

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) ~~There is established, on the effective date of the~~
6 ~~enactment of this section during the fourth extraordinary session~~
7 ~~of the Legislature in 2009,~~ The West Virginia Municipal Pensions
8 Oversight Board, established in 2009, is hereby continued as a
9 public body corporate for the purpose of monitoring and improving
10 the performance of municipal policemen's and firemen's pension and
11 relief funds to assure prudent administration, investment and
12 management of the funds. Management of the oversight board shall
13 be vested solely in the members of the oversight board. Duties of
14 the oversight board shall include, but not be limited to, assisting
15 municipal boards of trustees in performing their duties, assuring
16 the funds' compliance with applicable laws, providing for actuarial
17 studies, distributing tax revenues to the funds, initiating or
18 joining legal actions on behalf of active or retired pension fund
19 members or municipal boards of trustees to protect interests of the
20 members in the funds, and taking other actions as may be reasonably
21 necessary to provide for the security and fiscal integrity of the
22 pension funds. The oversight board's authority to initiate legal
23 action does not preempt the authority of municipalities; municipal

1 policemen's and firemen's boards of trustees; or pension fund
2 active members, beneficiaries or others to initiate legal action to
3 protect interests in the funds. Further, the oversight board may,
4 in its discretion, investigate the actions or practices of
5 municipal boards of trustees or of their administrators or
6 employees that, in the oversight board's judgment, have the
7 potential to threaten the security or fiscal integrity of the
8 pension funds and the boards of trustees, administrators and
9 employees shall cooperate with the oversight board in any
10 investigation. Regardless of whether it has previously conducted
11 an investigation, the oversight board may initiate or intervene in
12 legal actions to challenge or prevent any action or practice which,
13 in the oversight board's judgment has the potential to threaten the
14 security or fiscal integrity of the pension funds. ~~The oversight~~
15 ~~board is created as a public body corporate.~~ Establishment of the
16 oversight board does not relieve the municipal funds' boards of
17 trustees from their fiduciary and other duties to the funds, nor
18 does it create any liability for the funds on the part of the
19 state. The failure of the oversight board to investigate or
20 initiate legal actions regarding the actions or practices of
21 municipal boards of trustees, their administrators or employees
22 does not render the oversight board liable for the actions or
23 practices. Members and employees of the oversight board are not
24 liable personally, either jointly or severally, for debts or

1 obligations of the municipal pension and relief funds. Except as
2 otherwise provided herein, members and employees of the oversight
3 board have a fiduciary duty toward the municipal pension and relief
4 funds and are liable for malfeasance or gross negligence that
5 constitutes a breach of fiduciary duty and that has the reasonably
6 foreseeable effect of depleting or impairing any fund. Employees
7 of the oversight board are ~~nonclassified~~ classified-exempt state
8 employees.

9 (2) The oversight board shall consist of nine members. The
10 executive director of the state's Investment Management Board and
11 the executive director of the state's Consolidated Public
12 Retirement Board, or their designees, shall serve as voting ex
13 officio members. The other seven members shall be citizens of the
14 state who have been qualified electors of the state for a period of
15 at least one year next preceding their appointment and shall be as
16 follows: An active or retired member of a Municipal Policemen's
17 Pension and Relief Fund chosen from a list of three persons
18 submitted to the Governor by the state's largest professional
19 municipal police officers organization, an active or retired member
20 of a Municipal Firemen's Pension and Relief Fund chosen from a list
21 of three persons submitted to the Governor by the state's largest
22 professional firefighters organization, an attorney experienced in
23 finance and investment matters related to pensions management, two
24 persons experienced in pension funds management, one person who is

1 a certified public accountant experienced in auditing and one
2 person chosen from a list of three persons submitted to the
3 Governor by the state's largest association of municipalities.

4 (3) On the effective date of the enactment of this section as
5 amended during the fourth extraordinary session of the Legislature
6 in 2009, the Governor shall forthwith appoint the members, with the
7 advice and consent of the Senate. The Governor may remove any
8 member from the oversight board for neglect of duty, incompetency
9 or official misconduct.

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

11 (1) Enter into contracts, to sue and be sued, to implead and
12 be impleaded;

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

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

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

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

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

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

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

1 Protection Fund or the Municipal Pensions Security Fund shall be
2 first allocated to pay expenses of the oversight board and the
3 remainder in the fund distributed among the various municipal
4 pension and relief funds as provided in section fourteen-d, article
5 three, chapter thirty-three of this code. The board is exempt from
6 the provisions of sections seven and eleven, article three, chapter
7 twelve of this code relating to compensation and expenses of
8 members, including travel expenses.

