WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1991

ENROLLED

Com. Sub. for
HOUSE BILL No. 2625

(By Mr. Deb Browning and Kee)

Passed March 9, 1991

In Effect From Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2625
(By Delegates Browning and Kiss)

[Passed March 9, 1991; in effect from passage.]

AN ACT to amend and reenact sections twenty, twenty-four, twenty-six and twenty-six-a, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section sixteen-a, all relating to providing legislative findings; amending the amortization period for municipal pension funds; providing a base for death benefit calculations; providing disability benefit for nonservice related disability; creating a maximum supplemental pension benefit; providing supplemental disability benefit; creating a waiting period for eligibility for supplemental pension benefits and supplemental disability benefits; providing for actuarial certification of supplemental benefit amounts and providing for increased member contribution when required by actuary.

Be it enacted by the Legislature of West Virginia:

That sections twenty, twenty-four, twenty-six and twenty-six-a, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section sixteen-a, all to read as follows:
ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREFIGHTERS' PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWAGE SYSTEM OR COMBINED WATERWORKS AND SEWAGE SYSTEM.

§8-22-16a. Legislative findings.

1 The Legislature finds that prudence often dictates a review of well meaning actions previously taken. The Legislature further finds that implementation of the cost of living benefit enacted during the one thousand nine hundred ninety regular legislative session would be disadvantageous to members of the municipal policemen and firemen pension funds and municipal budgets due to the large cost associated with that benefit and that this fact was unknown at the time of enactment of the cost of living benefit. The Legislature further finds that the fiscal integrity of the various municipal policemen and firemen pension funds will be in extreme jeopardy if an alternative benefit is not enacted. The Legislature further finds that maintenance of an actuarially sound pension system is incumbent upon the administrators of the various funds and is also incumbent upon the Legislature when it enacts changes to the benefit structure. The Legislature further finds that the implementation of the cost of living benefit enacted in the one thousand nine hundred ninety regular legislative session would prevent the maintenance of an actuarially sound pension system and would jeopardize the interests of the members of the retirement funds, therefore, it is necessary to amend the cost of living benefit as previously enacted.


1 The board of trustees for each pension and relief fund shall have regularly scheduled actuarial valuation reports prepared by a qualified actuary. All of the following standards must be met:

(a) 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-three, or (2) three years following the most
recently prepared actuarial valuation report: Provided,
That this most recently prepared actuarial valuation
report meets all of the standards of this section.

(b) The actuarial valuation report shall consist of, but
is not limited to, the following disclosures: (1) The
financial objective of the fund and how the objective is
to be attained, (2) the progress being made toward
realization of the financial objective, (3) recent changes
in the nature of the fund, benefits provided, or actuarial
assumptions or methods, (4) the frequency of actuarial
valuation reports and the date of the most recent
actuarial valuation report, (5) the method used to value
fund assets, (6) the extent to which the qualified actuary
relies on the data provided and whether the data was
certified by the fund’s auditor or examined by the
qualified actuary for reasonableness, (7) a description
and explanation of the actuarial assumptions and
methods, and (8) any other information the qualified
actuary feels is necessary or would be useful in fully and
fairly disclosing the actuarial condition of the fund.

(c) After the thirtieth day of June, one thousand nine
hundred ninety-one, and thereafter, 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 and
the allocable portion of the state premium tax fund for
municipal pension and relief funds established under
section fourteen-d, article three, chapter thirty-three of
this code and other income sources as authorized by law,
will be sufficient to meet the normal cost of the fund
and amortize any actuarial deficiency over a period of
not more than forty years: Provided, That in the fiscal
year ending the thirtieth of June, one thousand nine
hundred ninety-one, the municipality may elect to make
its annual contribution to the fund utilizing an alterna-
tive contribution in an amount not less than (i) one
hundred seven percent of the amount contributed for the
fiscal year ending the thirtieth day of June, one
thousand nine hundred ninety, or (ii) an amount equal
to the average of the contribution payments made in the
five highest fiscal years beginning with the 1984 fiscal
year whichever is greater: Provided, however, That contribution payments in subsequent fiscal years under this alternative contribution method shall not be less than one hundred seven percent of the amount contributed in the prior fiscal year: Provided further, That prior to utilizing this alternative contribution methodology the actuary of the fund shall certify in writing that the fund is projected to be solvent under the alternative contribution method for the next consecutive fifteen year period. 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.

