

SB 400

WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
FOURTH EXTRAORDINARY SESSION, 2009

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ENROLLED

Senate Bill No. 4007

(BY SENATORS TOMBLIN (MR. PRESIDENT)
AND CARUTH, BY REQUEST OF THE EXECUTIVE)

[Passed November 19, 2009; in effect from passage.]

OFFICE OF THE CLERK
WEST VIRGINIA
SECRETARY OF STATE

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Senate Bill No. 4007

(BY SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH,

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[Passed November 19, 2009; in effect from passage.]

AN ACT to amend and reenact §5-10C-3, §5-10C-4 and §5-10C-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-10D-1 of said code; to amend and reenact §8-22-16, §8-22-17, §8-22-19, §8-22-20, §8-22-20a, §8-22-22, §8-22-22a, §8-22-23a and §8-22-27 of said code; to amend said code by adding thereto two new sections, designated §8-22-18a and §8-22-18b; to amend said code by adding thereto a new article, designated §8-22A-1, §8-22A-2, §8-22A-3, §8-22A-4, §8-22A-5, §8-22A-6, §8-22A-7, §8-22A-8, §8-22A-9, §8-22A-10, §8-22A-11, §8-22A-12, §8-22A-13, §8-22A-14, §8-22A-15, §8-22A-16, §8-22A-17, §8-22A-18, §8-22A-19, §8-22A-20, §8-22A-21, §8-22A-22, §8-22A-23, §8-22A-24, §8-22A-25, §8-22A-26, §8-22A-27, §8-22A-28, §8-22A-29, §8-22A-30, §8-22A-31 and §8-22A-32; to amend and reenact §33-3-14d of said code; and to amend and reenact §33-12C-7 of said code, all relating to pension

benefits for municipal police officers and firefighters; authorizing Consolidated Public Retirement Board to administer a retirement system for newly hired municipal police officers and firefighters; expanding membership of the retirement board; permitting a municipality by a majority vote of its governing body to close its policemen's or firemen's pension and relief fund to new employees and to place newly hired municipal police officers and firefighters into a new retirement system entitled the West Virginia Municipal Police Officers and Firefighters Retirement System; permitting an optional method of financing unfunded liabilities of existing municipal policemen's and firemen's pension and relief funds; preserving benefits under existing municipal policemen's and firemen's pension and relief funds; amending duties of local pension boards of trustees; creating the West Virginia Municipal Pensions Oversight Board and establishing powers and duties; providing for rules and emergency rules; creating Municipal Pensions Security Fund; providing for transfer of certain duties from the State Treasurer to the oversight board; amending time in which municipal and employee contributions must be made to pension and relief funds; increasing contribution requirement for new pension and relief fund members; requiring electronic funds transfer for certain funds; providing for actuary; providing for investment of funds; providing for disability examination and light-duty employment; amending investment requirements and restrictions; creating the West Virginia Municipal Police Officers and Firefighters Retirement System and the West Virginia Municipal Police Officers and Firefighters Retirement Fund; defining terms; establishing eligibility, administration, contributions and benefits; limiting liability; establishing criminal penalties; providing for retroactive membership in certain circumstances; and reallocating tax revenue.

Be it enacted by the Legislature of West Virginia:

That §5-10C-3, §5-10C-4 and §5-10C-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5-10D-1 of said code be amended and reenacted; that §8-22-16, §8-22-17, §8-22-19, §8-22-20, §8-22-20a, §8-22-22, §8-22-22a, §8-22-23a and §8-22-27 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §8-22-18a and §8-22-18b; that said code be amended by adding thereto a new article, designated §8-22A-1, §8-22A-2, §8-22A-3, §8-22A-4, §8-22A-5, §8-22A-6, §8-22A-7, §8-22A-8, §8-22A-9, §8-22A-10, §8-22A-11, §8-22A-12, §8-22A-13, §8-22A-14, §8-22A-15, §8-22A-16, §8-22A-17, §8-22A-18, §8-22A-19, §8-22A-20, §8-22A-21, §8-22A-22, §8-22A-23, §8-22A-24, §8-22A-25, §8-22A-26, §8-22A-27, §8-22A-28, §8-22A-29, §8-22A-30, §8-22A-31 and §8-22A-32; that §33-3-14d of said code be amended and reenacted; and that §33-12C-7 of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.

§5-10C-3. Definitions.

1 The following words and phrases as used in this article,
2 unless a different meaning is clearly indicated by the
3 context, have the following meanings:

4 (1) "Accumulated contributions" means the sum of all
5 amounts credited to a member's individual account in the
6 member's deposit fund and includes both contributions
7 deducted from the compensation of a member and
8 contributions of a member picked up and paid by the
9 member's participating public employer, plus applicable
10 interest thereon.

11 (2) "Board of trustees" means, as appropriate: The
12 Consolidated Public Retirement Board created in article
13 ten-d of this chapter; the Higher Education Policy
14 Commission; the West Virginia Council for Community
15 and Technical College Education; the institutional
16 governing boards responsible for the higher education
17 retirement plan and supplemental retirement plan; or the
18 boards of trustees of the firemen's and policemen's pension
19 and relief funds created in article twenty-two, chapter
20 eight of this code.

21 (3) "Employee" means any person, whether appointed,
22 elected or under contract, providing services for a public
23 employer for which compensation is paid and who is a
24 member of the applicable retirement system.

25 (4) "Member" means any person who has accumulated
26 contributions standing to his or her credit in a retirement
27 system.

28 (5) "Member contributions" means, as appropriate: The
29 contributions required by section twenty-nine, article ten
30 of this chapter from employees who are members of the
31 West Virginia Public Employees Retirement System; the
32 contributions required by section twenty-six, article two,
33 chapter fifteen of this code from employees who are
34 members of the West Virginia State Police Death,
35 Disability and Retirement Fund; the contributions
36 required by section seven, article fourteen-d, chapter
37 seven of this code from employees who are members of the
38 Deputy Sheriff Retirement System; the contributions
39 required by section fourteen, article seven-a, chapter
40 eighteen of this code from employees who are members of
41 the State Teachers Retirement System; the contributions
42 authorized or required by section fourteen-a, article
43 seven-a of said chapter or by section four-a, article
44 twenty-three of said chapter from employees who are
45 members of the West Virginia higher education retirement

46 plan and supplemental retirement plan; the contributions
47 required by section four, article nine, chapter fifty-one of
48 this code from employees who are members of the Judges'
49 Retirement System; the contributions required by section
50 nineteen, article twenty-two, chapter eight of this code
51 from employees who are members of municipal firemen's
52 and policemen's pension and relief funds; the
53 contributions required by section eight, article twenty-
54 two-a, chapter eight of this code from employees who are
55 members of the Municipal Police Officers and Firefighters
56 Retirement System; the contributions required by section
57 nine, article seven-b, chapter eighteen of this code from
58 employees who are members of the Teachers' Defined
59 Contribution Retirement System; the contributions
60 required by section five, article two-a, chapter fifteen of
61 this code from the employees who are members of the West
62 Virginia State Police Retirement System; or the
63 contributions required by section eight, article five-v,
64 chapter sixteen of this code from employees who are
65 members of the West Virginia Emergency Medical Services
66 Retirement System.

67 (6) "Participating public employer" means the State of
68 West Virginia, any board, commission, department,
69 institution or spending unit and includes any agency with
70 full-time employees, created by rule of the Supreme Court
71 of Appeals, which for the purpose of this article shall be
72 considered a department of state government and county
73 boards of education with respect to teachers employed by
74 them; any political subdivision in the state which has
75 elected to cover its employees, as defined in this article,
76 under the West Virginia Public Employees Retirement
77 System; any political subdivision in the state which has
78 elected to cover its employees, as defined in this article,
79 under the Deputy Sheriff Retirement System; any political
80 subdivision in the state which has elected to cover its
81 employees, as defined in this article, under the West

82 Virginia Emergency Medical Services Retirement System;
83 and any political subdivision in this state which is subject
84 to the provisions of articles twenty-two and twenty-two-a,
85 chapter eight of this code.

86 (7) "Political subdivision" means the State of West
87 Virginia, a county, city or town in the state; a school
88 corporation or corporate unit; any separate corporation or
89 instrumentality established by one or more counties, cities
90 or towns, as permitted by law; any corporation or
91 instrumentality supported in most part by counties, cities
92 or towns; any public corporation charged by law with the
93 performance of a governmental function and whose
94 jurisdiction is coextensive with one or more counties, cities
95 or towns, any agency or organization established by or
96 approved by the Department of Health and Human
97 Resources for the provision of community health or mental
98 retardation services and which is supported in part by
99 state, county or municipal funds.

100 (8) "Retirement system" means, as appropriate: The
101 West Virginia Public Employees Retirement System
102 created in article ten of this chapter; the West Virginia
103 State Police Death, Disability and Retirement Fund
104 created in sections twenty-six through thirty-nine-a,
105 inclusive, article two, chapter fifteen of this code; the West
106 Virginia Deputy Sheriff Retirement System created in
107 article fourteen-d, chapter seven of this code; the state
108 Teachers Retirement System created in article seven-a,
109 chapter eighteen of this code; the West Virginia higher
110 education retirement plan and supplemental retirement
111 plan created in section fourteen-a, article seven-a of said
112 chapter and section four-a, article twenty-three of said
113 chapter; the Judges' Retirement System created in article
114 nine, chapter fifty-one of this code; the firemen's or
115 policemen's pension and relief funds created in section
116 sixteen, article twenty-two, chapter eight of this code; the
117 Municipal Police Officers and Firefighters Retirement

118 System created in section four, article twenty-two-a,
119 chapter eight of this code; the Teachers' Defined
120 Contribution Retirement System created in article seven-
121 b, chapter eighteen of this code; the West Virginia State
122 Police Retirement System created in article two-a, chapter
123 fifteen of this code; or the West Virginia Emergency
124 Medical Services Retirement System created in article
125 five-v, chapter sixteen of this code.

126 (9) "Teacher" has the meaning ascribed to the term
127 "teacher member" in section three, article seven-a, chapter
128 eighteen of this code.

**§5-10C-4. Pick-up of members' contributions by participating
public employers.**

1 (a) The State of West Virginia for its public employees
2 and county boards of education for its teachers shall pick-
3 up and pay the contributions which the employees are
4 required by law to make to the retirement system in which
5 they are a member for all compensation earned by its
6 member employees after June 30, 1986. Any political
7 subdivision that is a participating public employer in the
8 West Virginia Public Employees Retirement System shall
9 pick-up and pay the contributions which the employees
10 are required by law to make to the retirement system in
11 which they are members for all compensation earned by its
12 member employees after January 1, 1995. Public
13 employers participating in the Municipal Police Officers
14 and Firefighters Retirement System shall pick-up and pay
15 the contributions which the employees are required by law
16 to make to the system in which they are members for all
17 compensation earned by its member employees beginning
18 January 1, 2010. Counties shall pick-up and pay the
19 contributions which the employees are required by law to
20 make to the Deputy Sheriff Retirement System in which
21 they are members for all compensation earned by its
22 member employees after June 30, 1998. Any election made
23 by a political subdivision to pick-up and pay employee

24 contributions prior to January 1, 1995, remains in effect
25 and is not altered or amended by the amendments made to
26 this section during the regular legislative session, 1995.
27 Unless a different commencement date for pick-up is
28 specifically stated in this section, all participating public
29 employers under this article, with respect to retirement
30 systems subject to this article, shall pick-up and pay the
31 contributions which their employees are required by law
32 to make to the retirement system in which they are a
33 member from and after the commencement of the required
34 employee contributions.

35 (b) When the participating public employer picks up and
36 pays the contributions of its member employees, the
37 contributions, although designated by statute as employee
38 contributions, shall be treated as employer contributions
39 in determining the tax treatment thereof under article
40 twenty-one, chapter eleven of this code and the federal
41 Internal Revenue Code of 1986, as amended, and the
42 contributions shall not be included in the gross income of
43 the employee in determining his or her tax treatment
44 under those provisions until they are distributed or made
45 available to the employee or his or her beneficiary. The
46 participating public employer shall pay these employee
47 contributions from the same source of funds used in
48 paying compensation to the employee, by effecting an
49 equal cash reduction in the gross salary of the employee,
50 or by an off-set against future salary increases, or by a
51 combination of reduction in gross salary and off-set
52 against future salary increases. In no event shall any
53 employee of a participating public employer have the right
54 to opt out of pick-up or to elect to receive the picked-up
55 and contributed amounts directly instead of having them
56 paid by the participating public employer into the
57 retirement system pursuant to this article.

58 (c) When employee contributions are picked up and paid
59 by the participating public employer, they shall be treated

60 by the board of trustees in the same manner and to the
61 same extent as employee contributions made prior to the
62 date on which employee contributions are picked up by
63 the participating public employer.

64 (d) The amount of employee contributions picked up by
65 the participating public employer shall be paid to the
66 retirement system in the manner and form and in the
67 frequency required by the board of trustees and shall be
68 accompanied by supporting data that the board of trustees
69 may prescribe. When paid to the retirement system, each
70 of these amounts shall be credited to the deposit fund
71 account of the member for whom the contribution was
72 picked up and paid by the participating public employer.

§5-10C-5. Savings clause.

1 In enacting this article, it is the intent of the Legislature
2 that the retirement plan created pursuant to this article
3 and those created pursuant to article ten of this chapter;
4 article fourteen-d, chapter seven of this code; article
5 twenty-two-a, chapter eight of this code; article two,
6 chapter fifteen of this code; article seven-a, chapter
7 eighteen of this code; article nine, chapter fifty-one of this
8 code; section four-a, article twenty-three, chapter eighteen
9 of this code; section sixteen, article twenty-two, chapter
10 eight of this code; article seven-b, chapter eighteen of this
11 code; article two-a, chapter fifteen of this code; and article
12 five-v, chapter sixteen of this code qualify under Section
13 401 of the Internal Revenue Code of 1986, as amended, and
14 that the member contributions picked up by the
15 participating public employer qualify under Subsection
16 (h), Section 414 of the Internal Revenue Code of 1986, as
17 amended. If the United States Internal Revenue Service
18 does not approve of certain sections or phraseology of
19 certain sections of this article as being in compliance with
20 the statutes or regulations governing the Internal Revenue
21 Service, the respective boards of trustees, in the adoption

22 of the deferred compensation plan, shall adopt the
23 terminology with respect to those sections that comply
24 with the statutes or regulations governing the Internal
25 Revenue Service.

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

**§5-10D-1. Consolidated Public Retirement Board continued;
members; vacancies; investment of plan funds.**

1 (a) The Consolidated Public Retirement Board is
2 continued to administer all public retirement plans in this
3 state. It shall administer the Public Employees Retirement
4 System established in article ten of this chapter; the
5 Teachers Retirement System established in article seven-a,
6 chapter eighteen of this code; the Teachers' Defined
7 Contribution Retirement System created by article seven-
8 b of said chapter; the West Virginia State Police Death,
9 Disability and Retirement Fund created by article two,
10 chapter fifteen of this code; the West Virginia State Police
11 Retirement System created by article two-a of said
12 chapter; the Deputy Sheriff Death, Disability and
13 Retirement Fund created by article fourteen-d, chapter
14 seven of this code; the Judges' Retirement System created
15 under article nine, chapter fifty-one of this code; the
16 Emergency Medical Services Retirement System
17 established in article five-v, chapter sixteen of this code;
18 and the Municipal Police Officers and Firefighters
19 Retirement System established in article twenty-two-a,
20 chapter eight of this code.

21 (b) The membership of the Consolidated Public
22 Retirement Board consists of:

- 23 (1) The Governor or his or her designee;
- 24 (2) The State Treasurer or his or her designee;
- 25 (3) The State Auditor or his or her designee;

26 (4) The Secretary of the Department of Administration
27 or his or her designee;

28 (5) Four residents of the state, who are not members,
29 retirants or beneficiaries of any of the public retirement
30 systems, to be appointed by the Governor, with the advice
31 and consent of the Senate; and

32 (6) A member, annuitant or retirant of the Public
33 Employees Retirement System who is or was a state
34 employee; a member, annuitant or retirant of the Public
35 Employees Retirement System who is not or was not a
36 state employee; a member, annuitant or retirant of the
37 Teachers Retirement System; a member, annuitant or
38 retirant of the West Virginia State Police Death, Disability
39 and Retirement Fund; a member, annuitant or retirant of
40 the Deputy Sheriff Death, Disability and Retirement
41 Fund; a member, annuitant or retirant of the Teachers'
42 Defined Contribution Retirement System; a member,
43 annuitant or retirant of the Emergency Medical Services
44 Retirement System; and beginning as soon as practicable
45 after January 1, 2010, one person who is a member,
46 annuitant or retirant of a municipal policemen's or
47 firemen's pension and relief fund or the West Virginia
48 Municipal Police Officers and Firefighters Retirement
49 System, all to be appointed by the Governor, with the
50 advice and consent of the Senate. The Governor shall
51 choose the member representing the municipal policemen's
52 or firemen's pension and relief fund or the West Virginia
53 Municipal Police Officers and Firefighters Retirement
54 System from two names submitted by the state's largest
55 organization of professional police officers and two names
56 submitted by the state's largest organization of
57 professional firefighters. Representation of the municipal
58 police officers and firefighters shall alternate after each
59 term on the board between persons having police officer
60 and firefighter affiliation so that each professional group
61 is represented on the board every other term.

62 All appointees to the board shall have recognized
63 competence or significant experience in pension
64 management or administration, actuarial analysis,
65 institutional management or accounting. Those members
66 appointed prior to January 1, 2010, shall be considered to
67 have met these qualifications. One trustee shall be an
68 attorney experienced in finance and pension matters and
69 one trustee shall be a certified public accountant. Each
70 member of the board must complete annual fiduciary
71 training and timely complete any conflict of interest forms
72 required to serve as a trustee.

73 (c) The appointed members of the board shall serve five-
74 year terms. A member appointed pursuant to subdivision
75 (6), subsection (b) of this section ceases to be a member of
76 the board if he or she ceases to be a member of the
77 represented system. If a vacancy occurs in the appointed
78 membership, the Governor, within sixty days, shall fill the
79 vacancy by appointment for the unexpired term. No more
80 than six appointees may be of the same political party.

81 (d) The Consolidated Public Retirement Board has all the
82 powers, duties, responsibilities and liabilities of the Public
83 Employees Retirement System established pursuant to
84 article ten of this chapter; the Teachers Retirement System
85 established pursuant to article seven-a, chapter eighteen
86 of this code; the Teachers' Defined Contribution
87 Retirement System established pursuant to article seven-b
88 of said chapter; the West Virginia State Police Death,
89 Disability and Retirement Fund created pursuant to
90 article two, chapter fifteen of this code; the West Virginia
91 State Police Retirement System created by article two-a of
92 said chapter; the Deputy Sheriff Death, Disability and
93 Retirement Fund created pursuant to article fourteen-d,
94 chapter seven of this code; the Judges' Retirement System
95 created pursuant to article nine, chapter fifty-one of this
96 code; the Emergency Medical Services Retirement System
97 established in article five-v, chapter sixteen of this code;

98 and the Municipal Police Officers and Firefighters
99 Retirement System created pursuant to article twenty-
100 two-a, chapter eight of this code, and their appropriate
101 governing boards.

