

1 **Senate Bill No. 634**

2 (By Senator Foster)

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4 [Introduced February 17, 2012; referred to the Committee on
5 Pensions; and then to the Committee on Government Organization.]

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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 match any state funds specifically appropriated to
17 reduce actuarially accrued liabilities of municipal
18 policemen's or firemen's pension and relief funds; and minimum
19 standards for annual municipal contributions to the pension
20 and relief funds.

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

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

1 **ARTICLE 13. TAXATION AND FINANCE.**

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

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

20 (b) Any municipality which has selected the conservation
21 method of financing its municipal policemen's or firemen's pension
22 and relief fund, as authorized in subsection (f), section twenty,
23 article twenty-two of this chapter, shall dedicate any proceeds

1 from the assessment authorized in this section along with any
2 matching state funds, to the trust of either the policemen's or
3 firemen's pension fund, or allocate the proceeds in a manner chosen
4 by the municipality between the plan trusts, to remain in the trust
5 or trusts and accumulate investment return as provided in
6 subsection (f), section twenty, article twenty-two of this chapter.

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

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

22 (e) A municipality has authority to enact an ordinance,
23 pursuant to this section, permitting it to file a lien on real
24 property located within the municipal corporate limits for unpaid

1 and delinquent public safety assessment fees. The ordinance must
2 provide an administrative procedure for the municipality's
3 assessment and collection of the fees. The administrative
4 procedure must require that, before any lien is filed, the
5 municipality will give notice to the property owner, by certified
6 mail, return receipt requested, that the municipality will file the
7 lien unless the delinquency is paid by a date stated in the notice,
8 which must be no less than ninety days from the date the notice is
9 mailed. The administrative procedure must include the right to
10 appeal to the circuit court of the county in which the real
11 property is located. The circuit court shall consider the appeal
12 under its general authority, including, but not limited to,
13 subsection (f), section two, article two of chapter fifty-one of
14 this code.

15 (f) Notwithstanding the provisions of section four, article
16 eleven of this chapter, any ordinance enacted or substantially
17 amended under the provisions of this section shall be published as
18 a Class II legal advertisement in compliance with the provisions of
19 article three, chapter fifty-nine of this code. The publication
20 area for the publication is the municipality.

21 (g) In the event thirty percent of the qualified voters of the
22 municipality, by petition duly signed by them in their own
23 handwriting and filed with the recorder of the municipality within
24 forty-five days after the expiration of the publication, protest

1 against the ordinance as enacted or amended, the ordinance shall
2 not become effective until it is ratified by a majority of the
3 legal votes cast by the qualified voters of the municipality at a
4 regular municipal election or special municipal election, as the
5 governing body directs. Voting may not take place until after
6 notice of the submission is given by publication as provided in
7 subsection (f) of this section.

8 (h) The powers and authority granted to municipalities and to
9 the governing bodies of municipalities in this section are in
10 addition and supplemental to the powers and authority named in any
11 charters of the municipalities.

12 **ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION**
13 **AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF**
14 **FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS**
15 **SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND**
16 **SEWERAGE SYSTEM.**

17 **§8-22-20. Actuary; actuarial valuation report; minimum standards**
18 **for annual municipality contributions to the fund;**
19 **definitions; actuarial review and audit.**

20 (a) The West Virginia Municipal Pensions Oversight Board shall
21 contract with or employ a qualified actuary to annually prepare an
22 actuarial valuation report on each pension and relief fund. The
23 selection of contract vendors to provide actuarial services,0

1 including the reviewing actuary as provided in subsection (c) of
2 this section, shall be by competitive bid process but is
3 specifically exempt from purchasing provisions of article three,
4 chapter five-a of this code. The expense of the actuarial report
5 shall be paid from moneys in the Municipal Pensions Security Fund.
6 Uses of the actuarial valuations from the qualified actuary shall
7 include, but not be limited to, determining a municipal policemen's
8 or firemen's pension and relief fund's eligibility to receive state
9 money and to provide supplemental benefits.

10 (b) The actuarial valuation report provided pursuant to
11 subsection (a) of this section shall consist of, but is not limited
12 to, the following disclosures: (1) The financial objective of the
13 fund and how the objective is to be attained; (2) the progress
14 being made toward realization of the financial objective; (3)
15 recent changes in the nature of the fund, benefits provided or
16 actuarial assumptions or methods; (4) the frequency of actuarial
17 valuation reports and the date of the most recent actuarial
18 valuation report; (5) the method used to value fund assets; (6) the
19 extent to which the qualified actuary relies on the data provided
20 and whether the data was certified by the fund's Auditor or
21 examined by the qualified actuary for reasonableness; (7) a
22 description and explanation of the actuarial assumptions and
23 methods; (8) an evaluation of each plan using the alternative
24 funding method, to assess advantages of changing to other funding

1 methods as provided in this article; and (9) any other information
2 required in section twenty-a of this article or that the qualified
3 actuary feels is necessary or would be useful in fully and fairly
4 disclosing the actuarial condition of the fund.

