

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 634**

4 (By Senator Foster)

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6 [Originating in the Committee on Finance;  
7 reported February 27, 2012.]

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9  
10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new section, designated §8-13-13a; and to  
12 amend and reenact §8-22-20 of said code, all relating to  
13 authorizing certain municipalities with policemen's pension  
14 and relief funds or firemen's pension and relief funds to  
15 impose by ordinance a limited public safety assessment fee to  
16 be used to reduce actuarially accrued liabilities of municipal  
17 policemen's or firemen's pension and relief funds; and minimum  
18 standards for annual municipal contributions to the pension  
19 and relief funds.

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

21 That the Code of West Virginia, 1931, as amended, be amended  
22 by adding thereto a new section, designated §8-13-13a; and that §8-  
23 22-20 of said code be amended and reenacted, all to read as  
24 follows:

25 **ARTICLE 13. TAXATION AND FINANCE.**

1 **§8-13-13a. Special public safety assessments for reduction of**  
2 **unfunded liabilities of municipal policemen's and**  
3 **firemen's pension and relief funds.**

4 (a) Notwithstanding any charter provisions to the contrary,  
5 any municipality which participates in a policemen's pension and  
6 relief fund or a firemen's pension and relief fund, pursuant to  
7 article twenty-two of this chapter, and has adopted the standard,  
8 optional or conservation method of financing those pension plans as  
9 provided in section twenty, article twenty-two of this chapter, may  
10 provide by ordinance for a public safety assessment fee, the  
11 revenues from which shall be dedicated to reducing any unfunded  
12 actuarial liability of a policemen's or firemen's pension and  
13 relief fund. The assessment shall be based on the square footage of  
14 structures, shall not exceed an annual assessment of two cents per  
15 square foot, and shall be for the purpose of reducing the unfunded  
16 liability of a policemen's or firemen's pension and relief fund.

17 (b) Any municipality which has selected the conservation  
18 method of financing its municipal policemen's or firemen's pension  
19 and relief fund, as authorized in subsection (f), section twenty,  
20 article twenty-two of this chapter, shall dedicate any proceeds  
21 from the assessment authorized in this section along with any  
22 matching state funds, to the trust of either the policemen's or  
23 firemen's pension fund, or allocate the proceeds in a manner chosen  
24 by the municipality between the plan trusts, to remain in the trust  
25 or trusts and accumulate investment return as provided in

1 subsection (f), section twenty, article twenty-two of this chapter.

2 (c) Any municipality which has selected the standard or  
3 optional method of financing its municipal policemen's or firemen's  
4 pension and relief fund, as authorized in section twenty, article  
5 twenty-two of this chapter, shall dedicate any proceeds from the  
6 assessment authorized in this section to either of the pension and  
7 relief funds or allocate the proceeds in a manner chosen by the  
8 municipality between the plan trusts. The payments into the plan  
9 trusts from assessment proceeds are to be treated as additional  
10 payments and shall not be included as another income source toward  
11 meeting the minimum standard for annual municipality contributions  
12 as established in subsections (c)(1) or (e)(2), section twenty,  
13 article twenty-two of this chapter, as applicable.

14 (d) A municipality does not have a lien on any property as  
15 security for payments due under subsection (a) of this section  
16 except as provided in subsection (e) of this section.

17 (e) A municipality may enact an ordinance, pursuant to this  
18 section, permitting it to file a lien on real property located  
19 within the municipal corporate limits for unpaid and delinquent  
20 public safety assessment fees. The ordinance shall provide an  
21 administrative procedure for the municipality's assessment and  
22 collection of the fees. The administrative procedure shall require  
23 that, before any lien is filed, the municipality shall give notice  
24 to the property owner, by certified mail, return receipt requested,  
25 and that the municipality shall file the lien unless the  
26 delinquency is paid by a date stated in the notice, which must be

1 no less than ninety days from the date the notice is mailed. The  
2 administrative procedure shall include the right to appeal to the  
3 circuit court of the county in which the real property is located.  
4 The circuit court shall consider the appeal under its general  
5 authority, including, but not limited to, subsection (f), section  
6 two, article two of chapter fifty-one of this code.

