollars per month; and

(k) "Average salary" shall mean the highest annual average salary earned by a member during a period of five consecutive years within the total service of the member, subject to a maximum amount of four hundred dollars per month to and including June thirty, one thousand nine hundred sixty-seven, and no such maximum amount after such date, but effective the first day of January, one thousand nine hundred eighty-seven, a city may provide that average salary be based on a three consecutive year period.

§8-22-5. Employees eligible for participation in fund.

Employees eligible for participation in the fund shall include all employees who are employed by the city on a permanent basis. The following employees, however, shall not be eligible for participation in the fund:

(1) Appointive members of administrative boards and commissions, except employees of such boards and commissions;

(2) Individuals employed under contract for a definite period or for the performance of a particular or special service;

(3) Employees serving on a part-time basis of less than one-half time;

(4) Policemen and firemen covered by a policemen's pension and relief fund or firemen's pension and relief fund;

(5) Employees who are paid in part by the state.
county or other governmental agency, and only in part
by the city;

(6) Employees who are past sixty years of age on the
effective date of the fund; and

(7) Employees who are hired after the effective date
of the fund and who were past sixty years of age at the
time they were so employed. Effective the first day of
January, one thousand nine hundred eighty-seven, a city
may disregard this exception.

In case of doubt, the board of trustees of the fund may
make determination as to any individual's eligibility to
become a member of the fund.

All employees eligible for participation at the effective
date of the fund shall become members of the fund,
unless they file a written election not to become a
member within thirty days after the effective date of the
fund.

Effective the first day of January, one thousand nine
hundred eighty-seven, a city may provide that em-
ployees who did not participate in the fund when first
eligible, or who were not permitted to join the fund
when they were first hired due to the prior age sixty
limitation, may now participate. Such members may
purchase prior service by paying into the fund the
employee contributions they would have contributed had
they been in the fund plus interest at the rate of six
percent annually. Members shall be given two years to
pay these contributions.

§8-22-6. Contributions; prior, earned and total service
credits; service breaks.

Until June thirty, one thousand nine hundred sixty-
seven, each member shall pay into the fund six percent
of his monthly salary up to four hundred dollars a
month. After June thirty, one thousand nine hundred
sixty-seven, each member shall contribute six percent of
his monthly salary without any such maximum limita-
tion. Effective the first day of January, one thousand
nine hundred eighty-seven, a city may provide that
contributions made by a member shall be before-tax, as
permitted by section 414(h)(2) of the Internal Revenue Code. Each member shall continue to make such contributions until such time as such member retires or until he has contributed to the fund for a period of thirty-five years, that is, has thirty-five years of “earned service credit.”

For prior service, each participating employee, in the employ of the city on the effective date of the fund, shall be credited, as of such date, with a prior service credit equal to the period or periods of service that the member has rendered to the city prior to the effective date of the fund. Any employee who is in the employ of the city on the effective date of the fund and who becomes a member of the fund shall be entitled to prior service credit even though such prior service was not continuous. Any individual who is not in the employ of the city on the effective date of the fund but who has been employed by the city in the past shall be entitled to prior service credit if he returns to the service of the city within two years from the date of the termination of his service and becomes a member of the fund within such two-year period.

Effective the first day of January, one thousand nine hundred eighty-seven, a city may provide that members who have been honorably discharged from the military shall receive up to two years prior service credit for military service prior to their employment with the city.

A member upon separation from the service shall be entitled to withdraw his contributions without interest in lieu of any benefits to which he may be entitled. A city may provide that contributions are credited with interest at the rate of six percent compounded annually from the first day of January, one thousand nine hundred eighty-seven. If such employee returns to the service of the city within two years and becomes a member of the fund, he shall be considered as a new employee and shall have forfeited all prior service credits unless he shall repay to the fund in cash at the time of reemployment the amount of money which he has withdrawn plus four percent interest compounded annually on said amount during the time he was
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51 separated from the service, but effective the first day
52 of January, one thousand nine hundred eighty-seven, a
53 city may require six percent interest. If, however, the
54 break in service of such member is more than two years,
55 he shall not be entitled to any prior service credit nor
56 shall he be entitled to redeposit withdrawals but he shall
57 reenter the fund as a new member.