5 (c) (1) Except as provided in subsections (e) and (f) of this
6 section, beginning June 30, 1991, and thereafter, the financial
7 objective of each municipality shall not be less than to contribute
8 to the fund annually an amount which, together with the
9 contributions from the members and the allocable portion of the
10 Municipal Pensions and Protection Fund for municipal pension and
11 relief funds established under section fourteen-d, article three,
12 chapter thirty-three of this code or a municipality's allocation
13 from the Municipal Pensions Security Fund created in section
14 eighteen-b of this article and other income sources as authorized
15 by law except from public safety assessments and any state matching
16 funds as provided in section thirteen-a, article thirteen of this
17 chapter, will be sufficient to meet the normal cost of the fund and
18 amortize any actuarial deficiency over a period of not more than
19 forty years beginning from July 1, 1991: *Provided,* That in the
20 fiscal year ending June 30, 1991, the municipality may elect to
21 make its annual contribution to the fund using an alternative
22 contribution in an amount not less than: (i) One hundred seven
23 percent of the amount contributed for the fiscal year ending June
24 30, 1990; or (ii) an amount equal to the average of the

1 contribution payments made in the five highest fiscal years
2 beginning with the fiscal year ending 1984, whichever is greater:
3 *Provided, however,* That contribution payments in subsequent fiscal
4 years under this alternative contribution method may not be less
5 than one hundred seven percent of the amount contributed in the
6 prior fiscal year: *Provided further,* That in order to avoid
7 penalizing municipalities and to provide flexibility when making
8 contributions, municipalities using the alternative contribution
9 method may exclude a one-time additional contribution made in any
10 one year in excess of the minimum required by this section: *And*
11 *provided further,* That the governing body of any municipality may
12 elect to provide an employer continuing contribution of one percent
13 more than the municipality's required minimum under the alternative
14 contribution plan authorized in this subsection: *And provided*
15 *further,* That if any municipality decides to contribute an
16 additional one percent, then that municipality may not reduce the
17 additional contribution until the respective pension and relief
18 fund no longer has any actuarial deficiency: *And provided further,*
19 That any decision and any contribution payment by the municipality
20 is not the liability of the State of West Virginia: *And provided*
21 *further,* That if any municipality or any pension fund board of
22 trustees makes a voluntary election and thereafter fails to
23 contribute the voluntarily increase as provided in this section and

1 in subsection (c), section nineteen of this article, then the board
2 of trustees is not eligible to receive funds allocated under
3 section fourteen-d, article three, chapter thirty-three of this
4 code: *And provided further,* That prior to using this alternative
5 contribution method the actuary of the fund shall certify in
6 writing that the fund is projected to be solvent under the
7 alternative contribution method for the next consecutive fifteen-
8 year period. For purposes of determining this minimum financial
9 objective: (i) The value of the fund's assets shall be determined
10 on the basis of any reasonable actuarial method of valuation which
11 takes into account fair market value; and (ii) all costs,
12 deficiencies, rate of interest and other factors under the fund
13 shall be determined on the basis of actuarial assumptions and
14 methods which, in aggregate, are reasonable (taking into account
15 the experience of the fund and reasonable expectations) and which,
16 in combination, offer the qualified actuary's best estimate of
17 anticipated experience under the fund: *And provided further,* That
18 any municipality which elected the alternative funding method under
19 this section and which has an unfunded actuarial liability of not
20 more than twenty-five percent of fund assets, may, beginning
21 September 1, 2003, elect to revert to the standard funding method,
22 which is to contribute to the fund annually an amount which is not
23 less than an amount which, together with the contributions from the
24 members and the allocable portion of the Municipal Pensions and

1 Protection Fund for municipal pension and relief funds established
2 under section fourteen-d, article three, chapter thirty-three of
3 this code and other income sources as authorized by law, will be
4 sufficient to meet the normal cost of the fund and amortize any
5 actuarial deficiency over a period of not more than forty years,
6 beginning from July 1, 1991.

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

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

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

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

22 (d) For purposes of this section, the term "qualified actuary"
23 means only an actuary who is a member of the Society of Actuaries
24 or the American Academy of Actuaries. The qualified actuary shall

1 be designated a fiduciary and shall discharge his or her duties
2 with respect to a fund solely in the interest of the members and
3 members' beneficiaries of that fund. In order for the standards of
4 this section to be met, the qualified actuary shall certify that
5 the actuarial valuation report is complete and accurate and that in
6 his or her opinion the technique and assumptions used are
7 reasonable and meet the requirements of this section.

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

13 (2) For those municipalities choosing the optional method of
14 finance, the minimum standard for annual municipality contributions
15 to each policemen's or firemen's pension and relief fund shall be
16 an amount which, together with the contributions from the members
17 and allocable portion of the Municipal Pensions and Protection Fund
18 or Municipal Pensions Security Fund created in section eighteen-b
19 of this article, and other income sources as authorized by law
20 except from public safety assessments and any state matching funds
21 as provided in section thirteen-a, article thirteen of this
22 chapter, will be sufficient to meet the normal cost of the fund and
23 amortize any actuarial deficiency over a period of not more than
24 forty years beginning January 1, 2010: *Provided*, That those

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

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

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

23 (2) For those municipalities choosing the conservation method
24 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.

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

NOTE: The purpose of this bill is to authorize certain municipalities to raise revenue by a public safety assessment to be used to match any state appropriations made available for the specific purpose of reducing unfunded liabilities in municipal policemen's or firemen's pension and relief funds.

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

§8-13-13a is new; therefore, strike-throughs and underscoring have been omitted.