Notwithstanding any other provision of this section or article to the contrary, each municipality shall contribute annually to the fund an amount which may not be less than the normal cost, as determined by the actuarial report.

(d) 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 member's beneficiaries of that fund. In order for the standards 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.

(e) The cost of the preparation of the actuarial valuation report shall be paid by the fund.
(f) Notwithstanding any other provision of this section, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-one, the municipality may calculate its annual contribution based upon the provisions of the supplemental benefit provided for in this article enacted during the one thousand nine hundred ninety-one regular session of the Legislature.


(a) The monthly sum to be paid to each member eligible for disability received as a proximate result of service rendered in the performance of his or her duties under the provisions of section twenty-three-a of this article shall be equal to sixty percent of the monthly salary being received by such member, at the time he is so disabled, or the sum of five hundred dollars per month, whichever shall be greater: Provided, That the limitation provided in subsection (b) of this section is not exceeded.

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

(c) Any member who has served on active duty with the armed forces of the United States as described in section twenty-seven of this article, whether prior or subsequent to becoming a member of a paid police or

33 fire department covered by the provisions of this article,
34 and who, on the first day of July, one thousand nine
35 hundred eighty-six, is receiving or thereafter receives a
36 disability pension, shall receive in addition to the sixty
37 percent or minimum five hundred dollars authorized in
38 subsection (a) of this section, one additional percent for
39 each year served in active military duty, up to a
40 maximum of four additional percent.
41
42 (d) Beginning on and after the first day of April, one
43 thousand nine hundred ninety-one, the monthly sum to
44 be paid to a member who becomes eligible for total
45 disability incurred not in the line of duty shall be the
46 monthly benefit provided in subsection (a) of this
47 section: Provided, That the limitation in subsection (b)
48 of this section is not exceeded: Provided, however, That
49 for any person receiving benefits under this subsection
50 who is self-employed or employed by another, there shall
51 be offset against said benefits the amount of one dollar
52 for each three dollars of income derived from self-
53 employment or employment by another: Provided
54 further, That a person receiving disability benefits must
55 file a certified copy of his or her tax return on or before
56 the fifteenth day of April of each year to demonstrate
57 either unemployment or income earned from self-
58 employment or employment by another: And provided
59 further, That there shall be no offset of benefit for any
60 income derived from self-employment or employment by
61 another when the annual total amount of such income
62 is seven thousand five hundred dollars or less.


1 (a) In case:

2 (1) Any member of a paid police or fire department
3 who has been in continuous service for more than five
4 years dies from any cause other than as specified in
5 subsection (b) of this section before retirement on a
6 disability pension under the provisions of, prior to the
7 first day of July, one thousand nine hundred eighty-one,
8 section twenty-four of this article, or after the thirtieth
9 day of June, one thousand nine hundred eighty-one,
10 sections twenty-three-a and twenty-four of this article or
a retirement pension under the provisions of subsection (a) or both subsections (a) and (b), section twenty-five of this article, leaving in either case surviving a spouse or any dependent child or children under the age of eighteen years, or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years, or any dependent child over the age of eighteen years of age who is totally physically or mentally disabled so long as such condition exists; or

