

Senate Bill No. 222

(By Senator Foster)

[Introduced January 20, 2011; referred to
the Committee on Pensions; and then to
the Committee on Government Organization.]

A BILL to amend and reenact §8-22A-12 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Municipal Police Officers and Firefighters Retirement System; and ensuring the continued qualification of the system under federal tax laws by adopting an amendment to the system required by Section 824 of the Pension Protection Act of 2006 (P.L. 109-280) permitting direct rollovers to Roth IRAs.

Be it enacted by the Legislature of West Virginia:

That §8-22A-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

§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 of
5 an eligible rollover distribution paid directly to an eligible
6 retirement plan specified by the distributee in a direct
7 rollover. For purposes of this section, the following defini-
8 tions apply:

9 (1) "Eligible rollover distribution" means any distribution
10 of all or any portion of the balance to the credit of the
11 distributee, except that an eligible rollover distribution does
12 not include any of the following: (A) Any distribution that is
13 one of a series of substantially equal periodic payments not
14 less frequently than annually made for the life or life
15 expectancy of the distributee or the joint lives or the joint
16 life expectancies of the distributee and the distributee's
17 designated beneficiary, or for a specified period of ten years
18 or more; (B) any distribution to the extent the distribution is
19 required under Section 401(a)(9) of the Internal Revenue
20 Code; and (C) any hardship distribution described in Section
21 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. A portion of
22 a distribution shall not fail to be an eligible rollover distri-

23 bution merely because the portion consists of after-tax
24 employee contributions which are not includable in gross
25 income. However, this portion may be paid only to an
26 individual retirement account or annuity described in
27 Section 408(a) or (b) of the Internal Revenue Code, or to a
28 qualified trust described in Section 401(a) or to an annuity
29 contract described in Section 403(a) or 403(b) of the Internal
30 Revenue Code that agrees to separately account for amounts
31 transferred (including interest or earnings thereon), includ-
32 ing separately accounting for the portion of the distribution
33 which is includable in gross income and the portion of the
34 distribution which is not includable, or to a Roth IRA
35 described in Section 408A of the Internal Revenue Code.

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

45 annuity plan described in Section 403(a) of the Internal
46 Revenue Code, an annuity contract described in Section
47 403(b) of the Internal Revenue Code, ~~or~~ a qualified plan
48 described in Section 401(a) of the Internal Revenue Code that
49 accepts the distributee's eligible rollover distribution, or a
50 Roth IRA described in Section 408A of the Internal Revenue
51 Code: Provided, That in the case of an eligible rollover
52 distribution to a designated beneficiary (other than a
53 surviving spouse) as ~~such~~ the term is defined in Section
54 402(c)(11) of the Internal Revenue Code, an eligible retire-
55 ment plan is limited to an individual retirement account or
56 individual retirement annuity which meets the conditions of
57 Section 402(c)(11) of the Internal Revenue Code.

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

67 term is defined in Section 402(c)(11) of the Internal Revenue
68 Code.

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

(NOTE: The purpose of this bill is to amend the West Virginia Municipal Police Officers and Firefighters Retirement System (the “Plan”) to ensure the plan’s continued qualified status under federal tax law by making an amendment necessary to comply with Section 824 of the Pension Protection Act of 2006 (P.L. 109-280) (“PPA”). Section 824 of the PPA requires that the Plan permit eligible rollover distributions to a Roth IRA described in Section 408A of the Internal Revenue Code. This bill amends the direct rollover provision of the plan by adding Roth IRAs to the definition of “eligible retirement plan” and amending the definition of “eligible rollover distribution” to provide that distributions of after-tax amounts may be rolled over to a Roth IRA.

Strike-throughs indicate language that would be stricken from present law, and underscoring indicates new language that would be added.)