102 (e) The Consolidated Public Retirement Board may
103 propose rules for legislative approval, in accordance with
104 article three, chapter twenty-nine-a of this code, necessary
105 to effectuate its powers, duties and responsibilities:
106 *Provided*, That the board may adopt any or all of the rules,
107 previously promulgated, of a retirement system which it
108 administers.

109 (f) (1) The Consolidated Public Retirement Board shall
110 continue to transfer all funds received for the benefit of
111 the retirement systems, including, but not limited to, all
112 employer and employee contributions, to the West Virginia
113 Investment Management Board: *Provided*, That the
114 employer and employee contributions of the Teachers'
115 Defined Contribution Retirement System, established in
116 section three, article seven-b, chapter eighteen of this
117 code, and voluntary deferred compensation funds invested
118 by the West Virginia Consolidated Public Retirement
119 Board pursuant to section five, article ten-b of this chapter
120 may not be transferred to the West Virginia Investment
121 Management Board.

122 (2) The board may recover from a participating employer
123 that fails to pay any amount due a retirement system in a
124 timely manner the contribution due and an additional
125 amount not to exceed interest or other earnings lost as a
126 result of the untimely payment, or a reasonable minimum
127 fee, whichever is greater, as provided by legislative rule
128 promulgated pursuant to the provisions of article three,
129 chapter twenty-nine-a of this code. Any amounts
130 recovered shall be administered in the same manner in
131 which the amount due is required to be administered.

132 (g) Notwithstanding any provision of this code or any
133 legislative rule to the contrary, all assets of the public
134 retirement plans set forth in subsection (a) of this section
135 shall be held in trust. The Consolidated Public Retirement
136 Board is a trustee for all public retirement plans, except
137 with regard to the investment of funds: *Provided*, That the
138 Consolidated Public Retirement Board is a trustee with
139 regard to the investments of the Teachers' Defined
140 Contribution Retirement System and any other assets of
141 the public retirement plans administered by the
142 Consolidated Public Retirement Board as set forth in
143 subsection (a) of this section for which no trustee has been
144 expressly designated in this code.

145 (h) The board may employ the West Virginia Investment
146 Management Board to provide investment management
147 consulting services for the investment of funds in the
148 Teachers' Defined Contribution Retirement System.

CHAPTER 8. MUNICIPAL CORPORATIONS.

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 III. POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND.

§8-22-16. Pension and relief funds for policemen and firemen; creation of boards of trustees; definitions; continuance of funds; average adjusted salary.

1 (a) Except as provided in subsection (e) of this section,
2 passed into law during the fourth extraordinary session of
3 the Legislature in 2009, in every Class I and Class II city
4 having, or which may hereafter have, a paid police

5 department and a paid fire department, or either of such
6 departments, the governing body shall, and in every Class
7 III city and Class IV town or village having, or which may
8 hereafter have, a paid police department and a paid fire
9 department, or either of such departments, the governing
10 body may, by ordinance provide for the establishment and
11 maintenance of a policemen's pension and relief fund and
12 for a firemen's pension and relief fund for the purposes
13 hereinafter enumerated and, thereupon, there shall be
14 created boards of trustees which shall administer and
15 distribute the moneys authorized to be raised by this
16 section and the following sections of this article. For the
17 purposes of this section and sections seventeen through
18 twenty-eight, inclusive, of this article, the term "paid
19 police department" or "paid fire department" means only
20 a municipal police department or municipal fire
21 department, as the case may be, maintained and paid for
22 out of public funds and whose employees are paid on a
23 full-time basis out of public funds. The term shall not be
24 taken to mean any department whose employees are paid
25 nominal salaries or wages or are only paid for services
26 actually rendered on an hourly basis.

27 (b) Any policemen's pension and relief fund and any
28 firemen's pension and relief fund established in
29 accordance with the provisions of former article six of this
30 chapter or this article shall be or remain mandatory and
31 shall be governed by the provisions of sections sixteen
32 through twenty-eight, inclusive, of this article (with like
33 effect, in the case of a Class III city or Class IV town or
34 village, as if such Class III city or Class IV town or village
35 were a Class I or Class II city) and shall not be affected by
36 the transition from one class of municipal corporation to
37 a lower class as specified in section three, article one of
38 this chapter: *Provided*, That any Class III or Class IV town
39 or village that hereafter becomes a Class I or Class II city
40 shall not be required to establish a pension and relief fund

41 if the town or village is a participant in an existing
42 pension plan regarding paid firemen and/or policemen.

43 (c) After June 30, 1981, for the purposes of sections
44 sixteen through twenty-eight, inclusive, of this article, the
45 word "member" means any paid police officer or
46 firefighter who at time of appointment to a paid police or
47 fire department met the medical requirements of chapter
48 2-2 of the National Fire Protection Association Standards
49 Number 1001 – Firefighters Professional Qualifications '74
50 as updated from year to year: *Provided*, That any police
51 officer or firefighter who was a member of the fund prior
52 to July 1, 1981, shall be considered a member after June
53 30, 1981.

54 (d) For purposes of sections sixteen through twenty-
55 eight, inclusive, of this article, the words "salary or
56 compensation" mean remuneration actually received by a
57 member, plus the member's deferred compensation under
58 sections 125, 401(k), 414(h)(2) and 457 of the United States
59 Internal Revenue Code of 1986, as amended: *Provided*,
60 That the remuneration received by the member during any
61 twelve-consecutive-month period used in determining
62 benefits which is in excess of an amount which is twenty
63 percent greater than the "average adjusted salary"
64 received by the member in the two consecutive twelve-
65 consecutive-month periods immediately preceding the
66 twelve-consecutive-month period used in determining
67 benefits shall be disregarded: *Provided, however*, That the
68 "average adjusted salary" means the arithmetic average of
69 each year's adjusted salary, the adjustment made to reflect
70 current salary rate and such average adjusted salary shall
71 be determined as follows: Assuming "year-one" means the
72 second twelve-consecutive-month period preceding such
73 twelve-consecutive-month period used in determining
74 benefits, "year-two" means the twelve-consecutive-month
75 period immediately preceding the twelve-consecutive-
76 month period used in determining benefits and "year-

77 three” means the twelve-consecutive-month period used
78 in determining benefits, year-one total remuneration shall
79 be multiplied by the ratio of year-three base salary,
80 exclusive of all overtime and other remuneration, to year-
81 one base salary, exclusive of all overtime and other
82 remuneration, such product shall equal “year-one adjusted
83 salary”; year-two total remuneration shall be multiplied
84 by the ratio of year-three base salary, exclusive of all
85 overtime and other remuneration, to year-two base salary,
86 exclusive of all overtime and other remuneration, such
87 product shall equal “year-two adjusted salary”; and the
88 arithmetic average of year-one adjusted salary and year-
89 two adjusted salary shall equal the average adjusted
90 salary.

91 (e)(1) Any municipality, as that term is defined in section
92 two, article one of this chapter, or municipal subdivision
93 as defined in section two, article twenty-two-a of this
94 chapter may, by a majority vote of its governing body,
95 close its existing policemen’s or firemen’s pension and
96 relief fund to employees newly hired on or after January
97 1, 2010, if the municipality enrolls those newly hired
98 police officers or firefighters in a retirement plan created
99 in article twenty-two-a of this chapter and approved and
100 administered by the West Virginia Consolidated Public
101 Retirement Board. On and after July 1, 2010, no new
102 policemen’s or firemen’s pension and relief fund may be
103 established under this section. A Class I or Class II
104 municipality forming a new paid police department or
105 paid fire department after June 30, 2010, shall,
106 notwithstanding the provisions of section two, article
107 twenty-two-a of this chapter, enroll the department
108 members in the Municipal Police Officers and Firefighters
109 Retirement System established in article twenty-two-a of
110 this chapter.

111 (2) Any municipality using the alternative method of
112 financing that elects to close an existing pension and relief

113 fund to new hires pursuant to this subsection shall also
114 adopt the optional method of financing the unfunded
115 actuarial accrued liability of the existing policemen's or
116 firemen's pension and relief fund as provided in subsection
117 (e), section twenty of this article.

118 (3) Except as provided in section thirty-two, article
119 twenty-two-a of this chapter, if the qualifying
120 municipality elects to close enrollment in an existing
121 municipal pension and relief fund to newly hired police
122 officers and firefighters pursuant to this section, all
123 current active members, retirees and other beneficiaries
124 covered by the existing policemen's or firemen's pension
125 and relief fund shall remain covered by that plan and shall
126 be paid all benefits of that plan in accordance with Part III
127 of this article.

§8-22-17. Powers and duties of boards of trustees; training.

1 (a) Boards of trustees shall be public corporations by the
2 name and style of "The Board of Trustees of the
3 Policemen's Pension and Relief Fund of (name of
4 municipality)", or "The Board of Trustees of the Firemen's
5 Pension and Relief Fund of (name of municipality)", as the
6 case may be, by which names they may sue and be sued,
7 plead and be impleaded, contract and be contracted with,
8 take and hold real and personal property for the use of the
9 policemen's pension and relief fund or the firemen's
10 pension and relief fund and have and use a common seal.
11 In the absence of a seal, the seal of the president of the
12 corporation shall be equivalent to a common seal. A board
13 of trustees may also in its corporate name do and perform
14 any and all other acts and business pertaining to the trust
15 created hereby or by any conveyance, devise or dedication
16 made for the uses and purposes of the board.

17 (b) After June 30, 1981, any board of trustees and any
18 members of a board shall, as fund fiduciaries, discharge
19 their duties with respect to pension and relief funds solely

20 in the interest of the members and members' beneficiaries
21 for the exclusive purpose of providing benefits to members
22 and their beneficiaries and defraying reasonable expenses
23 of administering the fund.

24 (c) The board of trustees of each fund shall deliver a
25 copy of the fund's current rules, regulations and
26 procedures to the State Treasurer or oversight board
27 established by section eighteen-a of this article on or
28 before March 1, 2010, and thereafter within thirty days of
29 any approved change in the rules, regulations or
30 procedures.

31 (d) Each member of a board of trustees shall attend
32 training in matters relating to trustee duties as may be
33 required by the oversight board pursuant to section
34 eighteen-a of this article.

**§8-22-18a. West Virginia Municipal Pensions Oversight Board
created; powers and duties; management;
composition; terms; quorum; expenses; reports.**

1 (a)(1) There is established, on the effective date of the
2 enactment of this section during the fourth extraordinary
3 session of the Legislature in 2009, the West Virginia
4 Municipal Pensions Oversight Board for the purpose of
5 monitoring and improving the performance of municipal
6 policemen's and firemen's pension and relief funds to
7 assure prudent administration, investment and
8 management of the funds. Management of the oversight
9 board shall be vested solely in the members of the
10 oversight board. Duties of the oversight board shall
11 include, but not be limited to, assisting municipal boards
12 of trustees in performing their duties, assuring the funds'
13 compliance with applicable laws, providing for actuarial
14 studies, distributing tax revenues to the funds, initiating
15 or joining legal actions on behalf of active or retired
16 pension fund members or municipal boards of trustees to
17 protect interests of the members in the funds, and taking

18 other actions as may be reasonably necessary to provide
19 for the security and fiscal integrity of the pension funds.
20 The oversight board's authority to initiate legal action
21 does not preempt the authority of municipalities;
22 municipal policemen's and firemen's boards of trustees; or
23 pension fund active members, beneficiaries or others to
24 initiate legal action to protect interests in the funds. The
25 oversight board is created as a public body corporate.
26 Establishment of the oversight board does not relieve the
27 municipal funds' boards of trustees from their fiduciary
28 and other duties to the funds, nor does it create any
29 liability for the funds on the part of the state. Members
30 and employees of the oversight board are not liable
31 personally, either jointly or severally, for debts or
32 obligations of the municipal pension and relief funds.
33 Members and employees of the oversight board have a
34 fiduciary duty toward the municipal pension and relief
35 funds and are liable for malfeasance or gross negligence.
36 Employees of the oversight board are nonclassified state
37 employees.

38 (2) The oversight board shall consist of nine members.
39 The executive director of the state's Investment
40 Management Board and the executive director of the
41 state's Consolidated Public Retirement Board, or their
42 designees, shall serve as voting ex-officio members. The
43 other seven members shall be citizens of the state who
44 have been qualified electors of the state for a period of at
45 least one year next preceding their appointment and shall
46 be as follows: An active or retired member of a municipal
47 policemen's pension and relief fund chosen from a list of
48 three persons submitted to the Governor by the state's
49 largest professional municipal police officers organization,
50 an active or retired member of a municipal firemen's
51 pension and relief fund chosen from a list of three persons
52 submitted to the Governor by the state's largest
53 professional firefighters organization, an attorney

54 experienced in finance and investment matters related to
55 pensions management, two persons experienced in pension
56 funds management, one person who is a certified public
57 accountant experienced in auditing and one person chosen
58 from a list of three persons submitted to the Governor by
59 the state's largest association of municipalities.

60 (3) On the effective date of the enactment of this section
61 as amended during the fourth extraordinary session of the
62 Legislature in 2009, the Governor shall forthwith appoint
63 the members, with the advice and consent of the Senate.
64 The Governor may remove any member from the oversight
65 board for neglect of duty, incompetency or official
66 misconduct.

67 (b) The oversight board has the power to:

68 (1) Enter into contracts, to sue and be sued, to implead
69 and be impleaded;

70 (2) Promulgate and enforce bylaws and rules for the
71 management and conduct of its affairs;

72 (3) Maintain accounts and invest those funds which the
73 oversight board is charged with receiving and distributing;

74 (4) Make, amend and repeal bylaws, rules and
75 procedures consistent with the provisions of this article
76 and article thirty-three of this code;

77 (5) Notwithstanding any other provision of law, retain or
78 employ, fix compensation, prescribe duties and pay
79 expenses of legal, accounting, financial, investment,
80 management and other staff, advisors or consultants as it
81 considers necessary, including the hiring of legal counsel
82 and actuary; and

83 (6) Do all things necessary and appropriate to implement
84 and operate the board in performance of its duties.
85 Expenses shall be paid from the moneys in the Municipal

86 Pensions Security Fund created in section eighteen-b of
87 this article or, prior to the transition provided in section
88 eighteen-b of this article, the Municipal Pensions and
89 Protection Fund: *Provided*, That the board may request
90 special appropriation for special projects.

91 (c) Except for ex-officio members, the terms of oversight
92 board members shall be staggered initially from January
93 1, 2010. The Governor shall appoint initially one member
94 for a term of one year, one member for a term of two years,
95 two members for terms of three years, one member for a
96 term of four years and two members for terms of five
97 years. Subsequent appointments shall be for terms of five
98 years. A member serving two full consecutive terms may
99 not be reappointed for one year after completion of his or
100 her second full term. Each member shall serve until that
101 member's successor is appointed and qualified. Any
102 member may be removed by the Governor in case of
103 incompetency, neglect of duty, gross immorality or
104 malfeasance in office. Any vacancy on the oversight board
105 shall be filled by appointment by the Governor for the
106 balance of the unexpired term.

107 (d) A majority of the full authorized membership of the
108 oversight board constitutes a quorum. The board shall
109 meet at least quarterly each year, but more often as duties
110 require, at times and places that it determines. The
111 oversight board shall elect a chairperson and a vice
112 chairperson from their membership who shall serve for
113 terms of two years and shall select annually a
114 secretary/treasurer who may be either a member or
115 employee of the board. The oversight board shall employ
116 an executive director and other staff as needed and shall
117 fix their duties and compensation. The compensation of
118 the executive director shall be subject to approval of the
119 Governor. Except for any special appropriation as
120 provided in subsection (b) of this section, all personnel and
121 other expenses of the board shall be paid from revenue

122 collected and allocated for municipal policemen's or
123 municipal firemen's pension and relief funds pursuant to
124 section fourteen-d, article three, chapter thirty-three of
125 this code and distributed through the Municipal Pensions
126 and Protection Fund or the Municipal Pensions Security
127 Fund created in section eighteen-b of this article.
128 Expenses during the initial year of the board's operation
129 shall be from proceeds of the allocation for the municipal
130 pensions and relief funds. Expenditures in years
131 thereafter shall be by appropriation from the Municipal
132 Pensions Security Fund. Money allocated for municipal
133 policemen's and firemen's pension and relief funds to be
134 distributed from the Municipal Pensions and Protection
135 Fund or the Municipal Pensions Security Fund shall be
136 first allocated to pay expenses of the oversight board and
137 the remainder in the fund distributed among the various
138 municipal pension and relief funds as provided in section
139 fourteen-d, article three, chapter thirty-three of this code.
140 The board is exempt from the provisions of sections seven
141 and eleven, article three, chapter twelve of this code
142 relating to compensation and expenses of members,
143 including travel expenses.

144 (e) Members of the oversight board shall serve the board
145 without compensation for their services: *Provided*, That no
146 public employee member may suffer any loss of salary or
147 wages on account of his or her service on the board. Each
148 member of the board shall be reimbursed, on approval of
149 the board, for any necessary expenses actually incurred by
150 the member in carrying out his or her duties. All
151 reimbursement of expenses shall be paid out of the
152 Municipal Pensions Security Fund.

153 (f) The board may contract with other state boards or
154 state agencies to share offices, personnel and other
155 administrative functions as authorized under this article:
156 *Provided*, That no provision of this subsection may be
157 construed to authorize the board to contract with other

158 state boards or state agencies to otherwise perform the
159 duties or exercise the responsibilities imposed on the
160 board by this code.

161 (g) The board shall propose rules for legislative approval
162 in accordance with the provisions of article three, chapter
163 twenty-nine-a of this code as necessary to implement the
164 provisions of this article, and may initially promulgate
165 emergency rules pursuant to the provisions of section
166 fifteen, article three, chapter twenty-nine-a of this code.

167 (h) The oversight board shall report annually to the
168 Legislature's Joint Committee on Government and
169 Finance and the Joint Committee on Pensions and
170 Retirement concerning the status of municipal policemen's
171 and firemen's pension and relief funds and shall present
172 recommendations for strengthening and protecting the
173 funds and the benefit interests of the funds' members.

174 (i) The oversight board shall cooperate with the West
175 Virginia Investment Management Board and the Board of
176 Treasury Investments to educate members of the local
177 pension boards of trustees on the services offered by the
178 two state investment boards. No later than October 31,
179 2013, the board shall report to the Joint Committee on
180 Government and Finance and the Joint Committee on
181 Pensions and Retirement a detailed comparison of returns
182 on long-term investments of moneys held by or allocated
183 to municipal pension and relief funds managed by the
184 West Virginia Investment Management Board and those
185 managed by others than the Investment Management
186 Board. The oversight board shall also report at that time
187 on short-term investment returns by local pension boards
188 using the West Virginia Board of Treasury Investments
189 compared to short-term investment returns by those local
190 boards of trustees not using the Board of Treasury
191 Investments.

192 (j) The oversight board shall establish minimum
193 requirements for training to be completed by each member
194 of the board of trustees of a municipal policemen's or
195 firemen's pension and relief fund. The requirements
196 should include, but not be limited to, training in ethics,
197 fiduciary duty and investment responsibilities.