1 (a) After the effective date of the fund, any member
2 of the fund who has at least ten years of continuous total
3 service credit shall receive a vested right to a retirement
4 pension which he may exercise upon or after attainment
5 of age sixty. When he has attained the age of sixty years
6 he may, at his option, apply for a retirement pension,
7 the amount thereof to be determined in accordance with
8 the provisions of subsection (e) of this section.

9 (b) Retirement for all members of the fund shall be
10 compulsory at the age of seventy subject to the following
11 conditions: The employee may be permitted to continue
12 in the service if he so desires and if his services are still
13 valuable to the city. Whether an employee’s services are
14 valuable at the age of seventy shall be determined by
15 the appointing officer of the city. If he determines that
16 such services are valuable, his determination must be
17 certified to the board for approval. If the board
18 approves, the employee may continue in the service of
19 the city. The appointing officer shall annually certify to
20 the board relative to the ability and competency of all
21 employees over age seventy. The amount of any pension
22 under the provisions of this subsection shall be deter-
23 mined in accordance with the provisions of subsection
24 (e) of this section.

25 (c) Effective the first day of January, one thousand
26 nine hundred eighty-seven, a city may provide that any
27 member of the fund who has at least ten years of
28 continuous total service credit shall receive a vested
29 right to a retirement pension which he may exercise
30 upon or after attainment of age fifty-five. When he has
31 attained the age of fifty-five years he may, at his option,
32 apply for a retirement pension, the amount thereof to
be determined in accordance with the provisions of subsection (e) of this section, reduced by one quarter of one percent for each month (three percent per year) by which his retirement date precedes age sixty, except that if his age plus years of continuous service credit is equal to or greater than eighty-five, the benefit shall not be reduced.

(d) Although he has not attained the age of sixty, any member who has thirty-five years' total service and who becomes so physically or mentally disabled as to render him unfit for the performance of the duties of the position he occupies shall be entitled to an annual retirement pension, the amount thereof to be determined in accordance with the provisions of subsection (e) of this section.

(e) A member of the fund, upon retirement, shall be entitled to the following annual retirement pension, payable in twelve monthly installments:

For thirty-five years of total service credit to and including twenty-four years of total service credit, fifty percent of average salary plus one and two-thirds percent of average salary per year of service for each year above twenty-three years;

For twenty-three years of total service credit, fifty percent of average salary: Provided, That if a member has twenty-three years of total service credit he shall be entitled to a minimum retirement pension of one hundred dollars per month;

For twenty-two years of total service credit, forty-nine percent of average salary;

For twenty-one years of total service credit, forty-eight percent of average salary;

For twenty years of total service credit, forty-seven percent of average salary;

For nineteen years of total service credit, forty-five percent of average salary;

For eighteen years of total service credit, forty-three percent of average salary;
For seventeen years of total service credit, forty-one percent of average salary;

For sixteen years of total service credit, thirty-nine percent of average salary;

For fifteen years of total service credit, thirty-six percent of average salary;

For fourteen years of total service credit, thirty-three percent of average salary;

For thirteen years of total service credit, thirty-one percent of average salary;

For twelve years of total service credit, twenty-nine percent of average salary;

For eleven years of total service credit, twenty-seven percent of average salary; and

For ten years of continuous total service credit, twenty-five percent of average salary.

The rate of a retirement pension shall be prorated for any fractional part of the total service credit of an employee of less than a full year.

(f) With the condition that no optional benefit shall be effective if the member dies within thirty days after the effective date of his retirement, such member may elect at least one year prior to such effective date of his retirement to receive a lesser retirement pension, on a joint and last survivor basis, in order to provide, on an actuarial equivalent basis, an annuity to a designated beneficiary under any of the following two options:

Option 1. Upon his death while on retirement, his lesser retirement pension shall be continued throughout the life of and paid to such individual having an insurable interest in his life, as he shall have named in a written designation duly acknowledged and filed with the board.

