

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 4489**

5 (By Delegates Pethtel, Duke, Guthrie, Canterbury, Stowers and
6 Givens)
7

8 [Passed March 9, 2012; in effect ninety days from passage.]
9

10 A BILL to amend and reenact §8-22-18a, §8-22-19a and §8-22-25 of
11 the Code of West Virginia, 1931, as amended; and to amend said
12 code by adding thereto a new section, designated §8-22-18c,
13 all relating to municipal policemen and firemen pensions;
14 providing powers and duties of the West Virginia Municipal
15 Oversight Board; requiring certain notice of lawsuit to the
16 West Virginia Municipal Oversight Board; limiting certain
17 court orders under certain circumstances; clarifying refunds
18 to members; and clarifying circumstances in which a member may
19 retire when the member's service has been interrupted by duty
20 with the Armed Forces of the United States.

21 *Be it enacted by the Legislature of West Virginia:*

22 That §8-22-18a, §8-22-19a and §8-22-25 of the Code of West
23 Virginia, 1931, as amended, be amended and reenacted; and that said
24 code be amended by adding thereto a new section, designated §8-22-
25 18c, all to read as follows:

26 **ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION**
27 **AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF**
28 **FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS**
29 **SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND**

1 **SEWERAGE SYSTEM.**

2 **§8-22-18a. West Virginia Municipal Pensions Oversight Board**
3 **created; powers and duties; management;**
4 **composition; terms; quorum; expenses; reports.**

5 (a) (1) The West Virginia Municipal Pensions Oversight Board,
6 established in 2009, is hereby continued as a public body corporate
7 for the purpose of monitoring and improving the performance of
8 municipal policemen's and firemen's pension and relief funds to
9 assure prudent administration, investment and management of the
10 funds. Management of the oversight board shall be vested solely in
11 the members of the oversight board. Duties of the oversight board
12 shall include, but not be limited to, assisting municipal boards of
13 trustees in performing their duties, assuring the funds' compliance
14 with applicable laws, providing for actuarial studies, distributing
15 tax revenues to the funds, initiating or joining legal actions on
16 behalf of active or retired pension fund members or municipal
17 boards of trustees to protect interests of the members in the
18 funds, and taking other actions as may be reasonably necessary to
19 provide for the security and fiscal integrity of the pension funds.
20 The oversight board's authority to initiate legal action does not
21 preempt the authority of municipalities; municipal policemen's and
22 firemen's boards of trustees; or pension fund active members,
23 beneficiaries or others to initiate legal action to protect
24 interests in the funds. Further, the oversight board may, in its
25 discretion, investigate the actions or practices of municipal
26 boards of trustees or of their administrators or employees that, in
27 the oversight board's judgment, have the potential to threaten the
28 security or fiscal integrity of the pension funds and the boards of

1 trustees, administrators and employees shall cooperate with the
2 oversight board in any investigation. Regardless of whether it has
3 previously conducted an investigation, the oversight board may
4 initiate or intervene in legal actions to challenge or prevent any
5 action or practice which, in the oversight board's judgment has the
6 potential to threaten the security or fiscal integrity of the
7 pension funds. Establishment of the oversight board does not
8 relieve the municipal funds' boards of trustees from their
9 fiduciary and other duties to the funds, nor does it create any
10 liability for the funds on the part of the state. The failure of
11 the oversight board to investigate or initiate legal actions
12 regarding the actions or practices of municipal boards of trustees,
13 their administrators or employees does not render the oversight
14 board liable for the actions or practices. Members and employees
15 of the oversight board are not liable personally, either jointly or
16 severally, for debts or obligations of the municipal pension and
17 relief funds. Except as otherwise provided herein, members and
18 employees of the oversight board have a fiduciary duty toward the
19 municipal pension and relief funds and are liable for malfeasance
20 or gross negligence. Employees of the oversight board are
21 classified-exempt state employees.