7 (f) Notwithstanding the provisions of section four, article  
8 eleven of this chapter, any ordinance enacted or substantially  
9 amended under the provisions of this section shall be published as  
10 a Class II legal advertisement in compliance with the provisions of  
11 article three, chapter fifty-nine of this code. The publication  
12 area for the publication is the municipality.

13 (g) In the event thirty percent of the qualified voters of the  
14 municipality, by petition duly signed by them in their own  
15 handwriting and filed with the recorder of the municipality within  
16 forty-five days after the expiration of the publication, protest  
17 against the ordinance as enacted or amended, the ordinance shall  
18 not become effective until it is ratified by a majority of the  
19 legal votes cast by the qualified voters of the municipality at a  
20 regular municipal election or special municipal election, as  
21 directed by the governing body. Voting may not take place until  
22 after notice of the submission is given by publication as provided  
23 in subsection (f) of this section.

24 (h) The powers and authority granted to municipalities and to  
25 the governing bodies of municipalities in this section are in  
26 addition and supplemental to the powers and authority named in any

1 charters of the municipalities.

2 **ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION**  
3 **AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF**  
4 **FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS**  
5 **SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND**  
6 **SEWERAGE SYSTEM.**

7 **§8-22-20. Actuary; actuarial valuation report; minimum standards**  
8 **for annual municipality contributions to the fund;**  
9 **definitions; actuarial review and audit.**

10 (a) The West Virginia Municipal Pensions Oversight Board shall  
11 contract with or employ a qualified actuary to annually prepare an  
12 actuarial valuation report on each pension and relief fund. The  
13 selection of contract vendors to provide actuarial services,⊕  
14 including the reviewing actuary as provided in subsection (c) of  
15 this section, shall be by competitive bid process but is  
16 specifically exempt from purchasing provisions of article three,  
17 chapter five-a of this code. The expense of the actuarial report  
18 shall be paid from moneys in the Municipal Pensions Security Fund.  
19 Uses of the actuarial valuations from the qualified actuary shall  
20 include, but not be limited to, determining a municipal policemen's  
21 or firemen's pension and relief fund's eligibility to receive state  
22 money and to provide supplemental benefits.

23 (b) The actuarial valuation report provided pursuant to  
24 subsection (a) of this section shall consist of, but is not limited  
25 to, the following disclosures: (1) The financial objective of the

1 fund and how the objective is to be attained; (2) the progress  
2 being made toward realization of the financial objective; (3)  
3 recent changes in the nature of the fund, benefits provided or  
4 actuarial assumptions or methods; (4) the frequency of actuarial  
5 valuation reports and the date of the most recent actuarial  
6 valuation report; (5) the method used to value fund assets; (6) the  
7 extent to which the qualified actuary relies on the data provided  
8 and whether the data was certified by the fund's Auditor or  
9 examined by the qualified actuary for reasonableness; (7) a  
10 description and explanation of the actuarial assumptions and  
11 methods; (8) an evaluation of each plan using the alternative  
12 funding method, to assess advantages of changing to other funding  
13 methods as provided in this article; and (9) any other information  
14 required in section twenty-a of this article or that the qualified  
15 actuary feels is necessary or would be useful in fully and fairly  
16 disclosing the actuarial condition of the fund.

17 (c) (1) Except as provided in subsections (e) and (f) of this  
18 section, beginning June 30, 1991, and thereafter, the financial  
19 objective of each municipality shall not be less than to contribute  
20 to the fund annually an amount which, together with the  
21 contributions from the members and the allocable portion of the  
22 Municipal Pensions and Protection Fund for municipal pension and  
23 relief funds established under section fourteen-d, article three,  
24 chapter thirty-three of this code or a municipality's allocation  
25 from the Municipal Pensions Security Fund created in section  
26 eighteen-b of this article and other income sources as authorized

