

No: 2850

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987

— ● —

# ENROLLED

HOUSE BILL No. 2850

(By Delegate SCHIFANO)

— ● —

Passed MARCH 12, 1987

In Effect Ninety Days from Passage

**ENROLLED**  
**H. B. 2850**

(By DELEGATE SCHIFANO)

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[Passed March 12, 1987; in effect ninety days from passage.]

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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 WA-  
TERWORKS SYSTEM, SEWERAGE SYSTEM OR  
COMBINED WATERWORKS AND SEWERAGE  
SYSTEM.**

PART II. GENERAL RETIREMENT SYSTEMS FOR  
CLASS I, II AND III CITIES.

**§8-22-3. Definitions.**

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

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

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

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

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

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

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

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

29 (h) "Total disability not in line of duty" shall mean  
30 total and permanent disablement from performing any  
31 work for pay, whether for the city by which employed  
32 at date of disability or other employer, from any cause  
33 other than that set forth in subdivision (g) of this  
34 section;

35 (i) The term "actuarial equivalent" shall mean any  
36 annuity of equal value to the accumulated contributions,  
37 annuity or benefit when computed upon the basis of the  
38 actuarial tables in use by the fund;

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

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

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

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

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

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

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

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

16 (5) Employees who are paid in part by the state,

17 county or other governmental agency, and only in part  
18 by the city;

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

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

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

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

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

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

1 Until June thirty, one thousand nine hundred sixty-  
2 seven, each member shall pay into the fund six percent  
3 of his monthly salary up to four hundred dollars a  
4 month. After June thirty, one thousand nine hundred  
5 sixty-seven, each member shall contribute six percent of  
6 his monthly salary without any such maximum limita-  
7 tion. Effective the first day of January, one thousand  
8 nine hundred eighty-seven, a city may provide that  
9 contributions made by a member shall be before-tax, as

10 permitted by section 414(h)(2) of the Internal Revenue  
11 Code. Each member shall continue to make such  
12 contributions until such time as such member retires or  
13 until he has contributed to the fund for a period of  
14 thirty-five years, that is, has thirty-five years of "earned  
15 service credit."

16 For prior service, each participating employee, in the  
17 employ of the city on the effective date of the fund, shall  
18 be credited, as of such date, with a prior service credit  
19 equal to the period or periods of service that the member  
20 has rendered to the city prior to the effective date of the  
21 fund. Any employee who is in the employ of the city on  
22 the effective date of the fund and who becomes a  
23 member of the fund shall be entitled to prior service  
24 credit even though such prior service was not continu-  
25 ous. Any individual who is not in the employ of the city  
26 on the effective date of the fund but who has been  
27 employed by the city in the past shall be entitled to prior  
28 service credit if he returns to the service of the city  
29 within two years from the date of the termination of his  
30 service and becomes a member of the fund within such  
31 two-year period.

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

37 A member upon separation from the service shall be  
38 entitled to withdraw his contributions without interest  
39 in lieu of any benefits to which he may be entitled. A  
40 city may provide that contributions are credited with  
41 interest at the rate of six percent compounded annually  
42 from the first day of January, one thousand nine  
43 hundred eighty-seven. If such employee returns to the  
44 service of the city within two years and becomes a  
45 member of the fund, he shall be considered as a new  
46 employee and shall have forfeited all prior service  
47 credits unless he shall repay to the fund in cash at the  
48 time of reemployment the amount of money which he  
49 has withdrawn plus four percent interest compounded  
50 annually on said amount during the time he was

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.

**§8-22-7. Retirement pensions.**

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

33 be determined in accordance with the provisions of  
34 subsection (e) of this section, reduced by one quarter of  
35 one percent for each month (three percent per year) by  
36 which his retirement date precedes age sixty, except  
37 that if his age plus years of continuous service credit is  
38 equal to or greater than eighty-five, the benefit shall not  
39 be reduced.

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

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

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

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

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

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

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

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

69 For eighteen years of total service credit, forty-three  
70 percent of average salary;



71 For seventeen years of total service credit, forty-one  
72 percent of average salary;

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

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

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

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

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

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

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

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

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

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

104 Option 2. Upon his death while on retirement, one  
105 half of his lesser retirement pension shall be continued  
106 throughout the life of and paid to such individual having  
107 an insurable interest in his life as he shall have named

108 in a written designation duly acknowledged and filed  
109 with the board.

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

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

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

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

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

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

12 (2) If a member receives total disability not in line of  
13 duty while an employee of the city after he has had at  
14 least ten years' total service credit and such member is  
15 not entitled to a retirement pension under the provisions  
16 of section seven of this article, he shall be entitled  
17 during the time of his disability to one half of the

18 retirement pension to which he would have been entitled  
19 under the provisions of said section seven had he been  
20 sixty years of age at date of disability and had elected  
21 to take retirement: *Provided*, That he shall be entitled  
22 to a minimum payment of fifty dollars per month and  
23 a maximum payment of one hundred dollars per month.  
24 Effective the first day of January, one thousand nine  
25 hundred eighty-seven, a city may provide that the  
26 maximum payment be three hundred dollars per month.

