

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2012



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 4489

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



Passed March 9, 2012

To Take Effect Ninety Days From Passage

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H. B. 4489

(BY DELEGATES PETHTEL, DUKE, GUTHRIE,
CANTERBURY, STOWERS AND GIVENS)

[Passed March 9, 2012; to take effect ninety days from passage.]

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

Be it enacted by the Legislature of West Virginia:

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

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

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

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

25 employees that, in the oversight board's judgment, have the
26 potential to threaten the security or fiscal integrity of the
27 pension funds and the boards of trustees, administrators and
28 employees shall cooperate with the oversight board in any
29 investigation. Regardless of whether it has previously
30 conducted an investigation, the oversight board may initiate
31 or intervene in legal actions to challenge or prevent any
32 action or practice which, in the oversight board's judgment
33 has the potential to threaten the security or fiscal integrity of
34 the pension funds. Establishment of the oversight board
35 does not relieve the municipal funds' boards of trustees from
36 their fiduciary and other duties to the funds, nor does it create
37 any liability for the funds on the part of the state. The failure
38 of the oversight board to investigate or initiate legal actions
39 regarding the actions or practices of municipal boards of
40 trustees, their administrators or employees does not render
41 the oversight board liable for the actions or practices.
42 Members and employees of the oversight board are not liable
43 personally, either jointly or severally, for debts or obligations
44 of the municipal pension and relief funds. Except as
45 otherwise provided herein, members and employees of the
46 oversight board have a fiduciary duty toward the municipal
47 pension and relief funds and are liable for malfeasance or
48 gross negligence. Employees of the oversight board are
49 classified-exempt state employees.

50 (2) The oversight board shall consist of nine members.
51 The executive director of the state's Investment Management
52 Board and the executive director of the state's Consolidated
53 Public Retirement Board, or their designees, shall serve as
54 voting ex officio members. The other seven members shall
55 be citizens of the state who have been qualified electors of
56 the state for a period of at least one year next preceding their
57 appointment and shall be as follows: An active or retired
58 member of a Municipal Policemen's Pension and Relief Fund
59 chosen from a list of three persons submitted to the Governor
60 by the state's largest professional municipal police officers

61 organization, an active or retired member of a Municipal
62 Firemen's Pension and Relief Fund chosen from a list of
63 three persons submitted to the Governor by the state's largest
64 professional firefighters organization, an attorney
65 experienced in finance and investment matters related to
66 pensions management, two persons experienced in pension
67 funds management, one person who is a certified public
68 accountant experienced in auditing and one person chosen
69 from a list of three persons submitted to the Governor by the
70 state's largest association of municipalities.

71 (3) On the effective date of the enactment of this section
72 as amended during the fourth extraordinary session of the
73 Legislature in 2009, the Governor shall forthwith appoint the
74 members, with the advice and consent of the Senate. The
75 Governor may remove any member from the oversight board
76 for neglect of duty, incompetency or official misconduct.

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

78 (1) Enter into contracts, to sue and be sued, to implead
79 and be impleaded;

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

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

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

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

92 (6) Do all things necessary and appropriate to implement
93 and operate the board in performance of its duties. Expenses
94 shall be paid from the moneys in the Municipal Pensions
95 Security Fund created in section eighteen-b of this article or,
96 prior to the transition provided in section eighteen-b of this
97 article, the Municipal Pensions and Protection Fund:
98 *Provided*, That the board may request special appropriation
99 for special projects. The oversight board is exempt from
100 provisions of article three, chapter five-a of this code for the
101 purpose of contracting for actuarial services, including the
102 services of a reviewing actuary.

103 (c) Except for ex officio members, the terms of oversight
104 board members shall be staggered initially from January 1,
105 2010. The Governor shall appoint initially one member for
106 a term of one year, one member for a term of two years, two
107 members for terms of three years, one member for a term of
108 four years and two members for terms of five years.
109 Subsequent appointments shall be for terms of five years. A
110 member serving two full consecutive terms may not be
111 reappointed for one year after completion of his or her second
112 full-term. Each member shall serve until that member's
113 successor is appointed and qualified. Any member may be
114 removed by the Governor in case of incompetency, neglect of
115 duty, gross immorality or malfeasance in office. Any
116 vacancy on the oversight board shall be filled by appointment
117 by the Governor for the balance of the unexpired term.