Option 2. Upon his death while on retirement, one half of his lesser retirement pension shall be continued throughout the life of and paid to such individual having an insurable interest in his life as he shall have named
in a written designation duly acknowledged and filed with the board.

Effective the first day of January, one thousand nine hundred eighty-seven, a city may provide that an election may be made at any time prior to the date his benefits commence.

(g) A member who has attained the age of sixty years and who has less than ten years' total service credit shall be entitled to an annuity which shall be the actuarial equivalent of his total accumulation account at the time of his retirement.

(h) Effective the first day of January, one thousand nine hundred eighty-seven, a city may provide that if an actuarial valuation of the plan determines that the required city contribution is less than six percent of payroll, then the board of trustees may provide ad hoc cost-of-living increases to retired members and beneficiaries, provided such change does not increase the city cost to an amount greater than six percent of payroll. Such cost-of-living increases are limited to the increase in the national consumer price index.

§8-22-8. Disability pensions; annuities.

A member may qualify for a disability pension under any one of the following mutually exclusive provisions:

(1) If a member receives total disability in line of duty, he shall be entitled during the time of his disability to a monthly disability pension equal to fifty percent of the monthly salary of the member at date of disability: Provided, That the minimum payment shall be one hundred dollars per month. Any benefits payable from the retirement and benefit fund shall be reduced by benefits payable from workers' compensation due to the total disability of the member.

(2) If a member receives total disability not in line of duty while an employee of the city after he has had at least ten years' total service credit and such member is not entitled to a retirement pension under the provisions of section seven of this article, he shall be entitled during the time of his disability to one half of the
retirement pension to which he would have been entitled under the provisions of said section seven had he been sixty years of age at date of disability and had elected to take retirement: Provided, That he shall be entitled to a minimum payment of fifty dollars per month and a maximum payment of one hundred dollars per month. Effective the first day of January, one thousand nine hundred eighty-seven, a city may provide that the maximum payment be three hundred dollars per month.

(3) If a member becomes so physically or mentally disabled as to render him unfit for the performance of the duties of the position he occupies, but his disability does not constitute either total disability in line of duty or total disability not in line of duty, and such member has less than ten years’ total service credit, he shall be entitled to an annuity which shall be the actuarial equivalent of his total accumulation at the date of his disability.

The board of trustees of the fund shall order a periodic reexamination of members of the fund receiving a disability pension, and if the disability no longer exists the payment thereunder shall be discontinued: Provided, That no such reexamination of any such member shall be ordered as aforesaid after such member attains the age of sixty years.


(a) A beneficiary or beneficiaries of a deceased member, which member was not receiving a retirement pension under the provisions of section seven of this article at the date of his death, may qualify for death benefits under either of the following mutually exclusive provisions:

(1) If the member died as a result of personal injury or disease arising out of and in the course of his employment with the city, the surviving spouse shall be entitled during widowhood or widowerhood to a monthly benefit equal to thirty-three and one-third percent of the final monthly salary of the member, but not to exceed one hundred and twenty-five dollars per month. In the event there be no surviving spouse, or if remarriage
occurs before the youngest child attains age eighteen, each child under age eighteen shall be entitled until age eighteen to a monthly benefit equal to twenty percent of the member’s final monthly salary, subject to a total payment to all such children of fifty percent of such final monthly salary, or one hundred twenty-five dollars per month, whichever is the lesser. If there be no surviving spouse or children under age eighteen, the deceased member’s dependent father or mother or both, the question of dependency to be determined by the board, shall each be entitled until death to a monthly payment equal to one sixth of the deceased member’s final monthly salary, but the payment to either parent shall not exceed fifty dollars per month. Effective the first day of January, one thousand nine hundred eighty-seven, a city may provide that the above maximum benefit limitations of this section nine shall no longer apply. Any benefits payable from the retirement and benefit fund shall be reduced by benefits payable from workers’ compensation due to the death of the member.