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

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

**§8-22-9. Death benefits; return of contributions.**

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

7 (1) If the member died as a result of personal injury  
8 or disease arising out of and in the course of his  
9 employment with the city, the surviving spouse shall be  
10 entitled during widowhood or widowerhood to a monthly  
11 benefit equal to thirty-three and one-third percent of the  
12 final monthly salary of the member, but not to exceed  
13 one hundred and twenty-five dollars per month. In the  
14 event there be no surviving spouse, or if remarriage

15 occurs before the youngest child attains age eighteen,  
16 each child under age eighteen shall be entitled until age  
17 eighteen to a monthly benefit equal to twenty percent  
18 of the member's final monthly salary, subject to a total  
19 payment to all such children of fifty percent of such  
20 final monthly salary, or one hundred twenty-five dollars  
21 per month, whichever is the lesser. If there be no  
22 surviving spouse or children under age eighteen, the  
23 deceased member's dependent father or mother or both,  
24 the question of dependency to be determined by the  
25 board, shall each be entitled until death to a monthly  
26 payment equal to one sixth of the deceased member's  
27 final monthly salary, but the payment to either parent  
28 shall not exceed fifty dollars per month. Effective the  
29 first day of January, one thousand nine hundred eighty-  
30 seven, a city may provide that the above maximum  
31 benefit limitations of this section nine shall no longer  
32 apply. Any benefits payable from the retirement and  
33 benefit fund shall be reduced by benefits payable from  
34 workers' compensation due to the death of the member.

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

49 (b) If a member receiving a retirement pension under  
50 the provisions of section seven of this article at the date  
51 of his death dies with a spouse or beneficiary surviving  
52 (concerning which retirement pension the optional  
53 benefit provisions set forth in subsection (f) of said  
54 section seven are not applicable), and such member had  
55 been receiving such retirement pension for less than ten

56 years, such surviving spouse or beneficiary shall be  
57 entitled to receive death benefits equivalent to the  
58 deceased member's retirement pension for the remain-  
59 ing period of ten years dating from the date of the  
60 member's retirement. The death benefits shall be paid  
61 to such individual or individuals having an insurable  
62 interest in the member's life as such member shall have  
63 nominated in a designation filed with the board; but a  
64 surviving spouse shall not be entitled to death benefits  
65 under the provisions of this subsection unless such  
66 surviving spouse was married to the member before the  
67 date of his retirement and such marriage took place at  
68 least one year prior to the date of the death of the  
69 member. If the surviving spouse remarries, such  
70 spouse's death benefits shall be terminated and shall not  
71 be resumed upon subsequent change in the marital  
72 status of such spouse.

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

#### §8-22-10. Contributions by city.

1 Effective the first day of January, one thousand nine  
2 hundred eighty-seven, the financial objective of each  
3 municipality shall not be less than to contribute to the  
4 fund annually an amount which, together with the  
5 contributions from the members will be sufficient to  
6 meet the normal cost of the fund including the cost of  
7 administration and amortize any actuarial deficiency  
8 over a period of not more than forty years but for those  
9 funds in existence on the first day of January, one  
10 thousand nine hundred eighty-seven, its actuarial  
11 deficiency, if any, shall not be amortized over a period  
12 longer than that which remains under its current  
13 schedule. For purposes of determining this minimum  
14 financial objective (1) the value of the fund's assets shall  
15 be determined on the basis of any reasonable actuarial

16 method of valuation which takes into account fair  
17 market value and (2) all costs, deficiencies, rate of  
18 interest and other factors under the fund shall be  
19 determined on the basis of actuarial assumptions and  
20 methods which in aggregate are reasonable, taking into  
21 account the experience of the fund and reasonable  
22 expectations, and which in combination offer the  
23 qualified actuary's best estimate of anticipated expe-  
24 rience under the fund. If as a result of this legislation  
25 a municipality's financial commitment to the fund is  
26 materially increased, the municipality may elect to  
27 phase in this increase over the five fiscal years com-  
28 mencing the first day of January, one thousand nine  
29 hundred eighty-seven.

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

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

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

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

21 The board of trustees shall submit to the governing  
22 body an annual report showing the condition of the fund  
23 under its control. It shall certify in such report the  
24 amount of accumulated cash and securities in the fund  
25 and shall present a full account of the operation of the  
26 system.

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

*Bruce S. Williams*  
Chairman Senate Committee

*Lyle Satter*  
Chairman House Committee  
member

Originating in the House.

Takes effect ninety days from passage.

*Todd C. Hicks*  
Clerk of the Senate

*Donald L. Kopp*  
Clerk of the House of Delegates

*Russ Tenthorn*  
President of the Senate

*Robert C. Bell*  
Speaker of the House of Delegates

The within *approved* this the *30th*  
*March*  
day of \_\_\_\_\_, 1987.

*André D. Phares Jr.*  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/87

Time 4:54 p.m.



100-443886-100