198 (k) The Joint Committee on Pensions and Retirement
199 shall study deferred retirement option programs (DROPs)
200 and shall provide opportunities for professional police
201 officer and firefighter organizations to present
202 information on DROPs to the committee, to consider and
203 evaluate elements of the programs to assess how the
204 programs may best serve the public interest. The
205 committee shall report any findings, conclusions or
206 recommendations, along with drafts of any proposed
207 legislation, to the Joint Committee on Government and
208 Finance by November 30, 2010.

**§8-22-18b. Creation of Municipal Pensions Security Fund;
transfer of certain powers, duties and functions
of Treasurer's office to Municipal Pensions
Oversight Board.**

1 (a) The Legislature finds that an important part of
2 oversight of municipal policemen's and firemen's pension
3 and relief funds is monitoring the performance required of
4 the various funds to qualify to receive distribution of
5 insurance premium tax revenues provided by section
6 fourteen-d, article three, chapter thirty-three of this code.
7 The duties and functions of the State Treasurer's office
8 with respect to monitoring and distribution are
9 transferred from the State Treasurer's office to the West
10 Virginia Municipal Pensions Oversight Board effective
11 January 1, 2010: *Provided*, That until the oversight board
12 is fully organized and operating, some duties and
13 functions being performed by the State Treasurer's office
14 prior to January 1, 2010, may be continued by that office

15 temporarily as necessary to effect an orderly transition of
16 responsibilities and provide for prompt distribution of the
17 insurance premium tax proceeds for expenses of the
18 oversight board and to the municipal policemen's and
19 firemen's pension and relief funds.

20 (b) There is hereby created in the State Treasury a
21 nonexpiring special revenue fund designated the West
22 Virginia Municipal Pensions Security Fund which shall be
23 administered by the West Virginia Municipal Pensions
24 Oversight Board solely for the purposes as provided in this
25 article and article three, chapter thirty-three of this code.
26 All earnings shall accrue to and be retained by the fund.

27 (c) Until the oversight board advises the Insurance
28 Commissioner and the State Treasurer in writing that the
29 oversight board is prepared to receive into and distribute
30 from the West Virginia Municipal Pensions Security Fund
31 premium tax revenues as provided in section fourteen-d,
32 article three, chapter thirty-three of this code and section
33 seven, article twelve-c of said chapter, the commissioner
34 shall continue to transfer the funds into the Municipal
35 Pensions and Protection Fund and the State Treasurer
36 shall continue to disburse funds to the qualifying
37 municipal pension and relief funds, and shall disburse
38 funds as necessary for the establishment and early
39 operation of the oversight board. The Insurance
40 Commissioner, the State Treasurer and oversight board
41 shall share information freely as required for efficient
42 transfer of powers and duties related to the premium tax
43 revenues generated pursuant to chapter thirty-three of this
44 code to be allocated to the municipal policemen's and
45 firemen's pension and relief funds. When the oversight
46 board assumes full responsibility to receive funds into and
47 disburse funds from the Municipal Pensions Security
48 Fund, the State Treasurer shall transfer to it all funds
49 remaining in the Municipal Pensions and Protection Fund
50 and close the Municipal Pensions and Protection Fund.

§8-22-19. Levy to maintain fund.

1 (a)(1) In order for a municipal policemen's or firemen's
2 pension and relief fund to receive the allocable portion of
3 moneys from the Municipal Pensions and Protection Fund
4 established in section fourteen-d, article three, chapter
5 thirty-three of this code and funds from the Municipal
6 Pensions Security Fund created in section eighteen-b of
7 this article, the governing body of the municipality shall
8 levy annually and in the manner provided by law for other
9 municipal levies and include within the maximum levy or
10 levies permitted by law and, if necessary, in excess of any
11 charter provision, a tax at such rate as will, after
12 crediting: (A) The amount of the contributions received
13 during the year from the members of the respective paid
14 police department or paid fire department; and (B) the
15 allocable portion of the Municipal Pensions and Protection
16 Fund established in section fourteen-d, article three,
17 chapter thirty-three of this code and funds from the
18 Municipal Pensions Security Fund created in section
19 eighteen-b of this article, provide funds equal to the
20 amount necessary to meet the minimum standards for
21 actuarial soundness as provided in section twenty of this
22 article. The amount shall be irrevocably contributed,
23 accumulated and invested as fund assets as described in
24 sections twenty-one and twenty-two of this article. One
25 twelfth of each municipality's annual contributions shall
26 be deposited with the municipality's pension trust funds as
27 fund assets on at least a monthly basis and any revenues
28 received from any source by a municipality which are
29 specifically collected for the purpose of allocation for
30 deposit into the policemen's pension and relief fund or
31 firemen's pension and relief fund shall be so deposited
32 within five days of receipt by the municipality. Heretofore
33 surplus reserves accumulated before the effective date of
34 this section shall be irrevocably contributed, aggregated
35 and invested as fund assets described in sections twenty-

36 one and twenty-two of this article. Any actuarial
37 deficiency arising under this section and section twenty of
38 this article shall not be the obligation of the State of West
39 Virginia.

40 (2) The levies authorized under the provisions of this
41 section, or any part of them, may by the governing body be
42 laid in addition to all other municipal levies and, to that
43 extent, beyond the limit of levy imposed by the charter of
44 the municipality; and the levies shall supersede and if
45 necessary exclude levies for other purposes, where other
46 purposes have not already attained priority, and within
47 the limitations on taxes or tax levies imposed by the
48 constitution and laws.

49 (b) The public corporations are authorized to take by
50 gift, grant, devise or bequest any money or real or personal
51 property on such terms as to the investment and
52 expenditures thereof as may be fixed by the grantor or
53 determined by the trustees.

54 (c) Notwithstanding provisions in section six of this
55 article, in addition to all other sums provided for pensions
56 in this section, it is the duty of every municipality in which
57 any fund or funds have been or shall be established to
58 assess and collect from each member of the paid police
59 department or paid fire department or both each month,
60 the sum of seven percent of the actual salary or
61 compensation of such member; and the amount so
62 collected shall become a regular part of the policemen's
63 pension and relief fund, if collected from a policeman, and
64 of the firemen's pension and relief fund, if collected from
65 a fireman: *Provided*, That for members of the funds who
66 are police officers or firefighters newly hired on or after
67 January 1, 2010, the municipality shall assess and collect
68 nine and one-half percent of the actual salary or
69 compensation. Only those funds for which the board of
70 trustees has collected and paid the contributions as herein

71 provided and meeting minimum standards for actuarial
72 soundness shall be eligible to receive moneys from the
73 additional fire and casualty insurance premium tax as
74 provided in section fourteen-d, article three, chapter
75 thirty-three of this code: *Provided, however,* That the
76 board of trustees for each pension and relief fund may
77 assess and collect from each member of the paid police
78 department or paid fire department or both each month
79 not more than an additional two and one-half percent of
80 the actual salary or compensation of each member, but not
81 to exceed nine and one-half percent total contribution:
82 *Provided further,* That if any board of trustees decides to
83 assess and collect any additional amount pursuant to this
84 subdivision above the member contribution required by
85 this section, then that board of trustees may not reduce the
86 additional amount until the respective pension and relief
87 fund no longer has any actuarial deficiency: *And provided*
88 *further,* That if any board of trustees decides to assess and
89 collect any additional amount, any board of trustees
90 decision and any additional amount is not the liability of
91 the State of West Virginia. Member contributions shall be
92 deposited in the pension and relief fund within five days
93 of being collected.

94 (d)(1) For the fiscal year beginning on July 1, 2010, and
95 subject to provisions of subsection (c), section eighteen-b
96 of this article and section fourteen-d, article three, chapter
97 thirty-three of this code and for each fiscal year thereafter,
98 the Municipal Pensions Oversight Board shall receive and
99 retain the moneys allocated to the Municipal Pensions
100 Security Fund until such time as the treasurer of the
101 municipality applies for the allocable portion and certifies
102 in writing to the Municipal Pensions Oversight Board that:

103 (A) The municipality has irrevocably contributed the
104 amount required under this section and section twenty of
105 this article to the pension and relief fund for the required
106 period; and

107 (B) The board of trustees of the pension and relief fund
108 has made a report to the governing body of the
109 municipality and to the oversight board on the condition
110 of its fund with respect to the fiscal year.

111 (2) When the aforementioned application and
112 certification are made, the allocable portion of moneys
113 from the Municipal Pensions and Protection Fund, or the
114 Municipal Pensions Security Fund, once established, shall
115 be paid to the corresponding policemen's or firemen's
116 pension and relief fund. Payment to a municipal pension
117 and relief fund shall be made by electronic funds transfer.

118 (e) The State Auditor and the oversight board have the
119 power, and the duty as each considers necessary, to
120 perform or review audits on the pension and relief funds
121 or to employ an independent consulting actuary or
122 accountant to determine the compliance of the
123 aforementioned certification with the requirements of this
124 section and section twenty of this article. The expense of
125 the audit or determination shall be paid from the portion
126 of the Municipal Pensions and Protection Fund allocable
127 to municipal policemen's and firemen's pension and relief
128 funds or from the Municipal Pensions Security Fund
129 pursuant to provisions of subsection (c), section eighteen-b
130 of this article. If the allocable portion of the Municipal
131 Pensions and Protection Fund or the Municipal Pensions
132 Security Fund is not paid to the pension and relief fund
133 within eighteen months, the portion is forfeited by the
134 pension and relief fund and is allocable to other eligible
135 municipal policemen's and firemen's pension and relief
136 funds in accordance with section fourteen-d, article three,
137 chapter thirty-three of this code.

§8-22-20. Actuary; actuarial valuation report; minimum standards for annual municipality contributions to the fund; definitions; actuarial review and audit.

1 (a) The oversight board shall contract with or employ a
2 qualified actuary to annually prepare an actuarial
3 valuation report on each pension and relief fund. The
4 expense of the actuarial report shall be paid from moneys
5 in the Municipal Pensions Security Fund. Uses of the
6 actuarial valuations from the qualified actuary shall
7 include, but not be limited to, determining a municipal
8 policemen's or firemen's pension and relief fund's
9 eligibility to receive state money and to provide
10 supplemental benefits.

11 (b) The actuarial valuation report provided pursuant to
12 subsection (a) of this section shall consist of, but is not
13 limited to, the following disclosures: (1) The financial
14 objective of the fund and how the objective is to be
15 attained; (2) the progress being made toward realization of
16 the financial objective; (3) recent changes in the nature of
17 the fund, benefits provided or actuarial assumptions or
18 methods; (4) the frequency of actuarial valuation reports
19 and the date of the most recent actuarial valuation report;
20 (5) the method used to value fund assets; (6) the extent to
21 which the qualified actuary relies on the data provided
22 and whether the data was certified by the fund's auditor
23 or examined by the qualified actuary for reasonableness;
24 (7) a description and explanation of the actuarial
25 assumptions and methods; and (8) any other information
26 the qualified actuary feels is necessary or would be useful
27 in fully and fairly disclosing the actuarial condition of the
28 fund.

29 (c)(1) Except as provided in subsection (e) of this section,
30 beginning June 30, 1991, and thereafter, the financial
31 objective of each municipality shall not be less than to
32 contribute to the fund annually an amount which, together
33 with the contributions from the members and the allocable
34 portion of the Municipal Pensions and Protection Fund for
35 municipal pension and relief funds established under
36 section fourteen-d, article three, chapter thirty-three of

37 this code or a municipality's allocation from the Municipal
38 Pensions Security Fund created in section eighteen-b of
39 this article and other income sources as authorized by law
40 will be sufficient to meet the normal cost of the fund and
41 amortize any actuarial deficiency over a period of not
42 more than forty years beginning from July 1, 1991:
43 *Provided*, That in the fiscal year ending June 30, 1991, the
44 municipality may elect to make its annual contribution to
45 the fund using an alternative contribution in an amount
46 not less than: (i) One hundred seven percent of the amount
47 contributed for the fiscal year ending June 30, 1990; or (ii)
48 an amount equal to the average of the contribution
49 payments made in the five highest fiscal years beginning
50 with the fiscal year ending 1984, whichever is greater:
51 *Provided, however*, That contribution payments in
52 subsequent fiscal years under this alternative contribution
53 method may not be less than one hundred seven percent of
54 the amount contributed in the prior fiscal year: *Provided*
55 *further*, That in order to avoid penalizing municipalities
56 and to provide flexibility when making contributions,
57 municipalities using the alternative contribution method
58 may exclude a one-time additional contribution made in
59 any one year in excess of the minimum required by this
60 section: *And provided further*, That the governing body of
61 any municipality may elect to provide an employer
62 continuing contribution of one percent more than the
63 municipality's required minimum under the alternative
64 contribution plan authorized in this subsection: *And*
65 *provided further*, That if any municipality decides to
66 contribute an additional one percent, then that
67 municipality may not reduce the additional contribution
68 until the respective pension and relief fund no longer has
69 any actuarial deficiency: *And provided further*, That any
70 decision and any contribution payment by the
71 municipality is not the liability of the State of West
72 Virginia: *And provided further*, That if any municipality
73 or any pension fund board of trustees makes a voluntary

74 election and thereafter fails to contribute the voluntary
75 increase as provided in this section and in subdivision (4),
76 subsection (b), section nineteen of this article, then the
77 board of trustees is not eligible to receive funds allocated
78 under section fourteen-d, article three, chapter thirty-
79 three of this code: *And provided further*, That prior to
80 using this alternative contribution method the actuary of
81 the fund shall certify in writing that the fund is projected
82 to be solvent under the alternative contribution method
83 for the next consecutive fifteen-year period. For purposes
84 of determining this minimum financial objective: (i) The
85 value of the fund's assets shall be determined on the basis
86 of any reasonable actuarial method of valuation which
87 takes into account fair market value; and (ii) all costs,
88 deficiencies, rate of interest and other factors under the
89 fund shall be determined on the basis of actuarial
90 assumptions and methods which, in aggregate, are
91 reasonable (taking into account the experience of the fund
92 and reasonable expectations) and which, in combination,
93 offer the qualified actuary's best estimate of anticipated
94 experience under the fund: *And provided further*, That any
95 municipality which elected the alternative funding method
96 under this section and which has an unfunded actuarial
97 liability of not more than twenty-five percent of fund
98 assets, may, beginning September 1, 2003, elect to revert
99 to the standard funding method, which is to contribute to
100 the fund annually an amount which is not less than an
101 amount which, together with the contributions from the
102 members and the allocable portion of the Municipal
103 Pensions and Protection Fund for municipal pension and
104 relief funds established under section fourteen-d, article
105 three, chapter thirty-three of this code and other income
106 sources as authorized by law, will be sufficient to meet the
107 normal cost of the fund and amortize any actuarial
108 deficiency over a period of not more than forty years,
109 beginning from July 1, 1991.

110 (2) No municipality may anticipate or use in any manner
111 any state funds accruing to the police or firemen's pension
112 fund to offset the minimum required funding amount for
113 any fiscal year.

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

119 (4) The actuarial process, which includes the selection of
120 methods and assumptions, shall be reviewed by the
121 qualified actuary no less than once every five years.
122 Furthermore, the qualified actuary shall provide a report
123 to the oversight board with recommendations on any
124 changes to the actuarial process.

125 (5) The oversight board shall hire an independent
126 reviewing actuary to perform an actuarial audit of the
127 work performed by the qualified actuary no less than once
128 every seven years.

129 (d) For purposes of this section, the term "qualified
130 actuary" means only an actuary who is a member of the
131 Society of Actuaries or the American Academy of
132 Actuaries. The qualified actuary shall be designated a
133 fiduciary and shall discharge his or her duties with respect
134 to a fund solely in the interest of the members and
135 members' beneficiaries of that fund. In order for the
136 standards of this section to be met, the qualified actuary
137 shall certify that the actuarial valuation report is complete
138 and accurate and that in his or her opinion the technique
139 and assumptions used are reasonable and meet the
140 requirements of this section.

141 (e)(1) Beginning January 1, 2010, municipalities may
142 choose the optional method of financing municipal
143 policemen's or firemen's pension and relief funds as

144 outlined in this subsection in lieu of the standard or
145 alternative methods as provided in subdivision (1),
146 subsection (c) of this section. The optional method
147 provides an option to the existing standard or alternative
148 methods of financing the funds.

149 (2) For those municipalities choosing the optional
150 method of finance, the minimum standard for annual
151 municipality contributions to each policemen's or
152 firemen's pension and relief fund shall be an amount
153 which, together with the contributions from the members
154 and allocable portion of the Municipal Pensions and
155 Protection Fund or Municipal Pensions Security Fund
156 created in section eighteen-b of this article, and other
157 income sources as authorized by law, will be sufficient to
158 meet the normal cost of the fund and amortize any
159 actuarial deficiency over a period of not more than forty
160 years beginning January 1, 2010: *Provided*, That those
161 municipalities using the standard method of financing in
162 2009 shall continue to amortize their actuarial deficiencies
163 over a period of not more than forty years beginning July
164 1, 1991. The required contribution shall be determined
165 each plan year as described above by the actuary retained
166 by the oversight board, based on an actuarial valuation
167 reflecting actual demographic and investment experience
168 and consistent with the Actuarial Standards of Practice
169 published by the Actuarial Standards Board.

170 (3) A municipality choosing the optional method of
171 financing a policemen's or firemen's pension and relief
172 fund as provided in this subsection shall close the fund to
173 police officers or fire fighters newly hired on or after
174 January 1, 2010, and provide for those employees to be
175 members of the Municipal Police Officers and Firefighters
176 Retirement System as established in article twenty-two-a
177 of this chapter.

§8-22-20a. Hiring of actuary; preparation of actuarial valuations.

1 (a)(1) The Legislature finds that it is in the best interests
2 of the state and its municipalities to have accurate data
3 regarding the various municipal police and firemen's
4 pension and relief funds.

5 (2) The Legislature finds that the State Treasurer should
6 contract with an actuary as a consultant for the municipal
7 police and firemen's pension and relief funds and among
8 other duties the actuary shall determine if there is
9 consistent reporting from the various funds. The
10 Legislature further finds that the State Treasurer or
11 oversight board should share the results of the actuary's
12 annual valuation with the appropriate municipality.

13 (b) Except as hereinafter provided, beginning July 1,
14 2002, the State Treasurer shall select by competitive bid
15 and contract with a single qualified actuary. The actuary
16 shall serve as a consultant to the Treasurer with regard to
17 the operation of the municipal policemen's and firemen's
18 pension and relief funds and shall report annually to the
19 Treasurer with regard to all funds existing in this state by
20 virtue of this article. Costs associated with the actuary's
21 work shall be paid out of the Municipal Pensions and
22 Protection Fund established pursuant to section fourteen-
23 d, article three, chapter thirty-three of this code. The
24 State Treasurer shall provide the single qualified actuary
25 until the oversight board assumes the duty of providing for
26 the actuary. Thereafter, it shall be the duty of the
27 Municipal Pensions Oversight Board to contract for or to
28 employ the single qualified actuary which, at a minimum,
29 shall serve as a consultant to the oversight board and
30 report annually to the oversight board with regard to all
31 municipal policemen's and firemen's pension and relief
32 funds existing in this state by virtue of this article, and
33 which shall be paid from moneys deposited in the
34 Municipal Pensions Security Fund. Copies of the annual
35 report prepared by the actuary shall be sent to the Joint
36 Committee on Government and Finance, the chair of the

37 House of Delegates Committee on Pensions and
38 Retirement and the chair of the Senate Committee on
39 Pensions. Each municipal pension and relief fund shall
40 receive a copy of the actuary's results related to that fund.