22 (2) The oversight board shall consist of nine members. The
23 executive director of the state's Investment Management Board and
24 the executive director of the state's Consolidated Public
25 Retirement Board, or their designees, shall serve as voting ex
26 officio members. The other seven members shall be citizens of the
27 state who have been qualified electors of the state for a period of
28 at least one year next preceding their appointment and shall be as

1 follows: An active or retired member of a Municipal Policemen's
2 Pension and Relief Fund chosen from a list of three persons
3 submitted to the Governor by the state's largest professional
4 municipal police officers organization, an active or retired member
5 of a Municipal Firemen's Pension and Relief Fund chosen from a list
6 of three persons submitted to the Governor by the state's largest
7 professional firefighters organization, an attorney experienced in
8 finance and investment matters related to pensions management, two
9 persons experienced in pension funds management, one person who is
10 a certified public accountant experienced in auditing and one
11 person chosen from a list of three persons submitted to the
12 Governor by the state's largest association of municipalities.

13 (3) On the effective date of the enactment of this section as
14 amended during the fourth extraordinary session of the Legislature
15 in 2009, the Governor shall forthwith appoint the members, with the
16 advice and consent of the Senate. The Governor may remove any
17 member from the oversight board for neglect of duty, incompetency
18 or official misconduct.

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

20 (1) Enter into contracts, to sue and be sued, to implead and
21 be impleaded;

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

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

26 (4) Make, amend and repeal bylaws, rules and procedures
27 consistent with the provisions of this article and chapter thirty-
28 three of this code;

1 (5) Notwithstanding any other provision of law, retain or
2 employ, fix compensation, prescribe duties and pay expenses of
3 legal, accounting, financial, investment, management and other
4 staff, advisors or consultants as it considers necessary, including
5 the hiring of legal counsel and actuary; and

6 (6) Do all things necessary and appropriate to implement and
7 operate the board in performance of its duties. Expenses shall be
8 paid from the moneys in the Municipal Pensions Security Fund
9 created in section eighteen-b of this article or, prior to the
10 transition provided in section eighteen-b of this article, the
11 Municipal Pensions and Protection Fund: *Provided*, That the board
12 may request special appropriation for special projects. The
13 oversight board is exempt from provisions of article three, chapter
14 five-a of this code for the purpose of contracting for actuarial
15 services, including the services of a reviewing actuary.

16 (c) Except for ex officio members, the terms of oversight
17 board members shall be staggered initially from January 1, 2010.
18 The Governor shall appoint initially one member for a term of one
19 year, one member for a term of two years, two members for terms of
20 three years, one member for a term of four years and two members
21 for terms of five years. Subsequent appointments shall be for
22 terms of five years. A member serving two full consecutive terms
23 may not be reappointed for one year after completion of his or her
24 second full-term. Each member shall serve until that member's
25 successor is appointed and qualified. Any member may be removed by
26 the Governor in case of incompetency, neglect of duty, gross
27 immorality or malfeasance in office. Any vacancy on the oversight
28 board shall be filled by appointment by the Governor for the

1 balance of the unexpired term.

2 (d) A majority of the full authorized membership of the
3 oversight board constitutes a quorum. The board shall meet at
4 least quarterly each year, but more often as duties require, at
5 times and places that it determines. The oversight board shall
6 elect a chairperson and a vice chairperson from their membership
7 who shall serve for terms of two years and shall select annually a
8 secretary/treasurer who may be either a member or employee of the
9 board. The oversight board shall employ an executive director and
10 other staff as needed and shall fix their duties and compensation.
11 The compensation of the executive director shall be subject to
12 approval of the Governor. Except for any special appropriation as
13 provided in subsection (b) of this section, all personnel and other
14 expenses of the board shall be paid from revenue collected and
15 allocated for municipal policemen's or municipal firemen's pension
16 and relief funds pursuant to section fourteen-d, article three,
17 chapter thirty-three of this code and distributed through the
18 Municipal Pensions and Protection Fund or the Municipal Pensions
19 Security Fund created in section eighteen-b of this article.
20 Expenses during the initial year of the board's operation shall be
21 from proceeds of the allocation for the municipal pensions and
22 relief funds. Expenditures in years thereafter shall be by
23 appropriation from the Municipal Pensions Security Fund. Money
24 allocated for municipal policemen's and firemen's pension and
25 relief funds to be distributed from the Municipal Pensions and
26 Protection Fund or the Municipal Pensions Security Fund shall be
27 first allocated to pay expenses of the oversight board and the
28 remainder in the fund distributed among the various municipal