118 (d) A majority of the full authorized membership of the
119 oversight board constitutes a quorum. The board shall meet
120 at least quarterly each year, but more often as duties require,
121 at times and places that it determines. The oversight board
122 shall elect a chairperson and a vice chairperson from their
123 membership who shall serve for terms of two years and shall
124 select annually a secretary/treasurer who may be either a
125 member or employee of the board. The oversight board shall
126 employ an executive director and other staff as needed and

127 shall fix their duties and compensation. The compensation of
128 the executive director shall be subject to approval of the
129 Governor. Except for any special appropriation as provided
130 in subsection (b) of this section, all personnel and other
131 expenses of the board shall be paid from revenue collected
132 and allocated for municipal policemen's or municipal
133 firemen's pension and relief funds pursuant to section
134 fourteen-d, article three, chapter thirty-three of this code and
135 distributed through the Municipal Pensions and Protection
136 Fund or the Municipal Pensions Security Fund created in
137 section eighteen-b of this article. Expenses during the initial
138 year of the board's operation shall be from proceeds of the
139 allocation for the municipal pensions and relief funds.
140 Expenditures in years thereafter shall be by appropriation
141 from the Municipal Pensions Security Fund. Money
142 allocated for municipal policemen's and firemen's pension
143 and relief funds to be distributed from the Municipal
144 Pensions and Protection Fund or the Municipal Pensions
145 Security Fund shall be first allocated to pay expenses of the
146 oversight board and the remainder in the fund distributed
147 among the various municipal pension and relief funds as
148 provided in section fourteen-d, article three, chapter thirty-
149 three of this code. The board is exempt from the provisions
150 of sections seven and eleven, article three, chapter twelve of
151 this code relating to compensation and expenses of members,
152 including travel expenses.

153 (e) Members of the oversight board shall serve the board
154 without compensation for their services: *Provided*, That no
155 public employee member may suffer any loss of salary or
156 wages on account of his or her service on the board. Each
157 member of the board shall be reimbursed, on approval of the
158 board, for any necessary expenses actually incurred by the
159 member in carrying out his or her duties. All reimbursement
160 of expenses shall be paid out of the Municipal Pensions
161 Security Fund.

162 (f) The board may contract with other state boards or
163 state agencies to share offices, personnel and other
164 administrative functions as authorized under this article:
165 *Provided*, That no provision of this subsection may be
166 construed to authorize the board to contract with other state
167 boards or state agencies to otherwise perform the duties or
168 exercise the responsibilities imposed on the board by this
169 code.

170 (g) The board shall propose rules for legislative approval
171 in accordance with the provisions of article three, chapter
172 twenty-nine-a of this code as necessary to implement the
173 provisions of this article, and may initially promulgate
174 emergency rules pursuant to the provisions of section fifteen,
175 article three, chapter twenty-nine-a of this code.

176 (h) The oversight board shall report annually to the
177 Legislature's Joint Committee on Government and Finance
178 and the Joint Committee on Pensions and Retirement
179 concerning the status of municipal policemen's and firemen's
180 pension and relief funds and shall present recommendations
181 for strengthening and protecting the funds and the benefit
182 interests of the funds' members.

183 (i) The oversight board shall cooperate with the West
184 Virginia Investment Management Board and the board of
185 Treasury Investments to educate members of the local
186 pension boards of trustees on the services offered by the two
187 state investment boards. No later than October 31, 2013, the
188 board shall report to the Joint Committee on Government and
189 Finance and the Joint Committee on Pensions and Retirement
190 a detailed comparison of returns on long-term investments of
191 moneys held by or allocated to municipal pension and relief
192 funds managed by the West Virginia Investment Management
193 Board and those managed by others than the Investment
194 Management Board. The oversight board shall also report at
195 that time on short-term investment returns by local pension

196 boards using the West Virginia Board of Treasury
197 Investments compared to short-term investment returns by
198 those local boards of trustees not using the board of Treasury
199 Investments.

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

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

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

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

1 After January 1, 2010, any member of a paid police
2 department or fire department who is removed or discharged
3 or who before retirement on any retirement pension or
4 disability pension severs his or her connection with said
5 department, whether or not consecutive, shall, upon request,
6 be refunded all pension and relief fund deductions made from
7 the member's salary or compensation, but without interest
8 from the fund. The refund shall come from the accounts
9 which originally received the member deductions. For
10 municipalities using the conservation method of funding, the
11 member contributions are to be refunded from both the
12 Municipal Pension and Relief Fund and the city benefit
13 account, in the exact percentages that were initially deposited
14 to the respective accounts. Any member who receives a
15 refund and subsequently wishes to reenter his or her
16 department, shall not be allowed to reenter the department
17 unless the police officer or fire fighter repays to the pension
18 and relief fund all sums refunded to him or her in a lump sum
19 at the date of reentry, or by monthly payroll deductions
20 within thirty-six months from the date he or she reenters the
21 department, with interest at the rate of eight percent per
22 annum. In the event such refund is made prior to January 1,
23 1981, and such member subsequently reenters the department
24 such police officer or firefighter shall be allowed membership
25 in such pension and relief fund; however, no credit may be
26 allowed such member for any former service, unless such
27 member repays to the pension and relief fund all sums
28 refunded to the member within one year from the date the
29 member reenters the department with interest at the rate of
30 eight percent per annum: *Provided*, That for such member
31 who receives such refund prior to January 1, 1980, interest
32 may not be charged for more than three years. Any
33 probationary member of a paid police or fire department who
34 is not given an absolute appointment at the end of the
35 member's probationary period shall, upon request, be