41 (c) With respect to each municipal policemen's or
42 firemen's pension and relief fund, the actuary shall
43 complete an annual valuation in accordance with actuarial
44 standards of practice promulgated by the actuarial
45 standards board of the American Academy of Actuaries.
46 The report of the valuation shall include: (1) A summary of
47 the benefit provisions evaluated; (2) a summary of the
48 census data and financial information used in the
49 valuation; (3) a description of the actuarial assumptions,
50 actuarial costs method and asset valuation method used in
51 the valuation, including a statement of the assumed rate of
52 payroll growth and assumed rate of growth or decline in
53 the number of the fund members' contributions to the
54 pension fund; (4) a summary of findings that includes a
55 statement of the actuarial accrued pension liabilities and
56 unfunded actuarial accrued pension liabilities; (5) a
57 schedule showing the effect of any changes in the benefit
58 provisions, actuarial assumptions or cost methods since
59 the last annual actuarial valuation; (6) a statement of
60 whether contributions to the pension fund are in
61 accordance with the provisions of this chapter and
62 whether they are expected to be sufficient; and (7) any
63 other matters determined by the Treasurer or, on or after
64 January 1, 2010, the oversight board, to be necessary or
65 appropriate.

66 (d)(1) The hiring of an actuary under the provisions of
67 this section shall not be construed to make the municipal
68 policemen's and firemen's pension and relief funds the
69 responsibility or obligation of the State of West Virginia.

70 (2) Any actuarial deficiency identified by the actuary
71 under this section or this article is not an obligation of the
72 State of West Virginia.

§8-22-22. Investment of funds by boards of trustees; exercise of discretion in making investments; report of investment plan.

1 (a) The board of trustees may invest a portion or all of
2 the fund assets in any of the pools, funds and securities
3 managed by the West Virginia Investment Management
4 Board or West Virginia Board of Treasury Investments or
5 as otherwise provided in this section. The board of
6 trustees shall keep as an available sum for the purpose of
7 making regular retirement, disability retirement, death
8 benefit, payments and administrative expenses in an
9 estimated amount not to exceed payments for a period of
10 ninety days in short-term investments. The board of
11 trustees, in acquiring, investing, reinvesting, exchanging,
12 retaining, selling and managing property for the benefit of
13 the fund, shall do so in accordance with the provisions of
14 the Uniform Prudent Investor Act codified as article six-c,
15 chapter forty-four of this code. Within the limitations of
16 the Uniform Prudent Investor Act, the board of trustees is
17 authorized in its sole discretion to invest and reinvest any
18 funds received by it and not invested with the West
19 Virginia Investment Management Board or West Virginia
20 Board of Treasury Investments.

21 (b) The board of trustees of each fund may delegate
22 investment authority to equity mutual funds managers
23 and/or professional investment advisors registered with
24 the Securities and Exchange Commission, in accordance
25 with the Investment Advisors Act of 1940, and registered
26 with the appropriate state regulatory agencies, if
27 applicable, and who manage assets in excess of \$75
28 million.

29 (c) The board of trustees of each fund shall deliver to the
30 State Treasurer or oversight board on or before March 1,
31 2010, a copy of the pension and relief fund's investment
32 policy. A board of trustees shall submit to the oversight

33 board any change to the investment policy within thirty
34 days of the board's authorizing the change.

§8-22-22a. Restrictions on investments; disclosure of fees and costs.

1 (a) Moneys invested as permitted by section twenty-two
2 of this article and not invested with the West Virginia
3 Investment Management Board or the Board of Treasury
4 Investments are subject to the following restrictions and
5 conditions contained in this section:

6 (1) The board shall hold in nonreal estate equity
7 investments no more than seventy-five percent of the
8 assets managed by the board and no more than seventy-
9 five percent of the assets of any individual participant
10 plan.

11 (2) The board shall hold in real estate equity investments
12 no more than twenty-five percent of the assets managed
13 by the board and no more than twenty-five percent of the
14 assets of any individual participant plan: *Provided*, That
15 the investment be made only on the recommendation by a
16 professional, third-party fiduciary investment adviser
17 registered with the Securities and Exchange Commission
18 under the Investment Advisors Act of 1940, as amended,
19 on the approval of the board or a committee designated by
20 the board, and on the execution of the transaction by a
21 third-party investment manager: *Provided, however*, That
22 the board's ownership interest in any fund is less than
23 forty percent of the fund's assets at the time of purchase:
24 *Provided further*, That the combined investment of
25 institutional investors, other public sector entities and
26 educational institutions and their endowments and
27 foundations in the fund is in an amount equal to or greater
28 than fifty percent of the board's total investment in the
29 fund at the time of acquisition. For the purposes of this
30 subsection, "fund" means a real estate investment trust
31 traded on a major exchange of the United States of

32 America or a partnership, limited partnership, limited
33 liability company or other entity holding or investing in
34 related or unrelated real estate investments, at least three
35 of which are unrelated and the largest of which is not
36 greater than forty percent of the entity's holdings at the
37 time of purchase.

38 (3) The board shall hold in international securities no
39 more than thirty percent of the assets managed by the
40 board and no more than thirty percent of the assets of any
41 individual participant plan.

42 (4) The board may not at the time of purchase hold more
43 than five percent of the assets managed by the board in the
44 nonreal estate equity securities of any single company or
45 association: *Provided*, That if a company or association
46 has a market weighting of greater than five percent in the
47 Standard & Poor's 500 index of companies, the board may
48 hold securities of that nonreal estate equity equal to its
49 market weighting.

50 (5) No security may be purchased by the board unless the
51 type of security is on a list approved by the board. The
52 board may modify the securities list at any time, and shall
53 review the list annually.

54 (6) Notwithstanding the investment limitations set forth
55 in this section, it is recognized that the assets managed by
56 the board may temporarily exceed the investment
57 limitations in this section due to market appreciation,
58 depreciation and rebalancing limitations. Accordingly,
59 the limitations on investments set forth in this section
60 shall not be considered to have been violated if the board
61 rebalances the assets it manages to comply with the
62 limitations set forth in this section at least once every
63 twelve months based on the latest available market
64 information and any other reliable market data that the
65 board considers advisable to take into consideration,
66 except for those assets authorized by subdivision (2) of this

67 subsection for which compliance with the percentage
68 limitations shall be measured at such time as the
69 investment is made.

70 (7) The board shall annually review, establish and
71 modify, if necessary, the board's investment objectives and
72 investment policy so as to provide for the financial
73 security of the trust funds giving consideration to the
74 following:

75 (A) Preservation of capital;

76 (B) Diversification;

77 (C) Risk tolerance;

78 (D) Rate of return;

79 (E) Stability;

80 (F) Turnover;

81 (G) Liquidity; and

82 (H) Reasonable cost of fees.

83 (8) The board is expressly prohibited from investing in
84 any class, style or strategy of alternative investments
85 including a private equity fund such as a venture capital,
86 private real estate or buy-out fund; commodities fund;
87 distressed debt fund; mezzanine debt fund; hedge fund; or
88 fund consisting of any combination of private equity,
89 distressed or mezzanine debt, hedge funds, private real
90 estate, commodities and other types and categories of
91 investment permitted under this article;

92 (b) The board of trustees of each fund shall obtain an
93 independent performance evaluation of the funds at least
94 annually and the evaluation shall consist of comparisons
95 with other funds having similar investment objectives for
96 performance results with appropriate market indices; and

97 (c) Each entity conducting business for each pension
98 fund shall fully disclose all fees and costs of investing
99 conducted on a quarterly basis to the trustees of the fund
100 and to the oversight board. Entities conducting business
101 in mutual funds for and on behalf of each pension fund
102 shall timely file revised prospectus and normal quarterly
103 and annual Securities and Exchange Commission
104 reporting documents with the board of trustees of each
105 pension fund.

**§8-22-23a. Eligibility for total and temporary disability
pensions and total and permanent disability
pensions; reporting; light duty.**

1 (a) All members applying for total and temporary or
2 total and permanent disability benefits after June 30,
3 1981, shall be examined by at least two physicians under
4 the direction of the staff at Marshall University, West
5 Virginia University, Morgantown, or West Virginia
6 University, Charleston: *Provided*, That if a member's
7 medical condition cannot be agreed on by the two
8 physicians, a third physician shall examine the member:
9 *Provided, however*, That beginning January 1, 2010, and
10 continuing thereafter, a member applying for total and
11 temporary or total and permanent disability benefits shall
12 be examined by two physicians, one of which shall be
13 chosen and paid by the member, and one of which shall be
14 chosen and paid by the oversight board. If the two
15 physicians disagree, the oversight board shall select and
16 pay for a third examining physician. Disability benefits
17 shall be awarded if in the opinion of two of the examining
18 physicians the member is by reason of the disability
19 unable to perform adequately the job duties required.
20 Each medical examination shall include the review of the
21 member's medical history, but an examining physician
22 may not have access to the disability examination report
23 or disability recommendation of another physician. The
24 physicians shall send copies of their reports to both the

25 board of trustees of the member's pension and relief fund
26 and the oversight board. The expense of the member's
27 transportation to medical examinations shall be paid by
28 the board of trustees. Medical expense shall not exceed
29 the reasonable and customary charges for similar services.
30 Beginning January 1, 2010, and thereafter, if a member is
31 charged with an offense that has the potential to lead to
32 the member's termination, the member's municipal
33 pensions and relief fund board of trustees may not
34 consider the member's eligibility for disability benefits
35 until after investigation of the charge is completed and
36 any disciplinary decision is implemented. No later than
37 January 1, 2011, and annually thereafter, each board of
38 trustees shall report to the oversight board the total
39 number of disability applications received during the prior
40 fiscal year, the status of each application as of the end of
41 the fiscal year, total applications granted and denied and
42 the percentage of disability-benefit recipients to the total
43 number of active members of the fund.

44 (b) Effective for members becoming eligible for total and
45 temporary disability benefits after June 30, 1981, initially
46 or previously under this subsection allowance for initial or
47 additional total and temporary disability payments, the
48 amount thereof to be determined as specified in section
49 twenty-four of this article shall be paid to the member
50 during the disability for a period not exceeding twenty-six
51 weeks if after a medical examination in accordance with
52 subsection (a) of this section two examining physicians
53 report in writing to the board of trustees that: (1) The
54 member has become so totally, physically or mentally
55 disabled, from any reason, as to render the member totally,
56 physically or mentally, incapacitated for employment as
57 a police officer or firefighter; and (2) it has not been
58 determined if the disability is permanent or it has been
59 determined that the disability may be alleviated or
60 eliminated if the member follows a reasonable medical

61 treatment plan or reasonable medical advice: *Provided,*
62 That, in any event, a member is not eligible for total and
63 temporary disability payments following the fourth
64 consecutive 26-week period of total and temporary
65 disability unless subsequent disability results from a cause
66 unrelated to the cause of the four previous periods of total
67 and temporary disability. During the two-year period of
68 total and temporary disability, the department is required
69 to restore the member to his or her former position in the
70 department at any time the member is determined to no
71 longer be disabled: *Provided, however,* That the
72 department may refill, on a temporary basis, the position
73 vacated by s the member after the first twenty-six weeks
74 of his or her temporary disability.

75 (c) Effective for members becoming eligible for total and
76 permanent disability benefits initially under this
77 subsection or becoming eligible for total and temporary
78 disability benefits under subsection (b) of this section after
79 June 30, 1981, allowance for total and permanent
80 disability payments, the amount thereof to be determined
81 as specified in section twenty-four of this article, shall be
82 paid to the member after a medical examination in
83 accordance with subsection (a) of this section, two
84 examining physicians report in writing to the board of
85 trustees that the member has become so totally, physically
86 or mentally, and permanently disabled, as a proximate
87 result of service rendered in the performance of his or her
88 duties in the department, as to render the member totally,
89 physically or mentally, and permanently incapacitated for
90 employment as a police officer or firefighter or, if the
91 member has been a member of either of the departments
92 for a period of not less than five consecutive years
93 preceding the disability, the member has become so
94 totally, physically or mentally, and permanently disabled,
95 from any reason other than service rendered in the
96 performance of his or her duties in the department, as to

97 render the member totally, physically or mentally, and
98 permanently incapacitated for employment as a police
99 officer or firefighter. The phrase "totally, physically or
100 mentally, and permanently disabled" shall not be
101 construed to include a medical condition which may be
102 corrected if the member follows a reasonable medical
103 treatment plan or reasonable medical advice.

104 (d) Effective for members becoming eligible for total and
105 temporary disability benefits after June 30, 1981, under
106 the provisions of subsection (b) of this section, any
107 payments for total and temporary disability for a period
108 during the disability not exceeding twenty-six weeks shall
109 cease at the end of the 26-week period under the following
110 conditions:

111 (1) The member fails to be examined as provided in
112 subsection (a) of this section; or (2) the member is
113 examined or reexamined as provided in said subsection
114 and two examining physicians report to the board of
115 trustees that the member's medical condition does not
116 meet the requirements of subsection (b) or (c) of this
117 section. Effective for members becoming eligible for total
118 and temporary disability benefits after June 30, 1981,
119 under subsection (b) of this section, subsequent to the
120 member's receipt of total and temporary disability
121 payments for a period of two years, the payments shall
122 cease at the end of the two-year period under the
123 following conditions: (A) The member fails to be examined
124 as provided in subsection (a) of this section; or (B) the
125 member is examined or reexamined as provided in said
126 subsection and two examining physicians report to the
127 board of trustees that the member's medical condition
128 does not meet the requirements of subsection (c) of this
129 section.

130 (e) Notwithstanding other provisions of this section to
131 the contrary, a member of a municipal policemen's or

132 firemen's pension and relief fund who is found to be
133 disabled from performing the full range of tasks relevant
134 to police officer or firefighter employment but capable of
135 performing a restricted or light-duty police officer or
136 firefighter job made available at the discretion of the
137 employing municipality may choose to continue working
138 and retain an active membership in his or her pension and
139 relief fund.

**§8-22-27. General provisions concerning disability pensions,
retirement pensions and death benefits.**

1 (a) In determining the years of service of a member in a
2 paid police or fire department for the purpose of
3 ascertaining certain disability pension benefits, all
4 retirement pension benefits and certain death benefits, the
5 following provisions shall be applicable:

6 (1) Absence from the service because of sickness or
7 injury for a period of two years or less shall not be
8 construed as time out of service; and

9 (2) Any member of any paid police or fire department
10 covered by the provisions of sections sixteen through
11 twenty-eight of this article who has been or will be on
12 qualified military service in the armed forces of the United
13 States, has an honorable discharge from the armed forces,
14 presents himself or herself for resumption of duty to his or
15 her appointing municipal official within six months from
16 his or her date of discharge and is accepted by two medical
17 examiners, at least one of which is appointed by the
18 oversight board as being mentally and physically capable
19 of performing the required duties as a member of the paid
20 police or fire department, shall be given credit for
21 continuous service in the paid police or fire department.
22 The six-month period in which a member has to resume
23 employment and receive credit for continuous service is
24 extended to a period not to exceed two years if the

25 member has been hospitalized for, or convalescing from,
26 an illness or injury incurred in, or aggravated during,
27 qualified military service. No member of a paid police or
28 fire department shall be required to pay the monthly
29 assessment during a period of qualified military service.
30 However, a member who desires to make up member
31 assessments, in whole or in part, has five years from the
32 date of return to work, but shall not be required to pay
33 any interest or other charges for the assessments being
34 made up. The employer must pay the employer
35 contributions for the periods made up by the member
36 within ninety days of each payment, or within ninety days
37 of the normal due date. A member who resumes duty with
38 a paid police or fire department after qualified military
39 service is entitled to accrued benefits only to the extent
40 that the member made up the member assessments.

41 (b) As to any former member of a paid police or fire
42 department receiving disability pension benefits or
43 retirement pension benefits from a policemen's or
44 firemen's pension and relief fund, on July 1, 1985, the
45 following provisions shall govern and control the amount
46 of the pension benefits:

47 (1) A former member who on June 30, 1962, was
48 receiving disability pension benefits or retirement pension
49 benefits from a policemen's or firemen's pension and relief
50 fund, shall continue to receive pension benefits, but on and
51 after July 1, 1985, the pension benefits shall be no less
52 than the amount of \$500 per month; and

53 (2) A former member who became entitled to disability
54 pension benefits or retirement pension benefits on or after
55 July 1, 1962, shall continue to receive pension benefits, but
56 on and after July 1, 1985, shall receive the disability
57 pension benefits, or retirement pension benefits provided
58 in section twenty-four or twenty-five of this article, as the
59 case may be.

60 (c) As to any surviving spouse, dependent child or
61 children, or dependent father or mother, or dependent
62 brothers or sisters, of any former member of a paid police
63 or fire department, receiving any death benefits from a
64 policemen's pension and relief fund or firemen's pension
65 and relief fund, on July 1, 1985, the following provisions
66 shall govern and control the amount of such death
67 benefits:

68 (1) A surviving spouse, dependent child or children or
69 dependent father or mother, or dependent brothers or
70 sisters, of any former member, who on June 30, 1962, was
71 receiving any death benefits from a policemen's pension
72 and relief fund or firemen's pension and relief fund, shall
73 continue to receive death benefits, but on and after July 1,
74 1985, the death benefits shall be no less than the following
75 amounts: To a surviving spouse, until death or remarriage,
76 the sum of \$300 per month; to each dependent child the
77 sum of \$30 per month, until the child attains the age of
78 eighteen years or marries, whichever first occurs; to each
79 dependent orphaned child, the sum of \$45 per month, until
80 the child attains the age of eighteen years or marries,
81 whichever first occurs; to each dependent father and
82 mother the sum of \$30 per month for each; to each
83 dependent brother or sister, the sum of \$50 per month,
84 until the individual attains the age of eighteen years or
85 marries, whichever first occurs, but in no event shall the
86 aggregate amount paid to the brothers and sisters exceed
87 \$100 per month. If at any time, because of the number of
88 dependents, all dependents cannot be paid in full as herein
89 provided, then each dependent shall receive a pro rata
90 share of the payments. In no case shall the payments to
91 the surviving spouse and children be cut below sixty-five
92 percent of the total amount paid to all dependents; and

93 (2) A surviving spouse, dependent child or children, or
94 dependent father or mother, or dependent brothers or
95 sisters, of any former member who became eligible for

96 death benefits on or after July 1, 1962, shall continue to
97 receive death benefits, but on and after July 1, 1985, shall
98 receive the death benefits provided in section twenty-six
99 of this article.

100 (d) A former member who is receiving disability pension
101 benefits on July 1, 1985, shall continue to receive disability
102 pension benefits provided in section twenty-four of this
103 article.

**ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND
FIREFIGHTERS RETIREMENT SYSTEM.**

§8-22A-1. Title.

1 This article is known and may be cited as the West
2 Virginia Municipal Police Officers and Firefighters
3 Retirement System Act.

§8-22A-2. Definitions.

1 As used in this article, unless a federal law or regulation
2 or the context clearly requires a different meaning:

3 (a) "Accrued benefit" means on behalf of any member
4 two and six-tenths percent per year of the member's final
5 average salary for the first twenty years of credited
6 service. Additionally, two percent per year for twenty-one
7 through twenty-five years and one percent per year for
8 twenty-six through thirty years will be credited with a
9 maximum benefit of sixty-seven percent. A member's
10 accrued benefit may not exceed the limits of Section 415
11 of the Internal Revenue Code and is subject to the
12 provisions of section ten of this article.