1 pension and relief funds as provided in section fourteen-d, article
2 three, chapter thirty-three of this code. The board is exempt from
3 the provisions of sections seven and eleven, article three, chapter
4 twelve of this code relating to compensation and expenses of
5 members, including travel expenses.

6 (e) Members of the oversight board shall serve the board
7 without compensation for their services: *Provided*, That no public
8 employee member may suffer any loss of salary or wages on account
9 of his or her service on the board. Each member of the board shall
10 be reimbursed, on approval of the board, for any necessary expenses
11 actually incurred by the member in carrying out his or her duties.
12 All reimbursement of expenses shall be paid out of the Municipal
13 Pensions Security Fund.

14 (f) The board may contract with other state boards or state
15 agencies to share offices, personnel and other administrative
16 functions as authorized under this article: *Provided*, That no
17 provision of this subsection may be construed to authorize the
18 board to contract with other state boards or state agencies to
19 otherwise perform the duties or exercise the responsibilities
20 imposed on the board by this code.

21 (g) The board shall propose rules for legislative approval in
22 accordance with the provisions of article three, chapter twenty-
23 nine-a of this code as necessary to implement the provisions of
24 this article, and may initially promulgate emergency rules pursuant
25 to the provisions of section fifteen, article three, chapter
26 twenty-nine-a of this code.

27 (h) The oversight board shall report annually to the
28 Legislature's Joint Committee on Government and Finance and the

1 Joint Committee on Pensions and Retirement concerning the status of
2 municipal policemen's and firemen's pension and relief funds and
3 shall present recommendations for strengthening and protecting the
4 funds and the benefit interests of the funds' members.

5 (i) The oversight board shall cooperate with the West Virginia
6 Investment Management Board and the board of Treasury Investments
7 to educate members of the local pension boards of trustees on the
8 services offered by the two state investment boards. No later than
9 October 31, 2013, the board shall report to the Joint Committee on
10 Government and Finance and the Joint Committee on Pensions and
11 Retirement a detailed comparison of returns on long-term
12 investments of moneys held by or allocated to municipal pension and
13 relief funds managed by the West Virginia Investment Management
14 Board and those managed by others than the Investment Management
15 Board. The oversight board shall also report at that time on
16 short-term investment returns by local pension boards using the
17 West Virginia Board of Treasury Investments compared to short-term
18 investment returns by those local boards of trustees not using the
19 board of Treasury Investments.

20 (j) The oversight board shall establish minimum requirements
21 for training to be completed by each member of the board of
22 trustees of a Municipal Policemen's or Firemen's Pension and Relief
23 Fund. The requirements should include, but not be limited to,
24 training in ethics, fiduciary duty and investment responsibilities.

25 **§8-22-18c. Notice of legal actions by or against municipal**
26 **policemen's and firemen's pension funds.**

27 In any legal action in which a municipal policemen's or
28 firemen's pension and relief fund, or the fund's board of trustees,

1 employee or administrator, is named as a party, the plaintiff or
2 petitioner shall serve a copy of the complaint or petition upon the
3 oversight board by certified mail, return receipt requested, within
4 seven days of filing the legal action. Until proof of service is
5 filed with the clerk of the court in which the action was filed,
6 and for sixty days after the filing of the proof of service, no
7 order may be entered by the court that directly or indirectly
8 requires the expenditure or other disposition of pension funds or
9 that determines the eligibility or entitlement of any member to any
10 pension benefit payable from the pension and relief fund: *Provided,*
11 That the court may enter such temporary or interim orders as may be
12 needed to preserve and protect the assets of the fund. In any legal
13 action involving a municipal policemen's or firemen's pension and
14 relief fund the oversight board is entitled to intervene for the
15 purpose of preserving the security or fiscal integrity of the
16 pension fund.