(2) If the member died from any cause other than that stated in subdivision (1) of this subsection, and such member at the date of his death had ten or more years’ total service credit, his beneficiary or beneficiaries shall be entitled, for a period not to exceed ten years, to death benefits in accordance with the retirement pension table contained in section seven of this article. The death benefits shall be paid to such individual or individuals having an insurable interest in the member’s life as such member shall have nominated in a designation filed with the board. As to any spouse beneficiary, the marriage must have occurred at least one year prior to the death of the member in order that the spouse may be eligible for benefits under this subdivision (2).

(b) If a member receiving a retirement pension under the provisions of section seven of this article at the date of his death dies with a spouse or beneficiary surviving (concerning which retirement pension the optional benefit provisions set forth in subsection (f) of said section seven are not applicable), and such member had been receiving such retirement pension for less than ten
years, such surviving spouse or beneficiary shall be entitled to receive death benefits equivalent to the deceased member's retirement pension for the remaining period of ten years dating from the date of the member's retirement. The death benefits shall be paid to such individual or individuals having an insurable interest in the member's life as such member shall have nominated in a designation filed with the board; but a surviving spouse shall not be entitled to death benefits under the provisions of this subsection unless such surviving spouse was married to the member before the date of his retirement and such marriage took place at least one year prior to the date of the death of the member. If the surviving spouse remarries, such spouse's death benefits shall be terminated and shall not be resumed upon subsequent change in the marital status of such spouse.

(c) If a member dies with less than ten years' total service credit so that he was not entitled to a retirement pension during life, the member's total contributions to the fund, without interest, shall be returned to such individual or individuals having an insurable interest in the member's life as such member shall have nominated in a designation filed with the board, and in the absence of any such designation, to the member's estate.

§8-22-10. Contributions by city.

Effective the first day of January, one thousand nine hundred eighty-seven, the financial objective of each municipality shall not be less than to contribute to the fund annually an amount which, together with the contributions from the members will be sufficient to meet the normal cost of the fund including the cost of administration and amortize any actuarial deficiency over a period of not more than forty years but for those funds in existence on the first day of January, one thousand nine hundred eighty-seven, its actuarial deficiency, if any, shall not be amortized over a period longer than that which remains under its current schedule. For purposes of determining this minimum financial objective (1) the value of the fund's assets shall be determined on the basis of any reasonable actuarial
method of valuation which takes into account fair market value and (2) all costs, deficiencies, rate of interest and other factors under the fund shall be determined on the basis of actuarial assumptions and methods which in aggregate are reasonable, taking into account the experience of the fund and reasonable expectations, and which in combination offer the qualified actuary's best estimate of anticipated experience under the fund. If as a result of this legislation a municipality's financial commitment to the fund is materially increased, the municipality may elect to phase in this increase over the five fiscal years commencing the first day of January, one thousand nine hundred eighty-seven.

§8-22-13. Reports by board of trustees.

The board of trustees for each retirement fund shall have regularly scheduled actuarial valuation reports prepared by a qualified actuary.

An actuarial valuation report shall be prepared at least once every three years commencing with the later of (1) the first day of July, one thousand nine hundred eighty-seven, or (2) three years following the most recently prepared actuarial valuation report.

For purposes of this section the term "qualified actuary" means only an actuary who is a member of the society of actuaries or the American academy of actuaries. The qualified actuary shall be designated a fiduciary and shall discharge his duties with respect to a fund solely in the interest of the members and members' beneficiaries of that fund. In order for the standard of this section to be met, the qualified actuary shall certify that the actuarial valuation report is complete and accurate and that in his opinion the technique and assumptions used are reasonable and meet the requirements of this section of this article.

The board of trustees shall submit to the governing body an annual report showing the condition of the fund under its control. It shall certify in such report the amount of accumulations, cash and securities in the fund and shall present a full account of the operation of the system.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within bill is hereby approved this the 30th day of ________, 1987.

[Signature]
Governor