13 (b) "Accumulated contributions" means the sum of all
14 retirement contributions deducted from the compensation
15 of a member, or paid on his or her behalf as a result of
16 covered employment, together with regular interest on the
17 deducted amounts.

18 (c) "Active military duty" means full-time duty in the
19 active military service of the United States Army, Navy,
20 Air Force, Coast Guard or Marine Corps. The term does
21 not include regularly required training or other duty
22 performed by a member of a reserve component or
23 National Guard unless the member can substantiate that
24 he or she was called into the full-time active military
25 service of the United States and has received no
26 compensation during the period of that duty from any
27 board or employer other than the armed forces.

28 (d) "Actuarial equivalent" means a benefit of equal
29 value computed on the basis of the mortality table and
30 interest rates as set and adopted by the board in
31 accordance with the provisions of this article: *Provided*,
32 That when used in the context of compliance with the
33 federal maximum benefit requirements of Section 415 of
34 the Internal Revenue Code, "actuarial equivalent" shall be
35 computed using the mortality tables and interest rates
36 required to comply with those requirements.

37 (e) "Annual compensation" means the wages paid to the
38 member during covered employment within the meaning
39 of Section 3401(a) of the Internal Revenue Code, but
40 determined without regard to any rules that limit the
41 remuneration included in wages based on the nature or
42 location of employment or services performed during the
43 plan year plus amounts excluded under Section 414(h)(2)
44 of the Internal Revenue Code and less reimbursements or
45 other expense allowances, cash or noncash fringe benefits
46 or both, deferred compensation and welfare benefits.
47 Annual compensation for determining benefits during any
48 determination period may not exceed the maximum
49 compensation allowed as adjusted for cost-of-living in
50 accordance with section seven, article ten-d, chapter five
51 of this code and Section 401(a)(17) of the Internal Revenue
52 Code.

53 (f) "Annual leave service" means accrued annual leave.

54 (g) "Annuity starting date" means the first day of the
55 month for which an annuity is payable after submission of
56 a retirement application or the required beginning date, if
57 earlier. For purposes of this subsection, if retirement
58 income payments commence after the normal retirement
59 age, "retirement" means the first day of the month
60 following or coincident with the latter of the last day the
61 member worked in covered employment or the member's
62 normal retirement age and after completing proper
63 written application for "retirement" on an application
64 supplied by the board.

65 (h) "Board" means the Consolidated Public Retirement
66 Board.

67 (i) "Covered employment" means either: (1) Employment
68 as a full-time municipal police officer or firefighter and
69 the active performance of the duties required of that
70 employment; or (2) the period of time during which active
71 duties are not performed but disability benefits are
72 received under this article; or (3) concurrent employment
73 by a municipal police officer or firefighter in a job or jobs
74 in addition to his or her employment as a municipal police
75 officer or firefighter in this plan where the secondary
76 employment requires the police officer or firefighter to be
77 a member of another retirement system which is
78 administered by the Consolidated Public Retirement
79 Board pursuant to this code: *Provided*, That the police
80 officer or firefighter contributes to the fund created in this
81 article the amount specified as the member's contribution
82 in section eight of this article.

83 (j) "Credited service" means the sum of a member's years
84 of service, active military duty and disability service.

85 (k) "Dependent child" means either:

86 (1) An unmarried person under age eighteen who is:

- 87 (A) A natural child of the member;
- 88 (B) A legally adopted child of the member;
- 89 (C) A child who at the time of the member's death was
90 living with the member while the member was an adopting
91 parent during any period of probation; or
- 92 (D) A stepchild of the member residing in the member's
93 household at the time of the member's death; or
- 94 (2) Any unmarried child under age twenty-three:
- 95 (A) Who is enrolled as a full-time student in an
96 accredited college or university;
- 97 (B) Who was claimed as a dependent by the member for
98 federal income tax purposes at the time of the member's
99 death; and
- 100 (C) Whose relationship with the member is described in
101 paragraph (A), (B) or (C), subdivision (1) of this subsection.
- 102 (l) "Dependent parent" means the father or mother of
103 the member who was claimed as a dependent by the
104 member for federal income tax purposes at the time of the
105 member's death.
- 106 (m) "Disability service" means service credit received by
107 a member, expressed in whole years, fractions thereof or
108 both, equal to one half of the whole years, fractions
109 thereof, or both, during which time a member receives
110 disability benefits under this article.
- 111 (n) "Effective date" means January 1, 2010.
- 112 (o)(1) "Municipal police officer" means an individual
113 employed as a member of a paid police department by a
114 West Virginia municipality or municipal subdivision
115 which has established and maintains a municipal
116 policemen's pension and relief fund, and who is not a
117 member of, and not eligible for membership in, a

118 municipal policemen's pension and relief fund as provided
119 in section sixteen, article twenty-two of this chapter. Paid
120 police department does not mean a department whose
121 employees are paid nominal salaries or wages or are paid
122 only for services actually rendered on an hourly basis.

123 (2) "Municipal firefighter" means an individual
124 employed as a member of a paid fire department by a West
125 Virginia municipality or municipal subdivision which has
126 established and maintains a municipal firemen's pension
127 and relief fund, and who is not a member of, and not
128 eligible for membership in, a municipal firemen's pension
129 and relief fund as provided in section sixteen, article
130 twenty-two of this chapter. Paid fire department does not
131 mean a department whose employees are paid nominal
132 salaries or wages or are paid only for services actually
133 rendered on an hourly basis.

134 (p) "Final average salary" means the average of the
135 highest annual compensation received for covered
136 employment by the member during any five consecutive
137 plan years within the member's last ten years of service
138 while employed, prior to any disability payment. If the
139 member did not have annual compensation for the five full
140 plan years preceding the member's attainment of normal
141 retirement age and during that period the member
142 received disability benefits under this article, then "final
143 average salary" means the average of the monthly
144 compensation which the member was receiving in the plan
145 year prior to the initial disability. "Final average salary"
146 does not include any lump sum payment for unused,
147 accrued leave of any kind or character.

148 (q) "Full-time employment" means permanent
149 employment of an employee by a participating
150 municipality in a position which normally requires twelve
151 months per year service and requires at least one thousand
152 forty hours per year service in that position.

153 (r) "Fund" means the West Virginia Municipal Police
154 Officers and Firefighters Retirement Fund created by this
155 article.

156 (s) "Hour of service" means:

157 (1) Each hour for which a member is paid or entitled to
158 payment for covered employment during which time
159 active duties are performed. These hours shall be credited
160 to the member for the plan year in which the duties are
161 performed; and

162 (2) Each hour for which a member is paid or entitled to
163 payment for covered employment during a plan year but
164 where no duties are performed due to vacation, holiday,
165 illness, incapacity including disability, layoff, jury duty,
166 military duty, leave of absence or any combination thereof
167 and without regard to whether the employment
168 relationship has terminated. Hours under this subdivision
169 shall be calculated and credited pursuant to West Virginia
170 Division of Labor rules. A member will not be credited
171 with any hours of service for any period of time he or she
172 is receiving benefits under section seventeen or eighteen of
173 this article; and

174 (3) Each hour for which back pay is either awarded or
175 agreed to be paid by the employing municipality,
176 irrespective of mitigation of damages. The same hours of
177 service shall not be credited both under subdivision (1) or
178 (2) of this subsection and under this subdivision. Hours
179 under this paragraph shall be credited to the member for
180 the plan year or years to which the award or agreement
181 pertains, rather than the plan year in which the award,
182 agreement or payment is made.

183 (t) "Member" means, except as provided in section
184 thirty-two of this article, a person first hired as a
185 municipal police officer or municipal firefighter, as
186 defined in this section, by a participating municipal

187 employer on or after January 1, 2010. A member shall
188 remain a member until the benefits to which he or she is
189 entitled under this article are paid or forfeited.

190 (u) "Monthly salary" means the W-2 reportable
191 compensation received by a member during the month.

192 (v) "Municipality" has the meaning ascribed to it in this
193 code.

194 (w) "Municipal subdivision" means any separate
195 corporation or instrumentality established by one or more
196 municipalities, as permitted by law; and any public
197 corporation charged by law with the performance of a
198 governmental function and whose jurisdiction is
199 coextensive with one or more municipalities.

200 (x) "Normal form" means a monthly annuity which is
201 one twelfth of the amount of the member's accrued benefit
202 which is payable for the member's life. If the member dies
203 before the sum of the payments he or she receives equals
204 his or her accumulated contributions on the annuity
205 starting date, the named beneficiary shall receive in one
206 lump sum the difference between the accumulated
207 contributions at the annuity starting date and the total of
208 the retirement income payments made to the member.

209 (y) "Normal retirement age" means the first to occur of
210 the following:

211 (1) Attainment of age fifty years and the completion of
212 twenty or more years of regular contributory service;

213 (2) While still in covered employment, attainment of at
214 least age fifty years and when the sum of current age plus
215 regular contributory service equals or exceeds seventy
216 years;

217 (3) While still in covered employment, attainment of at
218 least age sixty years and completion of ten years of regular
219 contributory service; or

220 (4) Attainment of age sixty-two years and completion of
221 five or more years of regular contributory service.

222 (z) "Plan" means the West Virginia Municipal Police
223 Officers and Firefighters Retirement System established
224 by this article.

225 (aa) "Plan year" means the twelve-month period
226 commencing on January 1 of any designated year and
227 ending the following December 31.

228 (bb) "Qualified public safety employee" means any
229 employee of a participating state or political subdivision
230 who provides police protection, fire-fighting services or
231 emergency medical services for any area within the
232 jurisdiction of the state or political subdivision, or such
233 other meaning given to the term by Section 72(t)(10)(B) of
234 the Internal Revenue Code or by Treasury Regulation
235 §1.401(a)-1(b)(2)(v) as they may be amended from time to
236 time.

237 (cc) "Regular contributory service" means a member's
238 credited service excluding active military duty, disability
239 service and accrued annual and sick leave service.

240 (dd) "Regular interest" means the rate or rates of
241 interest per annum, compounded annually, as the board
242 adopts in accordance with the provisions of this article.

243 (ee) "Required beginning date" means April 1 of the
244 calendar year following the later of: (1) The calendar year
245 in which the member attains age seventy and one-half; or
246 (2) the calendar year in which he or she retires or
247 otherwise separates from covered employment.

248 (ff) "Retirement income payments" means the monthly
249 retirement income payments payable under the plan.

250 (gg) "Spouse" means the person to whom the member is
251 legally married on the annuity starting date.

252 (hh) "Surviving spouse" means the person to whom the
253 member was legally married at the time of the member's
254 death and who survived the member.

255 (ii) "Totally disabled" means a member's inability to
256 engage in substantial gainful activity by reason of any
257 medically determined physical or mental impairment that
258 can be expected to result in death or that has lasted or can
259 be expected to last for a continuous period of not less than
260 twelve months.

261 For purposes of this subsection:

262 (1) A member is totally disabled only if his or her
263 physical or mental impairment or impairments is so severe
264 that he or she is not only unable to perform his or her
265 previous work as a police officer or firefighter but also
266 cannot, considering his or her age, education and work
267 experience, engage in any other kind of substantial gainful
268 employment which exists in the state regardless of
269 whether: (A) The work exists in the immediate area in
270 which the member lives; (B) a specific job vacancy exists;
271 or (C) the member would be hired if he or she applied for
272 work. For purposes of this article, substantial gainful
273 employment is the same definition as used by the United
274 States Social Security Administration.

275 (2) "Physical or mental impairment" is an impairment
276 that results from an anatomical, physiological or
277 psychological abnormality that is demonstrated by
278 medically accepted clinical and laboratory diagnostic
279 techniques. The board may require submission of a
280 member's annual tax return for purposes of monitoring the
281 earnings limitation.

282 (jj) "Year of service" means a member shall, except in his
283 or her first and last years of covered employment, be
284 credited with years of service credit based on the hours of
285 service performed as covered employment and credited to

286 the member during the plan year based on the following
287 schedule:

288	Hours of Service	Year of Service Credited
289	Less than 500	0
290	500 to 999	1/3
291	1,000 to 1,499	2/3
292	1,500 or more	1

293 During a member's first and last years of covered
294 employment, the member shall be credited with one
295 twelfth of a year of service for each month during the plan
296 year in which the member is credited with an hour of
297 service for which contributions were received by the fund.
298 A member is not entitled to credit for years of service for
299 any time period during which he or she received disability
300 payments under section seventeen or eighteen of this
301 article.

§8-22A-3. Meaning of terms.

1 Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the
3 United States, unless a different meaning is clearly
4 required. Any reference in this article to the Internal
5 Revenue Code means the Internal Revenue Code of 1986,
6 as amended.

**§8-22A-4. Creation and administration of West Virginia
Municipal Police Officers and Firefighters
Retirement System; specification of actuarial
assumptions.**

1 There is hereby created the West Virginia Municipal
2 Police Officers and Firefighters Retirement System. The
3 purpose of this system is to provide for the orderly
4 retirement of certain police officers and firefighters who
5 become superannuated because of age or permanent
6 disability and to provide certain survivor death benefits.

7 Substantially all of the members of the retirement system
8 shall be qualified public safety employees as defined in
9 section two of this article. The retirement system shall
10 come into effect January 1, 2010: *Provided*, That if the
11 number of members in the system are fewer than one
12 hundred on January 1, 2014, then all of the provisions of
13 this article are void and of no force and effect, and
14 memberships in the system will be merged into the
15 Emergency Medical Services Retirement System created
16 in article five-v, chapter sixteen of this code. If merger is
17 required, the board shall take all necessary steps to see
18 that the voluntary transfers of persons and assets
19 authorized by this article do not affect the qualified status
20 with the Internal Revenue Service of either retirement
21 plan. All business of the system shall be transacted in the
22 name of the West Virginia Municipal Police Officers and
23 Firefighters Retirement System. The board shall specify
24 and adopt all actuarial assumptions for the plan at its first
25 meeting of every calendar year or as soon thereafter as
26 may be practicable, which assumptions shall become part
27 of the plan.

**§8-22A-5. Article to be liberally construed; board to administer
plan; federal qualification requirements.**

1 (a) The provisions of this article shall be liberally
2 construed so as to provide a general retirement system for
3 municipal police officers and firefighters eligible to retire
4 under the provisions of this plan.

5 (b) The board shall administer the plan in accordance
6 with its terms and may construe the terms and determine
7 all questions arising in connection with the
8 administration, interpretation and application of the plan.
9 The board may sue and be sued, contract and be
10 contracted with and conduct all the business of the system
11 in the name of the plan. The board may employ those
12 persons it considers necessary or desirable to administer

13 the plan. The board shall administer the plan for the
14 exclusive benefit of the members and their beneficiaries
15 subject to the specific provisions of the plan.

16 (c) The plan is intended to meet the federal qualification
17 requirements of Section 401(a) and related sections of the
18 Internal Revenue Code as applicable to governmental
19 plans. Notwithstanding any other provision of state law,
20 the board shall administer the plan to fulfill this intent for
21 the exclusive benefit of the members and their
22 beneficiaries. Any provision of this article referencing or
23 relating to these federal qualification requirements is
24 effective as of the date required by federal law. The board
25 may propose rules for promulgation and amend or repeal
26 conflicting rules in accordance with the authority granted
27 to the board pursuant to section one, article ten-d, chapter
28 five of this code to assure compliance with the
29 requirements of this section.

§8-22A-6. Members.

1 (a) A police officer or firefighter first employed in
2 covered employment after the effective date of this article
3 by a municipality or municipal subdivision which has
4 established and maintained a policemen's pension and
5 relief fund or a firemen's pension and relief fund pursuant
6 to section sixteen, article twenty-two of this chapter and
7 which is a participating employer, shall be a member of
8 this retirement plan.

9 (b) Except as provided in section thirty-two of this
10 article, a police officer or firefighter who is a member of
11 the Municipal Police Officers and Firefighters Retirement
12 System may not have credit for covered employment in
13 any other retirement system applied as service credit in
14 the Municipal Police Officers and Firefighters Retirement
15 System.

16 (c) Notwithstanding any other provisions of this article,
17 any individual who is a leased employee is not eligible to

18 participate in the plan. For purposes of this plan, a
19 "leased employee" means any individual who performs
20 services as an independent contractor or pursuant to an
21 agreement with an employee leasing organization or
22 similar organization. If a question arises regarding the
23 status of an individual as a leased employee, the board has
24 final power to decide the question.

§8-22A-7. Creation of fund; investments; actuarial valuations.

1 (a) There is hereby created the West Virginia Municipal
2 Police Officers and Firefighters Retirement Fund for the
3 benefit of the members of the retirement system created
4 pursuant to this article and the dependents of any
5 deceased or retired member of the system.

6 (b) All moneys paid into and accumulated in the fund,
7 except amounts designated by the board for payment of
8 benefits as provided in this article, shall be held in trust
9 and invested in the Consolidated Pensions Fund
10 administered by the West Virginia Investment
11 Management Board as provided by law.

12 (c) The board shall employ a competent actuary or
13 actuarial firm to prepare an actuarial valuation of the
14 assets and liabilities of the fund. The actuarial valuation
15 period shall coincide with the fiscal year of the state.

**§8-22A-8. Members' contributions; employer contributions;
correction of errors.**

1 (a)(1) There shall be deducted from the monthly salary
2 of each member and paid into the fund an amount equal to
3 eight and one-half percent (or ten and one-half percent, if
4 applicable) of his or her monthly salary. An additional
5 amount shall be paid to the fund by the municipality or
6 municipal subdivision in which the member is employed
7 in covered employment in an amount determined by the
8 board: *Provided*, That in no year may the total of the

9 employer contributions provided in this section, to be paid
10 by the municipality or municipal subdivision, exceed ten
11 and one-half percent of the total payroll for the members
12 in the employ of the municipality or municipal
13 subdivision. Any active member who has concurrent
14 employment in an additional job or jobs and the additional
15 employment requires the police officer or firefighter to be
16 a member of another retirement system which is
17 administered by the Consolidated Public Retirement
18 Board pursuant to article ten-d, chapter five of this code
19 shall contribute to the fund the sum of eight and one-half
20 percent (or ten and one-half percent, if applicable) of his
21 or her monthly salary earned as a municipal police officer
22 or firefighter as well as the sum of eight and one-half
23 percent (or ten and one-half percent, if applicable) of his
24 or her monthly salary earned from any additional
25 employment which additional employment requires the
26 police officer or firefighter to be a member of another
27 retirement system which is administered by the
28 Consolidated Public Retirement Board pursuant to article
29 ten-d, chapter five of this code. An additional amount as
30 determined by the board, not to exceed ten and one-half
31 percent of the monthly salary of each member, shall be
32 paid to the fund by the concurrent employer by which the
33 member is employed.

34 (2) The board may, on the recommendation of the
35 board's actuary, increase the employees' contribution rate
36 from eight and one-half percent to ten and one-half
37 percent should the plan not be seventy percent funded by
38 July 1, 2014. The board shall decrease the contribution
39 rate to eight and one-half percent on July 1 following the
40 acceptance by the board of an actuarial valuation
41 determining that the plan is seventy-five percent funded.
42 If the plan funding level at a later actuarial valuation date
43 falls below seventy percent, the employee rate of
44 contribution shall be increased to ten and one-half percent

45 of salary until the seventy-five percent level of funding is
46 achieved. The board shall change the employee
47 contribution rate on July 1 following the board's
48 acceptance of the actuarial valuation. At no time may the
49 rate of employee contribution exceed the rate of employer
50 contribution.