17 **§8-22-19a. Refunds of member contributions.**

18 After January 1, 2010, any member of a paid police department
19 or fire department who is removed or discharged or who before
20 retirement on any retirement pension or disability pension severs
21 his or her connection with said department, whether or not
22 consecutive, shall, upon request, be refunded all pension and
23 relief fund deductions made from the member's salary or
24 compensation, but without interest from the fund. The refund shall
25 come from the accounts which originally received the member
26 deductions. For municipalities using the conservation method of
27 funding, the member contributions are to be refunded from both the
28 Municipal Pension and Relief Fund and the city benefit account, in

1 the exact percentages that were initially deposited to the
2 respective accounts. Any member who receives a refund and
3 subsequently wishes to reenter his or her department, shall not be
4 allowed to reenter the department unless the police officer or fire
5 fighter repays to the pension and relief fund all sums refunded to
6 him or her in a lump sum at the date of reentry, or by monthly
7 payroll deductions within thirty-six months from the date he or she
8 reenters the department, with interest at the rate of eight percent
9 per annum. In the event such refund is made prior to January 1,
10 1981, and such member subsequently reenters the department such
11 police officer or firefighter shall be allowed membership in such
12 pension and relief fund; however, no credit may be allowed such
13 member for any former service, unless such member repays to the
14 pension and relief fund all sums refunded to the member within one
15 year from the date the member reenters the department with interest
16 at the rate of eight percent per annum: *Provided*, That for such
17 member who receives such refund prior to January 1, 1980, interest
18 may not be charged for more than three years. Any probationary
19 member of a paid police or fire department who is not given an
20 absolute appointment at the end of the member's probationary period
21 shall, upon request, be refunded all pension and relief fund
22 deductions made from the member's salary or compensation, but
23 without interest. Any member contribution made in fiscal years
24 beginning on July 1, 1981 and thereafter by any members of such
25 fund, which is in excess of the percentages, required in section
26 nineteen of this article of such member's salary or compensation as
27 defined in section sixteen of this article shall be refunded with
28 eight percent interest to such member upon completion of the

1 calculation of the member's retirement benefit.

2 **§8-22-25. Retirement pensions.**

3 (a) Any member of a paid police or fire department who is
4 entitled to a retirement pension hereunder, and who has been in the
5 honorable service of such department for twenty years, may, upon
6 written application to the board of trustees, be retired from all
7 service in such department without medical examination or
8 disability. On such retirement the board of trustees shall
9 authorize the payment of annual retirement pension benefits
10 commencing upon the member's retirement or upon the member's
11 attaining the age of fifty years, whichever is later, payable in
12 twelve monthly installments for each year of the remainder of the
13 member's life, in an amount equal to sixty percent of such member's
14 average annual salary or compensation received during the three
15 twelve-consecutive-month periods of employment with such department
16 in which such member received the member's highest salary or
17 compensation while a member of the department, or an amount of \$500
18 per month, whichever is greater.

19 (b) Any member of any such department who is entitled to a
20 retirement pension under the provisions of subsection (a) of this
21 section and who has been in the honorable service of such
22 department for more than twenty years at the time of the member's
23 retirement shall receive, in addition to the sixty percent
24 authorized in said subsection (a):

25 (1) Two additional percent, to be added to the sixty percent
26 for each of the first five additional years of service completed at
27 the time of retirement in excess of twenty years of service up to
28 a maximum of seventy percent; and

1 (2) One additional percent, to be added to such maximum of
2 seventy percent, for each of the first five additional years of
3 service completed at the time of retirement in excess of twenty-
4 five years of service up to a maximum of seventy-five percent.