(2) Any former member of any such department who is on a disability pension prior to the first day of July, one thousand nine hundred eighty-one, under section twenty-four of this article, or after the thirtieth day of June, one thousand nine hundred eighty-one, under sections twenty-three-a and twenty-four of this article, or is receiving or is entitled to receive retirement pension benefits under the provisions of subsection (a) or both subsections (a) and (b), section twenty-five of this article, dies from any cause other than as specified in subsection (b) of this section leaving in either case surviving a spouse or any dependent child or children under the age of eighteen years or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years, or any dependent child over the age of eighteen years of age who is totally physically or mentally disabled so long as such condition exists; then in any of the cases set forth above in (1) and (2) the board of trustees of such pension and relief fund shall, immediately following the death of such member, pay to or for each of such entitled surviving dependents the following pension benefits: To such spouse, until death or remarriage, a sum per month equal to sixty percent of such member’s pension or, in the event such member was not receiving a pension at the time of his death, a sum per month equal to sixty percent of the monthly retirement pension such member would have been entitled to receive pursuant to section twenty-five of this article on the date of his death if such member had then been eligible for a retirement pension thereunder, or the sum of three hundred dollars per month, whichever is greater; to each such dependent child, a sum per month equal to twenty percent of such
member's pension or, in the event such member was not receiving a pension on the date of his death, a sum per month equal to twenty percent of the monthly retirement pension such member would have been entitled to receive pursuant to section twenty-five of this article on the date of his death if such member had then been eligible for a retirement pension thereunder, or until such child attains the age of eighteen years or marries, whichever first occurs; to each such dependent orphaned child, a sum per month equal to twenty-five percent of such member's pension or, in the event such member was not receiving a pension at the time of his death, a sum per month equal to twenty-five percent of the monthly retirement pension such member would have been entitled to receive pursuant to section twenty-five of this article on the date of his death if such member had then been eligible for a retirement pension thereunder, until such child attains the age of eighteen years or marries, whichever first occurs; to each such dependent orphaned child, a sum per month equal to twenty-five percent of such member's pension or, in the event such member was not receiving a pension on the date of his death, a sum per month equal to twenty-five percent of the monthly retirement pension such member would have been entitled to receive pursuant to section twenty-five of this article on the date of his death if such member had then been eligible for a retirement pension thereunder, until such child attains the age of eighteen years or marries, whichever first occurs; to each such dependent father or mother, a sum per month for each equal to ten percent of such member's pension or, in the event such member was not receiving a pension on the date of his death, a sum per month equal to ten percent of the monthly retirement pension such member would have been entitled to receive pursuant to section twenty-five of this article on the date of his death if such member had then been eligible for a retirement pension thereunder; to each such dependent brother or sister, the sum of fifty dollars per month until such individual attains the age of eighteen years or marries, whichever first occurs, but in no event shall the aggregate amount paid to such brothers and sisters exceed one hundred
dollars per month. If at any time, because of the number of dependents, all such dependents cannot be paid in full as herein provided, then each dependent shall receive his pro rata share of such payments. In no case shall the payments to the surviving spouse and children be cut below sixty-five percent of the total amount paid to all dependents.

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

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

(d) The provisions of this section shall not be construed as creating or establishing any contractual or vested rights in favor of any individual who may be or become qualified as a beneficiary of the death benefits herein authorized to be made, all the provisions hereof and benefits provided for hereunder being expressly subject to such subsequent legislative enactments as may provide for any change, modification or elimination of the beneficiaries or benefits specified herein.

(e) Notwithstanding the provisions of section twenty-
four of this article the benefit provided for in this section shall be calculated as if the member had remained unemployed throughout any period of disability.

§8-22-26a. Supplemental pension benefits entitlement; benefit payable; application of section; construction.

(a) Except as otherwise provided in this section, all retirees, surviving beneficiaries, disability pensioners or future retirees shall receive as a supplemental pension benefit an annualized monthly amount commencing on the first day of July, based on a percentage increase equal to any increase in the consumer price index as calculated by the United States Department of Labor, Bureau of Statistics, for the preceding year: Provided, That the supplemental pension benefit specified herein shall not exceed four percent per year: Provided, however, That no retiree shall be eligible for the supplemental pension benefit specified herein until the first day of July after the expiration of two years from the date of retirement of said retiree: Provided further, That persons retiring prior to the effective date of this section shall receive the supplemental benefit provided for in this section immediately upon retirement and shall not be subject to the two year delay: And provided further, That the supplemental benefit shall only be calculated on the allowable amount, which is the first fifteen thousand dollars of the total annual benefit paid. If at any time, after the supplemental benefit becomes applicable, the total accumulated percentage increase in benefit on the allowable amount becomes less than seventy-five percent of the total accumulated percentage increase in the consumer price index over that same period of time, the four percent limitation shall be inapplicable until such time as the supplemental benefit paid equals seventy-five percent of the accumulated increase in the consumer price index. The supplemental pension benefit payable under the provisions of this section shall be paid in equal monthly installments.