36 refunded all pension and relief fund deductions made from the
37 member's salary or compensation, but without interest. Any
38 member contribution made in fiscal years beginning on July 1,
39 1981 and thereafter by any members of such fund, which is in
40 excess of the percentages, required in section nineteen of this
41 article of such member's salary or compensation as defined in
42 section sixteen of this article shall be refunded with eight percent
43 interest to such member upon completion of the calculation of
44 the member's retirement benefit.

§8-22-25. Retirement pensions.

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

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

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

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

34 The total additional credit provided for in this subsection
35 may not exceed fifteen additional percent.

36 (c) Any member of any such department whose service
37 has been interrupted by duty with the Armed Forces of the
38 United States as provided in section twenty-seven of this
39 article prior to July 1, 1981, shall be eligible for retirement
40 pension benefits immediately upon retirement, regardless of
41 the member's age, if the member shall otherwise be eligible
42 for such retirement pension benefits. In no event are
43 provisions of this subsection to be interpreted to permit
44 retirement before age 50 unless the interruption of the
45 member's service by duty with the Armed Forces of the
46 United States actually occurred before July 1, 1981. The
47 amendment made to this subsection during the 2012 Regular
48 Session of the Legislature is not for the purpose of changing
49 the existing law regarding benefits provided to veterans for
50 military service prior to July 1, 1981, but to further clarify
51 that the provisions of this section and any previous
52 enactments of this section do not make a member eligible for
53 retirement before age 50 for a member's service with the
54 Armed Forces of the United States on or after July 1, 1981.

55 Any member or previously retired member of any such
56 department who has served in active duty with the Armed
57 Forces of the United States as described in section twenty-

58 seven of this article, whether prior to or subsequent to
59 becoming a member of a paid police or fire department
60 covered by the provisions of this article, shall receive, in
61 addition to the sixty percent authorized in subsection (a) of
62 this section and the additional percent credit authorized in
63 subsection (b) of this section, one additional percent for each
64 year so served in active military duty, up to a maximum of
65 four additional percent. In no event, however, may the total
66 benefit granted to any member exceed seventy-five percent
67 of the member's annual average salary calculated in
68 accordance with subsection (a) of this section.

69 (d) Any member of a paid police or fire department shall
70 be retired at the age of sixty-five years in the manner
71 provided in this subsection. When a member of the paid
72 police or fire department reaches the age of sixty-five years,
73 the said board of trustees shall notify the mayor of this fact,
74 within thirty days of such member's sixty-fifth birthday. The
75 mayor shall cause such sixty-five-year-old member of the
76 paid police or fire department to retire within a period of not
77 more than thirty additional days. Upon retirement under the
78 provisions of this subsection, such member shall receive
79 retirement pension benefits payable in twelve monthly
80 installments for each year of the remainder of the member's
81 life in an amount equal to sixty percent of such member's
82 average annual salary or compensation received during the
83 three twelve-consecutive-month periods of employment with
84 such department in which such member received the
85 member's highest salary or compensation while a member of
86 the department, or an amount of \$500 per month, whichever
87 is greater. If such member has been employed in said
88 department for more than twenty years, the provisions of
89 subsection (b) of this section shall apply.

90 (e) It shall be the duty of each member of a paid police or
91 fire department at the time a fund is hereafter established to
92 furnish the necessary proof of the member's date of birth to

93 the said board of trustees, as specified in section twenty-three
94 of this article, within a reasonable length of time, said length
95 of time to be determined by the said board of trustees. Then
96 the board of trustees and the mayor shall proceed to act in the
97 manner provided in subsection (d) of this section and shall
98 cause all members of the paid police or fire department who
99 are over the age of sixty-five years to retire in not less than
100 sixty days from the date the fund is established. Upon
101 retirement under the provisions of this subsection (e), such
102 member, whether the member has been employed in said
103 department for twenty years or not, shall receive retirement
104 pension benefits payable in twelve monthly installments for
105 each year of the remainder of the member's life in an amount
106 equal to sixty percent of such member's average annual salary
107 or compensation received during the three twelve-
108 consecutive-month periods of employment with such
109 department in which such member received the member's
110 highest salary or compensation while a member of the
111 department, or an amount of \$500 per month, whichever is
112 greater. If such member has been employed in said
113 department for more than twenty years, the provisions of
114 subsection (b) of this section shall apply.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2012.

Governor