5 The total additional credit provided for in this subsection
6 may not exceed fifteen additional percent.

7 (c) Any member of any such department whose service has been
8 interrupted by duty with the Armed Forces of the United States as
9 provided in section twenty-seven of this article prior to July 1,
10 1981, shall be eligible for retirement pension benefits immediately
11 upon retirement, regardless of the member's age, if the member
12 shall otherwise be eligible for such retirement pension benefits.
13 In no event are provisions of this subsection to be interpreted to
14 permit retirement before age 50 unless the interruption of the
15 member's service by duty with the Armed Forces of the United States
16 actually occurred before July 1, 1981. The amendment made to this
17 subsection during the 2012 Regular Session of the Legislature is
18 not for the purpose of changing the existing law regarding benefits
19 provided to veterans for military service prior to July 1, 1981,
20 but to further clarify that the provisions of this section and any
21 previous enactments of this section do not make a member eligible
22 for retirement before age 50 for a member's service with the Armed
23 Forces of the United States on or after July 1, 1981.

24 Any member or previously retired member of any such department
25 who has served in active duty with the Armed Forces of the United
26 States as described in section twenty-seven of this article,
27 whether prior to or subsequent to becoming a member of a paid
28 police or fire department covered by the provisions of this

1 article, shall receive, in addition to the sixty percent authorized
2 in subsection (a) of this section and the additional percent credit
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4
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6 authorized in subsection (b) of this section, one additional
7 percent for each year so served in active military duty, up to a
8 maximum of four additional percent. In no event, however, may the
9 total benefit granted to any member exceed seventy-five percent of
10 the member's annual average salary calculated in accordance with
11 subsection (a) of this section.

12 (d) Any member of a paid police or fire department shall be
13 retired at the age of sixty-five years in the manner provided in
14 this subsection. When a member of the paid police or fire
15 department reaches the age of sixty-five years, the said board of
16 trustees shall notify the mayor of this fact, within thirty days of
17 such member's sixty-fifth birthday. The mayor shall cause such
18 sixty-five-year-old member of the paid police or fire department to
19 retire within a period of not more than thirty additional days.
20 Upon retirement under the provisions of this subsection, such
21 member shall receive retirement pension benefits payable in twelve
22 monthly installments for each year of the remainder of the member's
23 life in an amount equal to sixty percent of such member's average
24 annual salary or compensation received during the three twelve-
25 consecutive-month periods of employment with such department in
26 which such member received the member's highest salary or
27 compensation while a member of the department, or an amount of \$500
28 per month, whichever is greater. If such member has been employed

1 in said department for more than twenty years, the provisions of
2 subsection (b) of this section shall apply.

3 (e) It shall be the duty of each member of a paid police or
4 fire department at the time a fund is hereafter established to
5 furnish the necessary proof of the member's date of birth to the
6 said board of trustees, as specified in section twenty-three of
7 this article, within a reasonable length of time, said length of
8 time to be determined by the said board of trustees. Then the
9 board of trustees and the mayor shall proceed to act in the manner
10 provided in subsection (d) of this section and shall cause all
11 members of the paid police or fire department who are over the age
12 of sixty-five years to retire in not less than sixty days from the
13 date the fund is established. Upon retirement under the provisions
14 of this subsection (e), such member, whether the member has been
15 employed in said department for twenty years or not, shall receive
16 retirement pension benefits payable in twelve monthly installments
17 for each year of the remainder of the member's life in an amount
18 equal to sixty percent of such member's average annual salary or
19 compensation received during the three twelve-consecutive-month
20 periods of employment with such department in which such member
21 received the member's highest salary or compensation while a member
22 of the department, or an amount of \$500 per month, whichever is
23 greater. If such member has been employed in said department for
24 more than twenty years, the provisions of subsection (b) of this
25 section shall apply.