1 by law except from public safety assessments and any state matching  
2 funds as provided in section thirteen-a, article thirteen of this  
3 chapter, will be sufficient to meet the normal cost of the fund and  
4 amortize any actuarial deficiency over a period of not more than  
5 forty years beginning from July 1, 1991: *Provided,* That in the  
6 fiscal year ending June 30, 1991, the municipality may elect to  
7 make its annual contribution to the fund using an alternative  
8 contribution in an amount not less than: (i) One hundred seven  
9 percent of the amount contributed for the fiscal year ending June  
10 30, 1990; or (ii) an amount equal to the average of the  
11 contribution payments made in the five highest fiscal years  
12 beginning with the fiscal year ending 1984, whichever is greater:  
13 *Provided, however,* That contribution payments in subsequent fiscal  
14 years under this alternative contribution method may not be less  
15 than one hundred seven percent of the amount contributed in the  
16 prior fiscal year: *Provided further,* That in order to avoid  
17 penalizing municipalities and to provide flexibility when making  
18 contributions, municipalities using the alternative contribution  
19 method may exclude a one-time additional contribution made in any  
20 one year in excess of the minimum required by this section: *And*  
21 *provided further,* That the governing body of any municipality may  
22 elect to provide an employer continuing contribution of one percent  
23 more than the municipality's required minimum under the alternative  
24 contribution plan authorized in this subsection: *And provided*  
25 *further,* That if any municipality decides to contribute an

1 additional one percent, then that municipality may not reduce the  
2 additional contribution until the respective pension and relief  
3 fund no longer has any actuarial deficiency: *And provided further,*  
4 That any decision and any contribution payment by the municipality  
5 is not the liability of the State of West Virginia: *And provided*  
6 *further,* That if any municipality or any pension fund board of  
7 trustees makes a voluntary election and thereafter fails to  
8 contribute the ~~voluntarily~~ voluntary increase as provided in this  
9 section and in subsection (c), section nineteen of this article,  
10 then the board of trustees is not eligible to receive funds  
11 allocated under section fourteen-d, article three, chapter thirty-  
12 three of this code: *And provided further,* That prior to using this  
13 alternative contribution method the actuary of the fund shall  
14 certify in writing that the fund is projected to be solvent under  
15 the alternative contribution method for the next consecutive  
16 fifteen-year period. For purposes of determining this minimum  
17 financial objective: (i) The value of the fund's assets shall be  
18 determined on the basis of any reasonable actuarial method of  
19 valuation which takes into account fair market value; and (ii) all  
20 costs, deficiencies, rate of interest and other factors under the  
21 fund shall be determined on the basis of actuarial assumptions and  
22 methods which, in aggregate, are reasonable (taking into account  
23 the experience of the fund and reasonable expectations) and which,  
24 in combination, offer the qualified actuary's best estimate of  
25 anticipated experience under the fund: *And provided further,* That  
26 any municipality which elected the alternative funding method under



1 this section and which has an unfunded actuarial liability of not  
2 more than twenty-five percent of fund assets, may, beginning  
3 September 1, 2003, elect to revert to the standard funding method,  
4 which is to contribute to the fund annually an amount which is not  
5 less than an amount which, together with the contributions from the  
6 members and the allocable portion of the Municipal Pensions and  
7 Protection Fund for municipal pension and relief funds established  
8 under section fourteen-d, article three, chapter thirty-three of  
9 this code and other income sources as authorized by law, will be  
10 sufficient to meet the normal cost of the fund and amortize any  
11 actuarial deficiency over a period of not more than forty years,  
12 beginning from July 1, 1991.

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

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

20       (4) The actuarial process, which includes the selection of  
21 methods and assumptions, shall be reviewed by the qualified actuary  
22 no less than once every five years. Furthermore, the qualified  
23 actuary shall provide a report to the oversight board with  
24 recommendations on any changes to the actuarial process.

25       (5) The oversight board shall hire an independent reviewing  
26 actuary to perform an actuarial audit of the work performed by the

1 qualified actuary no less than once every seven years.

2 (d) For purposes of this section, the term "qualified actuary"  
3 means only an actuary who is a member of the Society of Actuaries  
4 or the American Academy of Actuaries. The qualified actuary shall  
5 be designated a fiduciary and shall discharge his or her duties  
6 with respect to a fund solely in the interest of the members and  
7 members' beneficiaries of that fund. In order for the standards of  
8 this section to be met, the qualified actuary shall certify that  
9 the actuarial valuation report is complete and accurate and that in  
10 his or her opinion the technique and assumptions used are  
11 reasonable and meet the requirements of this section.