51 (b) All required deposits shall be remitted to the board
52 no later than fifteen days following the end of the calendar
53 month for which the deposits are required. If the board on
54 the recommendation of the board actuary finds that the
55 benefits provided by this article can be actuarially funded
56 with a lesser contribution, then the board shall reduce the
57 required member and employer contributions
58 proportionally. Any municipality or municipal
59 subdivision which fails to make any payment due the
60 Municipal Police Officers and Firefighters Retirement
61 Fund by the fifteenth day following the end of each
62 calendar month in which contributions are due may be
63 required to pay the actuarial rate of interest lost on the
64 total amount owed for each day the payment is delinquent.
65 Accrual of the loss of earnings owed by the delinquent
66 municipality or municipal subdivision commences after
67 the fifteenth day following the end of the calendar month
68 in which contributions are due and continues until receipt
69 of the delinquent amount. Interest compounds daily and
70 the minimum surcharge is \$50.

71 (c) If any change or employer error in the records of any
72 participating public employer or the retirement system
73 results in any member or retirant receiving from the
74 system more or less than he or she would have been
75 entitled to receive had the records been correct, the board
76 shall correct the error and as far as is practicable shall
77 adjust the payment of the benefit in a manner that the
78 actuarial equivalent of the benefit to which the member or
79 retirant was correctly entitled shall be paid. Any

80 employer error resulting in an underpayment to the
81 retirement system may be corrected by the member or
82 retirant remitting the required employee contribution and
83 the participating public employer remitting the required
84 employer contribution. Interest shall accumulate in
85 accordance with the legislative rule 162 CSR 7 (retirement
86 board reinstatement interest) and any accumulating
87 interest owed on the employee and employer contributions
88 resulting from the employer error shall be the
89 responsibility of the participating public employer. The
90 participating public employer may remit total payment
91 and the employee reimburse the participating public
92 employer through payroll deduction over a period
93 equivalent to the time period during which the employer
94 error occurred.

§8-22A-9. Retirement; commencement of benefits; insurance requirements during early period.

1 (a) To ensure the fiscal integrity of the retirement system
2 during the start-up phase, no member is entitled to
3 retirement, disability or death benefits under this
4 retirement system until January 1, 2013. Participating
5 municipalities shall purchase insurance for their new plan
6 members to provide coverage in an amount equal to
7 disability coverage otherwise provided in sections
8 seventeen and eighteen of this article and death benefits
9 otherwise provided in sections twenty, twenty-two and
10 twenty-three of this article for claims arising before
11 January 1, 2013.

12 (b) A member may retire and commence to receive
13 retirement income payments on the first day of the
14 calendar month following written application for his or
15 her voluntary petition for retirement coincident with or
16 next following the later of the date the member ceases
17 employment, or the date the member attains early or
18 normal retirement age, in an amount as provided under

19 this article: *Provided*, That retirement income payments
20 under this plan are subject to the provisions of this article.
21 On receipt of the petition, the board shall promptly
22 provide the member with an explanation of his or her
23 optional forms of retirement benefits and on receipt of
24 properly executed forms from the member, the board shall
25 process a member's request for and commence payments
26 as soon as administratively feasible.

§8-22A-10. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or
2 state law, the board shall administer the retirement system
3 in compliance with the limitations of Section 415 of the
4 Internal Revenue Code and regulations under that section
5 to the extent applicable to governmental plans (hereafter
6 sometimes referred to as the "415 limitation(s)" or "415
7 dollar limitation(s)"), so that the annual benefit payable
8 under this system to a member shall not exceed those
9 limitations. Any annual benefit payable under this system
10 shall be reduced or limited if necessary to an amount
11 which does not exceed those limitations. The extent to
12 which any annuity or other annual benefit payable under
13 this retirement system shall be reduced as compared with
14 the extent to which an annuity, contributions or other
15 benefits under any other defined benefit plans or defined
16 contribution plans required to be taken into consideration
17 under Section 415 of the Internal Revenue Code shall be
18 reduced, shall be proportional on a percentage basis to the
19 reductions made in such other plans required to be so
20 taken into consideration under Section 415, unless a
21 disproportionate reduction is determined by the board to
22 maximize the aggregate benefits payable to the member.
23 If the reduction is under this retirement system, the board
24 shall advise affected members of any additional limitation
25 on the annuities or other annual benefit required by this
26 section. The 415 limitations are incorporated herein by

27 reference, except to the extent the following provisions
28 may modify the default provisions thereunder:

29 (a) A member's annual benefit payable in any limitation
30 year from this retirement system shall in no event be
31 greater than the limit applicable at the annuity starting
32 date, as increased in subsequent years pursuant to Section
33 415(d) of the Internal Revenue Code and the regulations
34 thereunder.

35 (b) For purposes of this section, the "annual benefit"
36 means a benefit that is payable annually in the form of a
37 straight life annuity. Except as provided below, where a
38 benefit is payable in a form other than a straight life
39 annuity, the benefit shall be adjusted to an actuarially
40 equivalent straight life annuity that begins at the same
41 time as such other form of benefit, using factors prescribed
42 in the 415 limitation regulations, before applying the 415
43 limitations. No actuarial adjustment to the benefit shall
44 be made for: (1) Survivor benefits payable to a surviving
45 spouse under a qualified joint and survivor annuity to the
46 extent such benefits would not be payable if the member's
47 benefit were paid in another form; (2) benefits that are not
48 directly related to retirement benefits (such as a qualified
49 disability benefit, preretirement incidental death benefits,
50 and post-retirement medical benefits); or (3) the inclusion
51 in the form of benefit of an automatic benefit increase
52 feature, provided the form of benefit is not subject to
53 Section 417(e)(3) of the Internal Revenue Code and would
54 otherwise satisfy the limitations of this article, and the
55 plan provides that the amount payable under the form of
56 benefit in any limitation year shall not exceed the limits of
57 this article applicable at the annuity starting date, as
58 increased in subsequent years pursuant to Section 415(d)
59 of the Internal Revenue Code. For this purpose an
60 automatic benefit increase feature is included in a form of
61 benefit if the form of benefit provides for automatic,
62 periodic increases to the benefits paid in that form.

63 (c) *Adjustment for benefit forms not subject to Section*
64 *417(e)(3).* – The straight life annuity that is actuarially
65 equivalent to the member’s form of benefit shall be
66 determined under this subsection if the form of the
67 member’s benefit is either: (1) A nondecreasing annuity
68 (other than a straight life annuity) payable for a period of
69 not less than the life of the member (or, in the case of a
70 qualified preretirement survivor annuity, the life of the
71 surviving spouse); or (2) an annuity that decreases during
72 the life of the member merely because of: (i) The death of
73 the survivor annuitant (but only if the reduction is not
74 below fifty percent of the benefit payable before the death
75 of the survivor annuitant); or (ii) the cessation or reduction
76 of Social Security supplements or qualified disability
77 payments (as defined in Section 401(a)(11) of the Internal
78 Revenue Code). The actuarially equivalent straight life
79 annuity is equal to the greater of: (I) The annual amount of
80 the straight life annuity (if any) payable to the member
81 under the plan commencing at the same annuity starting
82 date as the member’s form of benefit; and (II) the annual
83 amount of the straight life annuity commencing at the
84 same annuity starting date that has the same actuarial
85 present value as the member’s form of benefit, computed
86 using a five percent interest rate assumption and the
87 applicable mortality table defined in Treasury Regulation
88 §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any
89 subsequent Revenue Ruling modifying the applicable
90 provisions of Revenue Ruling 2001-62) for that annuity
91 starting date.

92 (d) *Adjustment for benefit forms subject to Section*
93 *417(e)(3).* – The straight life annuity that is actuarially
94 equivalent to the member’s form of benefit shall be
95 determined under this subsection if the form of the
96 member’s benefit is other than a benefit form described in
97 subsection (c) of this section. In this case, the actuarially
98 equivalent straight life annuity shall be determined as

99 follows: The actuarially equivalent straight life annuity is
100 equal to the greatest of: (1) The annual amount of the
101 straight life annuity commencing at the same annuity
102 starting date that has the same actuarial present value as
103 the member's form of benefit, computed using the interest
104 rate specified in this retirement system and the mortality
105 table (or other tabular factor) specified in this retirement
106 system for adjusting benefits in the same form; (2) the
107 annual amount of the straight life annuity commencing at
108 the same annuity starting date that has the same actuarial
109 present value as the member's form of benefit, computed
110 using a five and one-half percent interest rate assumption
111 and the applicable mortality table defined in Treasury
112 Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or
113 any subsequent Revenue Ruling modifying the applicable
114 provisions of Revenue Ruling 2001-62) for that annuity
115 starting date; and (3) the annual amount of the straight
116 life annuity commencing at the same annuity starting date
117 that has the same actuarial present value as the member's
118 form of benefit, computed using the applicable interest
119 rate defined in Treasury Regulation §1.417(e)-1(d)(3) and
120 the applicable mortality table defined in Treasury
121 Regulation §1.417(e)-1(d)(2) (the mortality table specified
122 in Revenue Ruling 2001-62 or any subsequent Revenue
123 Ruling modifying the applicable provisions of Revenue
124 Ruling 2001-62), divided by 1.05.

125 (e) *Benefits payable prior to age sixty-two.* — (1) Except
126 as provided in subdivisions (2) and (3) of this subsection,
127 if the member's retirement benefits become payable before
128 age sixty-two, the 415 dollar limitation prescribed by this
129 section shall be reduced in accordance with regulations
130 issued by the Secretary of the Treasury pursuant to the
131 provisions of Section 415(b) of the Internal Revenue Code,
132 so that the limitation (as so reduced) equals an annual
133 straight life benefit (when the retirement income benefit
134 begins) which is equivalent to an annual benefit in the

135 amount of the applicable dollar limitation of Section
136 415(b)(1)(A) of the Internal Revenue Code (as adjusted
137 pursuant to Section 415(d) of the Internal Revenue Code)
138 beginning at age sixty-two.

139 (2) The limitation reduction provided in subdivision (1)
140 of this subsection shall not apply if the member
141 commencing retirement benefits before age sixty-two is a
142 qualified participant. A qualified participant for this
143 purpose is a participant in a defined benefit plan
144 maintained by a state, or any political subdivision of a
145 state, with respect to whom the service taken into account
146 in determining the amount of the benefit under the defined
147 benefit plan includes at least fifteen years of service: (i) As
148 a full-time employee of any police or fire department
149 organized and operated by the state or political
150 subdivision maintaining the defined benefit plan to
151 provide police protection, fire-fighting services or
152 emergency medical services for any area within the
153 jurisdiction of such state or political subdivision; or (ii) as
154 a member of the armed forces of the United States.

155 (3) The limitation reduction provided in subdivision (1)
156 of this subsection shall not be applicable to preretirement
157 disability benefits or preretirement death benefits.

158 (4) For purposes of adjusting the 415 dollar limitation
159 for benefit commencement before age sixty-two or after
160 age sixty-five, no adjustment is made to reflect the
161 probability of a member's death: (i) After the annuity
162 starting date and before age sixty-two; or (ii) after age
163 sixty-five and before the annuity starting date.

164 (f) *Adjustment when member has less than ten years of*
165 *participation.* – In the case of a member who has less than
166 ten years of participation in the retirement system (within
167 the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)),
168 the 415 dollar limitation (as adjusted pursuant to Section
169 415(d) of the Internal Revenue Code and subsection (e) of

170 this section) shall be reduced by multiplying the otherwise
171 applicable limitation by a fraction, the numerator of
172 which is the number of years of participation in the plan
173 (or 1, if greater), and the denominator of which is ten.
174 This adjustment shall not be applicable to preretirement
175 disability benefits or preretirement death benefits.

§8-22A-11. Federal law minimum required distributions.

1 The requirements of this section apply to any
2 distribution of a member's or beneficiary's interest and
3 take precedence over any inconsistent provisions of this
4 plan. This section applies to plan years beginning after
5 December 31, 1986. Notwithstanding anything in the plan
6 to the contrary, the payment of benefits under this article
7 shall be determined and made in accordance with Section
8 401(a)(9) of the Internal Revenue Code and its regulations.
9 For this purpose, the following provisions apply:

10 (a) The payment of benefits under the plan to any
11 member shall be distributed to him or her not later than
12 the required beginning date, or be distributed to him or
13 her commencing not later than the required beginning
14 date, in accordance with regulations prescribed under
15 Section 401(a)(9) of the Internal Revenue Code, over the
16 life of the member or over the lives of the member and his
17 or her beneficiary or over a period not extending beyond
18 the life expectancy of the member and his or her
19 beneficiary. Benefit payments under this section shall not
20 be delayed pending, or contingent on, receipt of an
21 application for retirement from the member.

22 (b) If a member dies after distribution to him or her has
23 commenced pursuant to this section but before his or her
24 entire interest in the plan has been distributed, then the
25 remaining portion of that interest shall be distributed at
26 least as rapidly as under the method of distribution being
27 used at the date of his or her death.

28 (c) If a member dies before distribution to him or her has
29 commenced, then his or her entire interest in the plan shall
30 be distributed by December 31 of the calendar year
31 containing the fifth anniversary of the member's death,
32 except as follows:

33 (1) If a member's interest is payable to a beneficiary,
34 distributions may be made over the life of that beneficiary
35 or over a period certain not greater than the life
36 expectancy of the beneficiary, commencing on or before
37 December 31 of the calendar year immediately following
38 the calendar year in which the member died; or

39 (2) If the member's beneficiary is the surviving spouse,
40 the date distributions are required to begin shall be no
41 later than the later of:

42 (A) December 31 of the calendar year in which the
43 member would have attained age seventy and one-half; or

44 (B) The earlier of: (i) December 31 of the calendar year
45 following the calendar year in which the member died; or
46 (ii) December 31 of the calendar year following the
47 calendar year in which the spouse died.

§8-22A-12. Direct rollovers.

1 Notwithstanding any provision of this article to the
2 contrary that would otherwise limit a distributee's election
3 under this plan, a distributee may elect, at the time and in
4 the manner prescribed by the board, to have any portion
5 of an eligible rollover distribution paid directly to an
6 eligible retirement plan specified by the distributee in a
7 direct rollover. For purposes of this section, the following
8 definitions apply:

9 (1) "Eligible rollover distribution" means any
10 distribution of all or any portion of the balance to the
11 credit of the distributee, except that an eligible rollover
12 distribution does not include any of the following: (A) Any

13 distribution that is one of a series of substantially equal
14 periodic payments not less frequently than annually made
15 for the life or life expectancy of the distributee or the joint
16 lives or the joint life expectancies of the distributee and
17 the distributee's designated beneficiary, or for a specified
18 period of ten years or more; (B) any distribution to the
19 extent the distribution is required under Section 401(a)(9)
20 of the Internal Revenue Code; and (C) any hardship
21 distribution described in Section 401(k)(2)(B)(i)(iv) of the
22 Internal Revenue Code. A portion of a distribution shall
23 not fail to be an eligible rollover distribution merely
24 because the portion consists of after-tax employee
25 contributions which are not includable in gross income.
26 However, this portion may be paid only to an individual
27 retirement account or annuity described in Section 408(a)
28 or (b) of the Internal Revenue Code, or to a qualified trust
29 described in Section 401(a) or to an annuity contract
30 described in Section 403(a) or 403(b) of the Internal
31 Revenue Code that agrees to separately account for
32 amounts transferred (including interest or earnings
33 thereon), including separately accounting for the portion
34 of the distribution which is includable in gross income and
35 the portion of the distribution which is not includable.

36 (2) "Eligible retirement plan" means an eligible plan
37 under Section 457(b) of the Internal Revenue Code which
38 is maintained by a state, political subdivision of a state, or
39 any agency or instrumentality of a state or political
40 subdivision of a state and which agrees to separately
41 account for amounts transferred into the plan from this
42 plan, an individual retirement account described in
43 Section 408(a) of the Internal Revenue Code, an individual
44 retirement annuity described in Section 408(b) of the
45 Internal Revenue Code, an annuity plan described in
46 Section 403(a) of the Internal Revenue Code, an annuity
47 contract described in Section 403(b) of the Internal
48 Revenue Code, or a qualified plan described in Section

49 401(a) of the Internal Revenue Code that accepts the
50 distributee's eligible rollover distribution: *Provided*, That
51 in the case of an eligible rollover distribution to a
52 designated beneficiary (other than a surviving spouse) as
53 such term is defined in Section 402(c)(11) of the Internal
54 Revenue Code, an eligible retirement plan is limited to an
55 individual retirement account or individual retirement
56 annuity which meets the conditions of Section 402(c)(11)
57 of the Internal Revenue Code.

58 (3) "Distributee" means an employee or former
59 employee. In addition, the employee's or former
60 employee's surviving spouse and the employee's or former
61 employee's spouse or former spouse who is the alternate
62 payee under a qualified domestic relations order, as
63 defined in Section 414(p) of the Internal Revenue Code
64 with respect to governmental plans, are distributees with
65 regard to the interest of the spouse or former spouse. The
66 term "distributee" also includes a designated beneficiary
67 (other than a surviving spouse) as the term is defined in
68 Section 402(c)(11) of the Internal Revenue Code.

69 (4) "Direct rollover" means a payment by the plan to the
70 eligible retirement plan.

§8-22A-13. Rollovers and transfers to repay withdrawn contributions.

1 (a) Notwithstanding any provision of this article to the
2 contrary that would otherwise prohibit or limit rollovers
3 and plan transfers to this system, the plan shall accept the
4 following rollovers and plan transfers on behalf of a
5 member solely for the purpose of the repayment of
6 withdrawn or refunded contributions, in whole and in
7 part, with respect to a previous forfeiture of service credit
8 as otherwise provided in this article: (1) One or more
9 rollovers within the meaning of Section 408(d)(3) of the
10 Internal Revenue Code from an individual retirement
11 account described in Section 408(a) of the Internal

12 Revenue Code or from an individual retirement annuity
13 described in Section 408(b) of the Internal Revenue Code;
14 (2) one or more rollovers described in Section 402(c) of the
15 Internal Revenue Code from a retirement plan that is
16 qualified under Section 401(a) of the Internal Revenue
17 Code or from a plan described in Section 403(b) of the
18 Internal Revenue Code; (3) one or more rollovers described
19 in Section 457(e)(16) of the Internal Revenue Code from a
20 governmental plan described in Section 457 of the Internal
21 Revenue Code; or (4) direct trustee-to-trustee transfers or
22 rollovers from a plan that is qualified under Section 401(a)
23 of the Internal Revenue Code, from a plan described in
24 Section 403(b) of the Internal Revenue Code or from a
25 governmental plan described in Section 457 of the Internal
26 Revenue Code: *Provided*, That any rollovers or transfers
27 pursuant to this section shall be accepted by the system
28 only if made in cash or other asset permitted by the board
29 and only in accordance with such policies, practices and
30 procedures established by the board from time to time.
31 For purposes of this section, "repayment of withdrawn or
32 refunded contributions" means the payment into the
33 retirement system of the funds required pursuant to this
34 article for the reinstatement of service credit previously
35 forfeited on account of any refund or withdrawal of
36 contributions permitted in this article, as set forth in
37 Section 415(k)(3) of the Internal Revenue Code.

