

710: 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)

[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 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.

Jedd C. Hults

Clerk of the Senate

Donald L. Kopp

Clerk of the House of Delegates

Sam Tankard

President of the Senate

Robert C. Byrd

Speaker of the House of Delegates

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

Andrew D. Young, Jr.

Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/87

Time 4:54 p.m.

RECORDED

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1961

OFFICE OF THE
SECRETARY OF THE
NAVY