12 (e) (1) Beginning January 1, 2010, municipalities may choose  
13 the optional method of financing municipal policemen's or firemen's  
14 pension and relief funds as outlined in this subsection in lieu of  
15 the standard or alternative methods as provided in subdivision (1),  
16 subsection (c) of this section.

17 (2) For those municipalities choosing the optional method of  
18 finance, the minimum standard for annual municipality contributions  
19 to each policemen's or firemen's pension and relief fund shall be  
20 an amount which, together with the contributions from the members  
21 and allocable portion of the Municipal Pensions and Protection Fund  
22 or Municipal Pensions Security Fund created in section eighteen-b  
23 of this article, and other income sources as authorized by law  
24 except from public safety assessments and any state matching funds  
25 as provided in section thirteen-a, article thirteen of this  
26 chapter, will be sufficient to meet the normal cost of the fund and

1 amortize any actuarial deficiency over a period of not more than  
2 forty years beginning January 1, 2010: *Provided*, That those  
3 municipalities using the standard method of financing in 2009 shall  
4 continue to amortize their actuarial deficiencies over a period of  
5 not more than forty years beginning July 1, 1991. The required  
6 contribution shall be determined each plan year as described above  
7 by the actuary retained by the oversight board, based on an  
8 actuarial valuation reflecting actual demographic and investment  
9 experience and consistent with the Actuarial Standards of Practice  
10 published by the Actuarial Standards Board.

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

18 (f) (1) Beginning April 1, 2011, any municipality using the  
19 alternative method of financing may choose a conservation method of  
20 financing its municipal policemen's and firemen's pension and  
21 relief funds as outlined in this subsection, in lieu of the  
22 alternative method as provided in subdivision (1), subsection (c),  
23 or the optional method as provided in subsection (e) of this  
24 section.

25 (2) For those municipalities choosing the conservation method  
26 of finance, until a plan is funded at one hundred percent, a part

1 of each plan member's employee contribution to the fund equal to  
2 one and one-half percent of the employee's compensation, shall be  
3 deposited into and remain in the trust and accumulate investment  
4 return. In addition, until a plan is funded at one hundred  
5 percent, an actuarially determined portion of the premium tax  
6 allocation to each fund provided in accordance with section  
7 fourteen-d, article three, and section seven, article twelve-c of  
8 chapter thirty-three of this code and any funds received pursuant  
9 to section thirteen-a, article thirteen of this chapter, shall also  
10 be deposited into and remain in the trust and accumulate investment  
11 return. This variable percentage of premium tax allocation to be  
12 retained in each fund shall be determined annually by the qualified  
13 actuary provided pursuant to subsection (a) of this section to be  
14 an amount required, along with other assets of the fund as  
15 necessary to reach a funded level of one hundred percent in thirty-  
16 five years from the time of adoption of the conservation financing  
17 method. The variable percentage shall be calculated using a  
18 prospective four-year rolling average.

19 (3) Upon adoption of the conservation method of finance, the  
20 municipality shall close its pension and relief funds to new  
21 members and shall place police officers and firefighters newly  
22 hired after adoption of the conservation method into the Municipal  
23 Police Officers and Firefighters Retirement System created in  
24 article twenty-two-a of this chapter.

25 (4) Upon adoption of the conservation method of financing, the  
26 minimum standard for annual municipality contributions to each

1 policemen's or firemen's pension and relief fund shall be an amount  
2 which, together with member contributions and premium tax proceeds  
3 not required to be retained in the trust pursuant to this  
4 subsection, and other income sources as authorized by law, is  
5 sufficient to meet the annual benefit and administrative expense  
6 payments from the funds on a pay-as-you-go basis: *Provided:* That at  
7 the time the actuarial report required by this section indicates no  
8 actuarial deficiency in the municipal policemen's or firemen's  
9 pension and relief fund, the minimum annual required contribution  
10 of the municipality may not be less than an amount which together  
11 with all member contributions and other income authorized by law,  
12 is sufficient to pay normal cost.