38 (b) Nothing in this section may be construed as
39 permitting rollovers or transfers into this system or any
40 other system administered by the retirement board other
41 than as specified in this section and no rollover or transfer
42 shall be accepted into the system in an amount greater
43 than the amount required for the repayment of withdrawn
44 or refunded contributions.

45 (c) Nothing in this section shall be construed as
46 permitting the repayment of withdrawn or refunded
47 contributions except as otherwise permitted in this article.

§8-22A-14. Retirement benefits.

1 This section describes when adjustment of a member's
2 accrued benefit to reflect the difference in age, in years
3 and months, between the member's annuity starting date
4 and the date the member attains normal retirement age
5 shall be made. This age adjustment, when required, shall
6 be made based on the normal form of benefit and shall be
7 the actuarial equivalent of the accrued benefit at the
8 member's normal retirement age. The member shall
9 receive the age adjusted retirement income in the normal
10 form or in an actuarial equivalent amount in an optional
11 form as provided under this article, subject to reduction if
12 necessary to comply with the maximum benefit limitations
13 of Section 415 of the Internal Revenue Code and section
14 ten of this article. The first day of the calendar month
15 following the month of birth shall be used in lieu of any
16 birth date that does not fall on the first day of a calendar
17 month.

18 (a) *Normal retirement.* – A member whose annuity
19 starting date is the date the member attains normal
20 retirement age is entitled to his or her accrued benefit
21 without adjustment for age at commencement.

22 (b) *Late retirement.* – A member whose annuity starting
23 date is later than the date the member attains normal
24 retirement age shall receive retirement income payments
25 in the normal form without adjustment for age at
26 commencement, which is the benefit to which he or she is
27 entitled according to his or her accrued benefit based on
28 his or her final average salary and credited service at the
29 time of his or her actual retirement and following the
30 completion of an application for retirement as required by
31 the board.

32 (c) Retirement benefits shall be paid monthly in an
33 amount equal to one twelfth of the retirement income
34 payments elected and at those times established by the

35 board. Notwithstanding any other provision of the plan,
36 a member who is married on the annuity starting date will
37 receive his or her retirement income payments in the form
38 of a sixty-six and two-thirds percent joint and survivor
39 annuity with his or her spouse unless prior to the annuity
40 starting date the spouse waives the form of benefit.

§8-22A-15. Annuity options.

1 Prior to the effective date of retirement, but not after
2 that date, a member may elect to receive retirement
3 income payments in the normal form, or the actuarial
4 equivalent of the normal form from the following options:

5 (a) *Option A – Contingent joint and survivor annuity.* –
6 A life annuity payable during the joint lifetime of the
7 member and his or her beneficiary who must be a natural
8 person with an insurable interest in the member's life. On
9 the death of the member, the benefit shall continue as a
10 life annuity to the beneficiary in an amount equal to fifty
11 percent, sixty-six and two-thirds percent, seventy-five
12 percent or one hundred percent of the amount paid while
13 both were living, as elected by the member. If the
14 beneficiary dies first, the monthly amount of benefits may
15 not be reduced, but shall be paid at the amount that was
16 in effect before the death of the beneficiary. If the retiring
17 member is married, the spouse shall sign a waiver of
18 benefit rights if the beneficiary is to be other than the
19 spouse.

20 (b) *Option B – Ten years certain and life annuity.* – A
21 life annuity payable during the member's lifetime but in
22 any event for a minimum of ten years. If the member dies
23 before the expiration of ten years, the remaining payments
24 shall be made to a designated beneficiary, if any, or
25 otherwise to the member's estate.

**§8-22A-16. Refunds to certain members on discharge or
resignation; deferred retirement; forfeitures.**

1 (a) Any member who terminates covered employment
2 and is not eligible to receive disability benefits under this
3 article is, by written request filed with the board, entitled
4 to receive from the fund the member's accumulated
5 contributions. Except as provided in subsection (b) of this
6 section, on withdrawal, the member shall forfeit his or her
7 accrued benefit and cease to be a member.

8 (b)(1) Any member who ceases employment in covered
9 employment and active participation in this plan and who
10 thereafter becomes reemployed in covered employment
11 may not receive any credited service for any prior
12 accumulated contributions withdrawn from the plan
13 unless following his or her return to covered employment
14 and active participation in this plan, the member
15 redeposits in the fund the amount of the accumulated
16 contributions withdrawn from previous covered
17 employment, together with interest on the accumulated
18 contributions at the rate determined by the board from the
19 date of withdrawal to the date of redeposit. On repayment
20 he or she shall receive the same credit on account of his or
21 her former covered employment as if no refund had been
22 made.

23 (2) The repayment authorized by this subsection shall be
24 made in a lump sum within sixty months of the police
25 officer's or firefighter's reemployment in covered
26 employment.

27 (c) Every member who completes sixty months of regular
28 contributory service may, on cessation of covered
29 employment, either withdraw his or her accumulated
30 contributions in accordance with this section or choose not
31 to withdraw his or her accumulated contribution and
32 receive retirement income payments, if eligible, on
33 attaining normal retirement age.

34 (d) Notwithstanding any other provision of this article,
35 forfeitures under the plan may not be applied to increase

36 the benefits any member would otherwise receive under
37 the plan.

**§8-22A-17. Awards and benefits for disability – Duty related;
exception during early period.**

1 (a) Except as provided in subsection (a), section nine of
2 this article, any member who after the effective date of
3 this article and during covered employment: (1) Has been
4 or becomes totally disabled by injury, illness or disease;
5 and (2) the disability is a result of an occupational risk or
6 hazard inherent in or peculiar to the services required of
7 members; or (3) the disability was incurred while
8 performing police officer or firefighter functions during
9 either scheduled work hours or at any other time; and (4)
10 in the opinion of two physicians after medical
11 examination, at least one of whom shall be named by the
12 board, the member is by reason of the disability not only
13 unable to perform his or her previous work as a police
14 officer or firefighter but also cannot, considering his or her
15 age, education and work experience, engage in any other
16 kind of substantial gainful employment which exists in the
17 state regardless of whether: (A) The work exists in the
18 immediate area in which the member lives; (B) a specific
19 job vacancy exists; or (C) the member would be hired if he
20 or she applied for work, is entitled to receive and shall be
21 paid from the fund in monthly installments during the
22 lifetime of the member or, if sooner, until the member
23 attains normal retirement age or until the disability sooner
24 terminates, the compensation under this section. For
25 purposes of this article, substantial gainful employment is
26 the same definition as used by the United States Social
27 Security Administration.

28 (b) If the member is totally disabled, the member shall
29 receive ninety percent of his or her average full monthly
30 compensation for the twelve-month period preceding the
31 member's disability or the shorter period if the member
32 has not worked twelve months.

33 (c) If the member remains totally disabled until
34 attaining sixty-five years of age, the member shall then
35 receive the retirement benefit provided in sections
36 fourteen and fifteen of this article.

§8-22A-18. Awards and benefits for disability – Due to other causes; exception during early period.

1 (a) Except as provided in subsection (a), section nine of
2 this article, any member who after the effective date of
3 this article and during covered employment: (1) Has been
4 or becomes totally disabled from any cause other than
5 those set forth in section seventeen of this article and not
6 due to vicious habits, intemperance or willful misconduct
7 on his or her part; and (2) in the opinion of two physicians
8 after medical examination, at least one of whom shall be
9 named by the board, he or she is by reason of the disability
10 not only unable to perform his or her previous work as a
11 police officer or firefighter but also cannot, considering his
12 or her age, education and work experience, engage in any
13 other kind of substantial gainful employment which exists
14 in the state regardless of whether: (A) The work exists in
15 the immediate area in which the member lives; (B) a
16 specific job vacancy exists; or (C) the member would be
17 hired if he or she applied for work, is entitled to receive
18 and shall be paid from the fund in monthly installments
19 during the lifetime of the member or, if sooner, until the
20 member attains normal retirement age or until the
21 disability sooner terminates, the compensation set forth in,
22 either subsection (b) or (c) of this section.

23 (b) If the member is totally disabled, he or she shall
24 receive sixty-six and two-thirds percent of his or her
25 average monthly compensation for the twelve-month
26 period preceding the disability, or the shorter period, if the
27 member has not worked twelve months.

28 (c) If the member remains totally disabled until
29 attaining sixty years of age, then the member shall receive

30 the retirement benefit provided in sections fourteen and
31 fifteen of this article.

**§8-22A-19. Same – Physical examinations; recertification;
termination of disability.**

1 The board may require any member who has applied for
2 or is receiving disability benefits under this article to
3 submit to a physical examination, mental examination or
4 both, by a physician or physicians selected or approved by
5 the board and may cause all costs incident to the
6 examination and approved by the board to be paid from
7 the fund. The costs may include hospital, laboratory, X-
8 ray, medical and physicians' fees. A report of the findings
9 of any physician shall be submitted in writing to the board
10 for its consideration. If, from the report, independent
11 information, or from the report and any hearing on the
12 report, the board finds that the member is no longer
13 totally disabled and is engaged in or is able to engage in
14 substantial gainful employment, then the disability
15 benefits shall cease.

16 The board shall require recertification annually for the
17 first three years of disability and thereafter at the
18 discretion of the board. For purposes of recertification the
19 board may require a disability retiree to undergo a
20 medical examination to be made by or under the direction
21 of a physician designated by the board, or to submit a
22 statement signed by the disability retiree's physician
23 certifying continued disability, and may require the
24 retiree to submit copies of annual income tax returns. If
25 a retiree refuses to submit to medical examinations or to
26 provide statements or returns requested for recertification,
27 the board may discontinue disability until the retiree
28 complies.

**§8-22A-20. Awards and benefits to surviving spouse – When
member dies in performance of duty, etc.;
exception during early period.**

1 (a) Except as provided in subsection (a), section nine of
2 this article, the surviving spouse of any member who, after
3 the effective date of this article while in covered
4 employment, has died or dies by reason of injury, illness or
5 disease resulting from an occupational risk or hazard
6 inherent in or peculiar to the service required of members,
7 while the member was or is engaged in the performance of
8 his or her duties as a police officer or firefighter, or the
9 surviving spouse of a member who dies from any cause
10 while receiving benefits pursuant to section seventeen of
11 this article, is entitled to receive and shall be paid from the
12 fund benefits as determined in this section. To the
13 surviving spouse annually, in equal monthly installments
14 during his or her lifetime, an amount equal to the greater
15 of: (1) Two thirds of the annual compensation received in
16 the preceding twelve-month period by the deceased
17 member; or (2) if the member dies after his or her normal
18 retirement age, the monthly amount which the spouse
19 would have received had the member retired the day
20 before his or her death, elected a one hundred percent joint
21 and survivor annuity with the spouse as the joint
22 annuitant, and then died.

23 (b) Benefits for a surviving spouse received under this
24 section, section twenty-two and section twenty-three of
25 this article are in lieu of receipt of any other benefits
26 under this article for the spouse or any other person or
27 under the provisions of any other state retirement system
28 based on the member's covered employment.

**§8-22A-21. Awards and benefits to surviving spouse – When
member dies from nonservice-connected causes.**

1 (a) If a member who has been a member for at least ten
2 years, while in covered employment after the effective
3 date of this article, has died or dies from any cause other
4 than those specified in section twenty of this article and
5 not due to vicious habits, intemperance or willful

6 misconduct on his or her part, the fund shall pay annually
7 in equal monthly installments to the surviving spouse
8 during his or her lifetime, a sum equal to the greater of: (1)
9 One half of the annual compensation received in the
10 preceding twelve-month employment period by the
11 deceased member; or (2) if the member dies after his or her
12 normal retirement age, the monthly amount which the
13 spouse would have received had the member retired the
14 day before his or her death, elected a one hundred percent
15 joint and survivor annuity with the spouse as the joint
16 annuitant, and then died. If the member is receiving
17 disability benefits under this article at the time of his or
18 her death, the amount of the average monthly
19 compensation which the member was receiving in the plan
20 year prior to the initial disability shall be substituted for
21 the annual compensation in subdivision (1) of this
22 subsection.

23 (b) Benefits for a surviving spouse received under this
24 section, or other sections of this article are in lieu of
25 receipt of any other benefits under this article for the
26 spouse or any other person or under the provisions of any
27 other state retirement system based on the member's
28 covered employment.

**§8-22A-22. Additional death benefits and scholarships –
Dependent children.**

1 (a) Except as provided in subsection (a), section nine of
2 this article, in addition to the spouse death benefits in this
3 article, the surviving spouse is entitled to receive and there
4 shall be paid to the spouse \$100 monthly for each
5 dependent child.

6 (b) If the surviving spouse dies or if there is no surviving
7 spouse, the fund shall pay monthly to each dependent
8 child a sum equal to one hundred percent of the spouse's
9 entitlement under this article divided by the number of
10 dependent children. If there is neither a surviving spouse

11 nor a dependent child, the fund shall pay in equal monthly
12 installments to the dependent parents of the deceased
13 member during their joint lifetimes a sum equal to the
14 amount which a surviving spouse, without children, would
15 have received: *Provided*, That when there is only one
16 dependent parent surviving, that parent is entitled to
17 receive during his or her lifetime one-half the amount
18 which both parents, if living, would have been entitled to
19 receive: *Provided, however*, That if there is no surviving
20 spouse, dependent child or dependent parent of the
21 deceased member, the accumulated contributions shall be
22 paid to a named beneficiary or beneficiaries: *Provided*
23 *further*, That if there is no surviving spouse, dependent
24 child or dependent parent of the deceased member, or any
25 named beneficiary or beneficiaries, then the accumulated
26 contributions shall be paid to the estate of the deceased
27 member.

28 (c) Any person qualifying as a dependent child under this
29 section, in addition to any other benefits due under this or
30 other sections of this article, is entitled to receive a
31 scholarship to be applied to the career development
32 education of that person. This sum, up to but not
33 exceeding \$6,000 per year, shall be paid from the fund to
34 any university or college in this state or to any trade or
35 vocational school or other entity in this state approved by
36 the board to offset the expenses of tuition, room and
37 board, books, fees or other costs incurred in a course of
38 study at any of these institutions so long as the recipient
39 makes application to the board on an approved form and
40 under rules provided by the board and maintains
41 scholastic eligibility as defined by the institution or the
42 board. The board may propose legislative rules for
43 promulgation in accordance with article three, chapter
44 twenty-nine-a of this code which define age requirements,
45 physical and mental requirements, scholastic eligibility,
46 disbursement methods, institutional qualifications and

47 other requirements as necessary and not inconsistent with
48 this section.

§8-22A-23. Burial benefit.

1 Except as provided in subsection (a), section nine of this
2 article, any member who dies as a result of any service-
3 related illness or injury after the effective date is entitled
4 to a lump sum burial benefit of \$5,000. If the member is
5 married, the burial benefit shall be paid to the member's
6 spouse. If the member is not married, the burial benefit
7 shall be paid to the member's estate for the purposes of
8 paying burial expenses, settling the member's final affairs,
9 or both.

§8-22A-24. Double death benefits prohibited.

1 A surviving spouse is not entitled to receive
2 simultaneous death benefits under this article as a result
3 of the death of two or more members to whom the spouse
4 was married. Any spouse who becomes eligible for a
5 subsequent death benefit under this article while receiving
6 a death benefit under this article shall receive the higher
7 benefit, but not both.

**§8-22A-25. Right to benefits not subject to execution, etc.;
assignments prohibited; deductions for group
insurance; setoffs for fraud; exception for
certain domestic relations orders; assets exempt
from taxes.**

1 The right of a person to any benefit provided in this
2 article shall not be subject to execution, attachment,
3 garnishment, the operation of bankruptcy or insolvency
4 laws, or other process whatsoever, nor shall any
5 assignment thereof be enforceable in any court except that
6 the benefits or contributions under this system shall be
7 subject to "qualified domestic relations orders" as that
8 term is defined in Section 414(p) of the Internal Revenue

9 Code as applicable to governmental plans: *Provided*, That
10 should a member be covered by a group insurance or
11 prepayment plan participated in by a participating public
12 employer, and should he or she be permitted to, and elect
13 to, continue such coverage as a retirant, he or she may
14 authorize the board of trustees to have deducted from his
15 or her annuity the payments required of him or her to
16 continue coverage under such group insurance or
17 prepayment plan: *Provided, however*, That a participating
18 public employer shall have the right of setoff for any claim
19 arising from embezzlement by, or fraud of, a member,
20 retirant or beneficiary. The assets of the retirement
21 system are exempt from state, county and municipal taxes.

§8-22A-26. Fraud; penalties; and repayment.

1 Any person who knowingly makes any false statement or
2 who falsifies or permits to be falsified any record of the
3 retirement system in any attempt to defraud that system
4 is guilty of a misdemeanor and, on conviction thereof,
5 shall be punished by a fine not to exceed \$1,000, by
6 confinement in jail not to exceed one year, or by both fine
7 and confinement. Any increased benefit received by any
8 person as a result of the falsification or fraud shall be
9 returned to the fund on demand by the board.

**§8-22A-27. Credit toward retirement for member's military
service; qualified military service.**

1 (a) Each member shall receive months of credited service
2 for months served in active military duty not to exceed
3 twenty-four months: *Provided*, That any employee may
4 purchase as much as an additional twelve months of
5 service for time served in active military duty that
6 otherwise has not been credited, by paying the actuarial
7 reserve lump sum purchase amount within three years
8 after becoming vested.

9 (b) "Actuarial reserve lump sum purchase amount"
10 means the purchase annuity rate multiplied by the
11 purchase accrued benefit. The purchase annuity rate is
12 the actuarial lump sum annuity factor calculated on a
13 monthly basis based on the following actuarial
14 assumptions: Interest rate of seven and one-half percent;
15 mortality of the 1983 group annuity mortality table, male
16 rates, applied on a unisex basis to all members; if purchase
17 age is under age fifty, a deferred annuity factor with
18 payments commencing at age fifty; and if purchase age is
19 fifty or over, an immediate annuity factor with payments
20 starting at the purchase age. The purchase accrued benefit
21 is two and three-fourths percent times the purchase
22 military service times the purchase average monthly
23 salary. The purchase military service is the amount of
24 military service being purchased by the employee as a
25 fraction of a year up to a one year maximum. The
26 purchase average monthly salary is the final average
27 monthly salary of the employee at the beginning of the
28 month which is three months prior to the purchase month
29 as if the employee terminated employment on that date.
30 The purchase month is the month in which the employee
31 deposits the actuarial reserve lump sum purchase amount
32 into the plan trust fund in full payment of the service
33 being purchased. The purchase age is the attained age of
34 the employee in years and completed months as of the first
35 day of the purchase month.

36 (c) Members who are eligible to receive credited service
37 for periods of active military duty must substantiate to the
38 retirement board:

39 (1) That the member has served one or more periods of
40 active duty as substantiated by a federal form DD-214;

41 (2) That the member has been honorably discharged
42 from active military duty as substantiated by a federal
43 form DD-214; and

44 (3) That the member is receiving no benefits from any
45 other governmental retirement system, except those
46 benefits provided by federal law, for his or her active
47 military duty.