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

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

24 (g) The board shall propose rules for legislative approval in

1 accordance with the provisions of article three, chapter twenty-
2 nine-a of this code as necessary to implement the provisions of
3 this article, and may initially promulgate emergency rules pursuant
4 to the provisions of section fifteen, article three, chapter
5 twenty-nine-a of this code.

6 (h) The oversight board shall report annually to the
7 Legislature's Joint Committee on Government and Finance and the
8 Joint Committee on Pensions and Retirement concerning the status of
9 municipal policemen's and firemen's pension and relief funds and
10 shall present recommendations for strengthening and protecting the
11 funds and the benefit interests of the funds' members.

12 (i) The oversight board shall cooperate with the West Virginia
13 Investment Management Board and the Board of Treasury Investments
14 to educate members of the local pension boards of trustees on the
15 services offered by the two state investment boards. No later than
16 October 31, 2013, the board shall report to the Joint Committee on
17 Government and Finance and the Joint Committee on Pensions and
18 Retirement a detailed comparison of returns on long-term
19 investments of moneys held by or allocated to municipal pension and
20 relief funds managed by the West Virginia Investment Management
21 Board and those managed by others than the Investment Management
22 Board. The oversight board shall also report at that time on
23 short-term investment returns by local pension boards using the
24 West Virginia Board of Treasury Investments compared to short-term

1 investment returns by those local boards of trustees not using the
2 Board of Treasury Investments.

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

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

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

1 relief fund the oversight board is entitled to intervene for the
2 purpose of preserving the security or fiscal integrity of the
3 pension fund.

4 **§8-22-19a. Refunds of member contributions.**

5 After January 1, 2010, any member of a paid police department
6 or fire department who is removed or discharged or who before
7 retirement on any retirement pension or disability pension severs
8 his or her connection with said department, whether or not
9 consecutive, shall, upon request, be refunded all pension and
10 relief fund deductions made from ~~his~~ the member's salary or
11 compensation, but without interest from the fund. The refund shall
12 come from the accounts which originally received the member
13 deductions. For municipalities using the conservation method of
14 funding, the member contributions are to be refunded from both the
15 Municipal Pension and Relief Fund and the city benefit account, in
16 the exact percentages that were initially deposited to the
17 respective accounts. Any member who receives ~~such~~ a refund and
18 ~~such member~~ subsequently wishes to reenter ~~the~~ his or her
19 department, ~~such police officer or fire fighter~~ shall not be
20 allowed to reenter the department unless ~~such~~ the police officer or
21 fire fighter repays to the pension and relief fund all sums
22 refunded to him or her in a lump sum at the date of reentry, or by
23 monthly payroll deductions within thirty-six months from the date
24 he or she reenters the department, with interest at the rate of

1 eight percent per annum. In the event such refund is made prior to
2 January 1, 1981, and such member subsequently reenters the
3 department such police officer or firefighter shall be allowed
4 membership in such pension and relief fund; however, no credit may
5 be allowed such member for any former service, unless such member
6 repays to the pension and relief fund all sums refunded to ~~him~~ the
7 member within one year from the date ~~he~~ the member reenters the
8 department with interest at the rate of eight percent per annum:
9 *Provided, That ~~any member who, on or before June 3, 1955, reentered~~*
10 ~~the paid police or fire department shall be allowed credit for any~~
11 ~~former service in the same department reentered if he, within one~~
12 ~~year from said June 3, 1955, repaid all sums withdrawn or refunded~~
13 ~~to him with interest at the rate of six percent per annum, but for~~
14 such member who receives such refund prior to January 1, 1980,
15 interest may not be charged for more than three years. Any
16 probationary member of a paid police or fire department who is not
17 given an absolute appointment at the end of ~~his~~ the member's
18 probationary period shall, upon request, be refunded all pension
19 and relief fund deductions made from ~~his~~ the member's salary or
20 compensation, but without interest. Any member contribution made
21 in fiscal years beginning on July 1, 1981 and thereafter by any
22 members of such fund, which is in excess of the percentages,
23 required in section nineteen of this article of such member's
24 salary or compensation as defined in section sixteen of this

1 article shall be refunded with eight percent interest to such
2 member upon completion of the calculation of ~~his~~ the member's
3 retirement benefit.

NOTE: The purpose of this bill is to enhance the ability of the Municipal Pensions Oversight Board to ensure compliance and protect the fiscal integrity of the state's municipal policemen's and firemen's pension and relief funds. The bill clarifies the oversight board's authority to investigate practices of local policemen's and firemen's pension funds and to intervene in any legal actions involving the funds. It also clarifies procedure for refunding contributions to a member who leaves before retirement.

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

§18-22-18c is new; therefore, strike-throughs and underscoring have been omitted.