(b) Upon commencement of the payment of death benefits pursuant to section twenty-six of this article, there shall be calculated on the allowable amount, which
(c) Persons becoming disabled and eligible for a benefit under subsection (d), section twenty-four of this article after the first day of January, one thousand nine hundred ninety-one, shall receive as an annualized monthly supplemental benefit commencing on each July first an amount based on a percentage increase equal to any increase in the consumer price index as calculated by the United States Department of Labor, Bureau of Statistics, for the preceding year: Provided, That the supplemental pension benefit shall not exceed four percent per year: Provided, however, That the benefit provided herein shall not commence until the first day of July in the second year after what would have been the earliest service retirement date pursuant to section twenty-five of this article for the person receiving the disability benefit: Provided further, That for persons becoming eligible for a benefit under subsection (d), article twenty-four of this section who were not employed in the preceding year and file a copy of his or her income tax return by the fifteenth of April each year, evidencing said lack of employment, the benefit provided herein shall commence on the first day of July in the second year after the date of disablement: And provided further, That the supplemental benefit shall only be calculated on the allowable amount, which is the first fifteen thousand dollars of the total annual benefit paid. If at any time after the commencement of the payment of the supplemental benefit provided under

this subsection the total accumulated percentage increase in benefit on the allowable amount becomes less than seventy-five percent of the total accumulated increase in the consumer price index for that same period of time, the four percent limitation shall be inapplicable until such time as the supplemental benefit paid equals seventy-five percent of the accumulated increase in the consumer price index.

(d) Persons receiving a disability pension pursuant to section twenty-four of this article prior to the first day of January, one thousand nine hundred ninety-one, shall receive commencing each July first, as an annualized monthly supplemental benefit an amount based on a percentage increase equal to any increase in the consumer price index as calculated by the United States Department of Labor, Bureau of Statistics, for the preceding year. Provided, That the supplemental benefit provided herein shall not exceed two percent per year: Provided, however, That beginning the first day of July two years after what would have been the earliest service retirement date pursuant to section twenty-five of this article the supplemental benefit provided herein shall not exceed four percent per year. The amount of supplemental benefit provided in this subsection shall not exceed four percent beginning the first day of July in any twelve month period for any pensioner who files a certified copy of his or her tax return evidencing that said pensioner was unemployed in the preceding year and received no earned income. The tax return shall be filed by the fifteenth of April in any such year. If at any time after the first day of July in the second year from what would have been the earliest service retirement date pursuant to section twenty-five of this article the total accumulated percentage increase in the supplemental benefit provided pursuant to this subsection on the allowable amount becomes less than the seventy-five percent of the total accumulated percentage increase in the consumer price index over that same period of time, the maximum percentage shall be inapplicable until such time as the percentage increase in the supplemental benefit paid equals seventy-five percent of the accumulated increase in the consumer price index. The
supplemental benefit provided in this subsection shall only be calculated on the allowable amount, which is the first fifteen thousand dollars of the annual benefit paid.

(e) Any supplemental benefits paid during a period of non-entitlement may be withheld out of subsequent regular monthly pension benefits.

(f) During the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety-six, and each year thereafter, each municipal policemen's and firemen's pension fund shall be reviewed by a qualified actuary who shall make a determination as to its actuarial soundness. Based upon the actuary's determination of the actuarial soundness of the fund, the actuary shall certify to the board of trustees of the fund the amount of increase in supplemental benefits, if any, which may be paid, and which will preserve the minimum standards for actuarial soundness of the fund, as set forth in section twenty of this article. The board of trustees shall increase supplemental benefits by an amount which is equal to the actuary's certified recommendation, up to the four percent limit contained in this section or the increase in the consumer price index, whichever is less. If the actuary determines that it is necessary to preserve the actuarial soundness of the fund, the board of trustees of the fund shall increase the percentage of the members' contribution from seven percent to the amount certified by the actuary not to exceed eight and one half percent, but only for so long as is necessary to achieve the minimum standards for actuarial soundness required by section twenty of this article. In any year in which there is no supplemental benefit paid, such year shall not be included in the reindexation calculation provided pursuant to this section.

(g) This section shall be construed liberally to effectuate the purpose of establishing minimum pension benefits under this article for members and surviving spouses.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Take effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within __________ day of __________, 1991.

Governor