48 (d) Any service credit allowed under this section may be
49 credited one time only for each municipal police officer or
50 municipal firefighter, regardless of any changes in job title
51 or responsibilities.

52 (e) Notwithstanding any provision of this section to the
53 contrary, contributions, benefits and service credit with
54 respect to qualified military service shall be provided in
55 accordance with Section 414(u) of the Internal Revenue
56 Code. For purposes of this section, "qualified military
57 service" has the same meaning as in Section 414(u) of the
58 Internal Revenue Code. The retirement board is
59 authorized to determine all questions and make all
60 decisions relating to this section and, pursuant to the
61 authority granted to the board in section one, article ten-d,
62 chapter five of this code, may promulgate rules relating to
63 contributions, benefits and service credit to comply with
64 Section 414(u) of the Internal Revenue Code.

65 (f) Any contribution under this section to purchase
66 service for time served in active military duty must satisfy
67 the special limitation rules described in Section 415(n) of
68 the Internal Revenue Code to the extent it is considered
69 permissive service credit, and shall be automatically
70 reduced, limited, or required to be paid over multiple
71 years (consistent with the time limits under this section for
72 making such contributions) if necessary to ensure such
73 compliance. To the extent the purchased service is
74 qualified military service within the meaning of Section
75 414(u) of the Internal Revenue Code, the limitations of
76 Section 415 of the Internal Revenue Code shall be applied
77 to the purchase as described in Section 414(u)(1)(B) of the
78 Internal Revenue Code.

79 (g) The retirement board may propose legislative rules
80 for promulgation in accordance with the provisions of
81 article three, chapter twenty-nine-a of this code to
82 administer the provisions of this section.

83 (h) Notwithstanding the preceding provisions of this
84 section, contributions, benefits and service credit with
85 respect to qualified military service shall be provided in
86 accordance with Section 414(u) of the Internal Revenue
87 Code. For purposes of this section, "qualified military
88 service" has the same meaning as in Section 414(u) of the
89 Internal Revenue Code.

**§8-22A-28. How a municipality or municipal subdivision
becomes a participating public employer; duty
to request referendum on Social Security
coverage.**

1 (a) Subject to section sixteen, article twenty-two of this
2 chapter, any municipality or municipal subdivision
3 employing municipal police officers or firefighters may by
4 a majority of the members of its governing body eligible to
5 vote, elect to become a participating public employer and
6 thereby include its police officers and firefighters in the
7 membership of the plan. The clerk or secretary of each
8 municipality or municipal subdivision electing to become
9 a participating public employer shall certify the
10 determination of the municipality or municipal
11 subdivision by corporate resolution to the Consolidated
12 Public Retirement Board within ten days from and after
13 the vote of the governing body. Separate resolutions are
14 required for municipal police officers and municipal
15 firefighters. Once a municipality or municipal subdivision
16 elects to participate in the plan, the action is final and it
17 may not, at a later date, elect to terminate its participation
18 in the plan.

19 (b) After April 1, 2010, and before July 1, 2010, the
20 participating employers shall jointly submit a plan to the

21 State Auditor, pursuant to section five, article seven,
22 chapter five of this code, to extend Social Security benefits
23 to members of the retirement system.

**§8-22A-29. Effective date; special starting date for benefits;
provisions governing health care benefits for
retirees age fifty to fifty-five.**

1 (a) The effective date of this article is January 1, 2010.
2 No payout of any benefits may be made by the retirement
3 system to any person prior to January 1, 2013, except as
4 provided in subsection (a), section nine of this article.

5 (b) The Director of the Public Employees Insurance
6 Agency shall include in the insurance plan document filed
7 in the office of the Secretary of State as 151. CSR 1
8 provisions governing health insurance benefits for retirees
9 under the plan who are enrolled by their employers in
10 insurance provided by the Public Employees Insurance
11 Agency.

§8-22A-30. Limitation of employer liability.

1 No municipality or municipal subdivision which has
2 timely met all of its obligations under this article is liable
3 for any payments or contributions to the retirement plan
4 which are owed to the plan by another participating
5 employer.

§8-22A-31. Benefits not forfeited if system terminates.

1 If the retirement system is terminated or contributions
2 are completely discontinued, the rights of all members to
3 benefits accrued or contributions made to the date of the
4 termination or discontinuance, to the extent then funded,
5 are not forfeited.

§8-22A-32. Membership retroactive in certain circumstances.

1 Notwithstanding all other provisions relating to this
2 article and article twenty-two of this chapter, any police

3 officer or firefighter hired by a participating public
4 employer on or after June 1, 2009, and before January 1,
5 2010, who received notice at the time of employment that
6 he or she may be placed in a new retirement system
7 created by legislation and who has been enrolled in but
8 received no benefits from a municipal policemen's or
9 firemen's pension and relief fund shall, if permitted by
10 applicable federal law, be enrolled in the Municipal Police
11 Officers and Firefighters Retirement System upon accep-
12 tance by the Consolidated Public Retirement Board of the
13 resolution of the municipality required by section twenty-
14 eight of this article. Employee and employer contributions
15 made by or on behalf of the employee to the municipal
16 pension and relief fund pursuant to article twenty-two of
17 this chapter shall be transferred within sixty days to the
18 retirement system created in this article and the employee
19 subject to the transfer shall receive service credit for time
20 worked while a member of the municipal pension and
21 relief fund.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

1 (a) (1) For the purpose of providing additional revenue
2 for municipal policemen's and firemen's pension and relief
3 funds and the Teachers Retirement System Reserve Fund
4 and for volunteer and part-volunteer fire companies and
5 departments, there is hereby levied and imposed an
6 additional premium tax equal to one percent of taxable
7 premiums for fire insurance and casualty insurance
8 policies. For purposes of this section, casualty insurance
9 does not include insurance on the life of a debtor pursuant
10 to or in connection with a specific loan or other credit
11 transaction or insurance on a debtor to provide indemnity
12 for payments becoming due on a specific loan or other

13 credit transaction while the debtor is disabled as defined
14 in the policy.

15 (2) All moneys collected from this additional tax shall be
16 received by the commissioner and paid by him or her into
17 a special account in the State Treasury, designated the
18 Municipal Pensions and Protection Fund: *Provided*, That
19 on or after January 1, 2010, the commissioner shall pay ten
20 percent of the amount collected to the Teachers Retire-
21 ment System Reserve Fund created in section eighteen,
22 article seven-a, chapter eighteen of this code, twenty-five
23 percent of the amount collected to the Fire Protection
24 Fund created in section thirty-three of this article for
25 allocation by the Treasurer to volunteer and part-volun-
26 teer fire companies and departments and sixty-five
27 percent of the amount collected to the Municipal Pensions
28 and Protection Fund: *Provided, however*, That upon
29 notification by the Municipal Pensions Oversight Board
30 pursuant to the provisions of section eighteen-b, article
31 twenty-two, chapter eight of this code, on or after January
32 1, 2010, or as soon thereafter as the Municipal Pensions
33 Oversight Board is prepared to receive the funds, sixty-
34 five percent of the amount collected by the commissioner
35 shall be deposited in the Municipal Pensions Security
36 Fund created in section eighteen-b, article twenty-two,
37 chapter eight of this code. The net proceeds of this tax
38 after appropriation thereof by the Legislature is distrib-
39 uted in accordance with the provisions of this section,
40 except for distribution from proceeds pursuant to subsec-
41 tion (d), section eighteen-a, article twenty-two, chapter
42 eight of this code.

43 (b) (1) Before the first day of August of each year, the
44 treasurer of each municipality in which a municipal
45 policemen's or firemen's pension and relief fund is estab-
46 lished shall report to the State Treasurer the average
47 monthly number of members who worked at least one
48 hundred hours per month and the average monthly

49 number of retired members of municipal policemen's or
50 firemen's pension and relief fund or the Municipal Police
51 Officers and Firefighters Retirement System during the
52 preceding fiscal year: *Provided*, That beginning in the year
53 2010 and continuing thereafter, the report shall be made
54 to the oversight board created in section eighteen-a, article
55 twenty-two, chapter eight of this code. These reports
56 received by the oversight board shall be provided annually
57 to the State Treasurer by September 1.

58 (2) Before the first day of September of each calendar
59 year, the State Treasurer, or the Municipal Pensions
60 Oversight Board, once in operation, shall allocate and
61 authorize for distribution the revenues in the Municipal
62 Pensions and Protection Fund which were collected during
63 the preceding calendar year for the purposes set forth in
64 this section. Before the first day of September of each
65 calendar year and after the Municipal Pensions Oversight
66 Board has notified the Treasurer and commissioner
67 pursuant to section eighteen-b, article twenty-two,
68 chapter eight of this code, the Municipal Pensions Over-
69 sight Board shall allocate and authorize for distribution
70 the revenues in the Municipal Pensions Security Fund
71 which were collected during the preceding calendar year
72 for the purposes set forth in this section. In any year the
73 actuarial report required by section twenty, article
74 twenty-two, chapter eight of this code indicates no
75 actuarial deficiency in the municipal policemen's or
76 firemen's pension and relief fund, no revenues may be
77 allocated from the Municipal Pensions and Protection
78 Fund or the Municipal Pensions Security Fund to that
79 fund. The revenues from the Municipal Pensions and
80 Protection Fund shall then be allocated to all other
81 pension and relief funds which have an actuarial defi-
82 ciency.

83 (3) The moneys, and the interest earned thereon, in the
84 Municipal Pensions and Protection Fund allocated to

85 volunteer and part-volunteer fire companies and depart-
86 ments shall be allocated and distributed quarterly to the
87 volunteer fire companies and departments. Before each
88 distribution date, the State Fire Marshal shall report to
89 the State Treasurer the names and addresses of all volun-
90 teer and part-volunteer fire companies and departments
91 within the state which meet the eligibility requirements
92 established in section eight-a, article fifteen, chapter eight
93 of this code.

94 (c)(1) Each municipal pension and relief fund shall have
95 allocated and authorized for distribution a pro rata share
96 of the revenues allocated to municipal policemen's and
97 firemen's pension and relief funds based on the corre-
98 sponding municipality's average monthly number of police
99 officers and firefighters who worked at least one hundred
100 hours per month during the preceding fiscal year. On and
101 after July 1, 1997, from the growth in any moneys col-
102 lected pursuant to the tax imposed by this section and
103 interest thereon there shall be allocated and authorized for
104 distribution to each municipal pension and relief fund, a
105 pro rata share of the revenues allocated to municipal
106 policemen's and firemen's pension and relief funds based
107 on the corresponding municipality's average number of
108 police officers and firefighters who worked at least one
109 hundred hours per month and average monthly number of
110 retired police officers and firefighters. For the purposes of
111 this subsection, the growth in moneys collected from the
112 tax collected pursuant to this section is determined by
113 subtracting the amount of the tax collected during the
114 fiscal year ending June 30, 1996, from the tax collected
115 during the fiscal year for which the allocation is being
116 made and interest thereon. All moneys received by
117 municipal pension and relief funds under this section may
118 be expended only for those purposes described in sections
119 sixteen through twenty-eight, inclusive, article twenty-
120 two, chapter eight of this code.

121 (2) Each volunteer fire company or department shall
122 receive an equal share of the revenues allocated for
123 volunteer and part-volunteer fire companies and depart-
124 ments.

125 (3) In addition to the share allocated and distributed in
126 accordance with subdivision (1) of this subsection, each
127 municipal fire department composed of full-time paid
128 members and volunteers and part-volunteer fire compa-
129 nies and departments shall receive a share equal to the
130 share distributed to volunteer fire companies under
131 subdivision (2) of this subsection reduced by an amount
132 equal to the share multiplied by the ratio of the number of
133 full-time paid fire department members who are also
134 members of a municipal firemen's pension and relief fund
135 or the Municipal Police Officers and Firefighters Retire-
136 ment System to the total number of members of the fire
137 department.

138 (d) The allocation and distribution of revenues provided
139 for in this section are subject to the provisions of section
140 twenty, article twenty-two, and sections eight-a and eight-
141 b, article fifteen, chapter eight of this code.

ARTICLE 12C. SURPLUS LINE.

§33-12C-7. Surplus lines tax.

1 (a) In addition to the full amount of gross premiums
2 charged by the insurer for the insurance, every person
3 licensed pursuant to section eight of this article shall
4 collect and pay to the commissioner a sum equal to four
5 percent of the gross premiums and gross fees charged, less
6 any return premiums, for surplus lines insurance provided
7 by the licensee pursuant to the license. Where the insur-
8 ance covers properties, risks or exposures located or to be
9 performed both in and out of this state, the sum payable
10 shall be computed on that portion of the gross premiums
11 allocated to this state pursuant to subsection (g) of this

12 section less the amount of gross premiums allocated to this
13 state and returned to the insured due to cancellation of
14 policy. The tax on any portion of the premium unearned
15 at termination of insurance having been credited by the
16 state to the licensee shall be returned to the policyholder
17 directly by the surplus lines licensee or through the
18 producing broker, if any.

19 (b) The individual insurance producer may not:

20 (1) Pay directly or indirectly the tax or any portion
21 thereof, either as an inducement to the policyholder to
22 purchase the insurance or for any other reason; or

23 (2) Rebate all or part of the tax or the surplus lines
24 licensee's commission, either as an inducement to the
25 policyholder to purchase the insurance or for any reason.

26 (c) The surplus lines licensee may charge the prospective
27 policyholder a fee for the cost of underwriting, issuing,
28 processing, inspecting, service or auditing the policy for
29 placement with the surplus lines insurer if:

30 (1) The service is required by the surplus lines insurer;

31 (2) The service is actually provided by the individual
32 insurance producer or the cost of the service is actually
33 incurred by the surplus lines licensee; and

34 (3) The provision or cost of the service is reasonable,
35 documented and verifiable.

36 (d) The surplus lines licensee shall make a clear and
37 conspicuous written disclosure to the policyholder of:

38 (1) The total amount of premium for the policy;

39 (2) Any fee charged;

40 (3) The total amount of any fee charged; and

41 (4) The total amount of tax on the premium and fee.

42 (e) The clear and conspicuous written disclosure required
43 by subdivision (4) of this subsection is subject to the
44 record maintenance requirements of section eight of this
45 article.

46 (f) This tax is imposed for the purpose of providing
47 additional revenue for municipal policemen's and fire-
48 men's pension and relief funds and additional revenue for
49 volunteer and part-volunteer fire companies and depart-
50 ments. This tax is required to be paid and remitted, on a
51 calendar year basis and in quarterly estimated install-
52 ments due and payable on or before the twenty-fifth day
53 of the month succeeding the close of the quarter in which
54 they accrued, except for the fourth quarter, in respect of
55 which taxes shall be due and payable and final computa-
56 tion of actual total liability for the prior calendar year
57 shall be made, less credit for the three quarterly estimated
58 payments prior made, and filed with the annual return to
59 be made on or before March 1 of the succeeding year.
60 Provisions of this chapter relating to the levy, imposition
61 and collection of the regular premium tax are applicable
62 to the levy, imposition and collection of this tax to the
63 extent that the provisions are not in conflict with this
64 section.

65 All taxes remitted to the commissioner pursuant to this
66 subsection shall be paid by him or her into a special
67 account in the State Treasury, designated Municipal
68 Pensions and Protection Fund, or pursuant to section
69 eighteen-b, article twenty-two, chapter eight of this code,
70 the Municipal Pensions Security Fund, and after appropri-
71 ation by the Legislature, shall be distributed in accordance
72 with the provisions of subsection (c), section fourteen-d,
73 article three of this chapter. The surplus lines licensee
74 shall return to the policyholder the tax on any unearned
75 portion of the premium returned to the policyholder
76 because of cancellation of policy.

77 (g) If a surplus lines policy procured through a surplus
78 lines licensee covers properties, risks or exposures only
79 partially located or to be performed in this state, the tax
80 due shall be computed on the portions of the premiums
81 which are attributable to the properties, risks or exposures
82 located or to be performed in this state. In determining
83 the amount of premiums taxable in this state, all premi-
84 ums written, procured or received in this state shall be
85 considered written on properties, risks or exposures
86 located or to be performed in this state, except premiums
87 which are properly allocated or apportioned and reported
88 as taxable premiums of a reciprocal state. In no event
89 shall the tax payable to this state be less than the tax due
90 pursuant to subsection (h) of this section; provided,
91 however, in the event that the amount of tax due under
92 this provision is less than \$50 in any jurisdiction, it shall
93 be payable in the jurisdiction in which the affidavit
94 required in section eleven is filed. The commissioner may,
95 at least annually furnish to the commissioner of a recipro-
96 cal state, as defined in subsection (q), section three of this
97 article, a copy of all filings reporting an allocation of taxes
98 as required by this subsection.

99 (h) In determining the amount of gross premiums taxable
100 in this state for a placement of surplus lines insurance
101 covering properties, risks or exposures only partially
102 located or to be performed in this state, the tax due shall
103 be computed on the portions of the premiums which are
104 attributable to properties, risks or exposures located or to
105 be performed in this state and which relates to the kinds
106 of insurance being placed as determined by reference to
107 the model allocation schedule and reporting form.

108 (1) If a policy covers more than one classification:

109 (A) For any portion of the coverage identified by a
110 classification on the allocation schedule, the tax shall be

111 computed by using the allocation schedule for the corre-
112 sponding portion of the premium;

113 (B) For any portion of the coverage not identified by a
114 classification on the allocation schedule, the tax shall be
115 computed by using an alternative equitable method of
116 allocation for the property or risk;

117 (C) For any portion of the coverage where the premium
118 is indivisible, the tax shall be computed by using the
119 method of allocation which pertains to the classification
120 describing the predominant coverage.

121 (2) If the information provided by the surplus lines
122 licensee is insufficient to substantiate the method of
123 allocation used by the surplus lines licensee, or if the
124 commissioner determines that the licensee's method is
125 incorrect, the commissioner shall determine the equitable
126 and appropriate amount of tax due to this state as follows:

127 (A) By use of the allocation schedule where the risk is
128 appropriately identified in the schedule;

129 (B) Where the allocation schedule does not identify a
130 classification appropriate to the coverage, the commis-
131 sioner may give significant weight to documented evidence
132 of the underwriting bases and other criteria used by the
133 insurer. The commissioner may also consider other
134 available information to the extent sufficient and relevant,
135 including the percentage of the insured's physical assets in
136 this state, the percentage of the insured's sales in this
137 state, the percentage of income or resources derived from
138 this state, and the amount of premium tax paid to another
139 jurisdiction for the policy.

140 (i) Collection of tax.

141 If the tax owed by a surplus lines licensee under this
142 section has been collected and is not paid within the time

143 prescribed, the same shall be recoverable in a suit brought
144 by the commissioner against the surplus lines licensee.
145 The commissioner may charge interest for any unpaid tax,
146 fee, financial assessment or penalty, or portion thereof:
147 *Provided*, That interest may not be charged on interest.
148 Interest shall be calculated using the annual rates which
149 are established by the Tax Commissioner pursuant to
150 section seventeen-a, article ten, chapter eleven of this code
151 and shall accrue daily.

A handwritten signature in dark ink, appearing to be "R. M. ...", is located at the bottom of the page. The signature is written in a cursive style with a large loop at the end.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *31st*
Day of *December*, 2009.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

DEC 2 2009

Time 4:20 pm