

COMMITTEE SUBSTITUTE

FOR

H. B. 4489

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

(Originating in the Committee on Finance)
[February 23, 2012]

A BILL 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) ~~There is established, on the effective date of the~~
2 ~~enactment of this section during the fourth extraordinary~~
3 ~~session of the Legislature in 2009;~~ The West Virginia
4 Municipal Pensions Oversight Board, established in 2009, is
5 hereby continued as a public body corporate for the purpose
6 of monitoring and improving the performance of municipal
7 policemen's and firemen's pension and relief funds to assure
8 prudent administration, investment and management of the
9 funds. Management of the oversight board shall be vested
10 solely in the members of the oversight board. Duties of the
11 oversight board shall include, but not be limited to, assisting

12 municipal boards of trustees in performing their duties,
13 assuring the funds' compliance with applicable laws,
14 providing for actuarial studies, distributing tax revenues to
15 the funds, initiating or joining legal actions on behalf of
16 active or retired pension fund members or municipal boards
17 of trustees to protect interests of the members in the funds,
18 and taking other actions as may be reasonably necessary to
19 provide for the security and fiscal integrity of the pension
20 funds. The oversight board's authority to initiate legal action
21 does not preempt the authority of municipalities; municipal
22 policemen's and firemen's boards of trustees; or pension fund
23 active members, beneficiaries or others to initiate legal action
24 to protect interests in the funds. Further, the oversight board
25 may, in its discretion, investigate the actions or practices of
26 municipal boards of trustees or of their administrators or
27 employees that, in the oversight board's judgment, have the
28 potential to threaten the security or fiscal integrity of the
29 pension funds and the boards of trustees, administrators and
30 employees shall cooperate with the oversight board in any
31 investigation. Regardless of whether it has previously
32 conducted an investigation, the oversight board may initiate
33 or intervene in legal actions to challenge or prevent any

34 action or practice which, in the oversight board's judgment
35 has the potential to threaten the security or fiscal integrity of
36 the pension funds. ~~The oversight board is created as a public~~
37 ~~body corporate.~~ Establishment of the oversight board does
38 not relieve the municipal funds' boards of trustees from their
39 fiduciary and other duties to the funds, nor does it create any
40 liability for the funds on the part of the state. The failure of
41 the oversight board to investigate or initiate legal actions
42 regarding the actions or practices of municipal boards of
43 trustees, their administrators or employees does not render
44 the oversight board liable for the actions or practices.
45 Members and employees of the oversight board are not liable
46 personally, either jointly or severally, for debts or obligations
47 of the municipal pension and relief funds. Except as
48 otherwise provided herein, members and employees of the
49 oversight board have a fiduciary duty toward the municipal
50 pension and relief funds and are liable for malfeasance or
51 gross negligence. Employees of the oversight board are
52 ~~nonclassified~~ classified-exempt state employees.

53 (2) The oversight board shall consist of nine members.
54 The executive director of the state's Investment Management
55 Board and the executive director of the state's Consolidated

56 Public Retirement Board, or their designees, shall serve as
57 voting ex officio members. The other seven members shall
58 be citizens of the state who have been qualified electors of
59 the state for a period of at least one year next preceding their
60 appointment and shall be as follows: An active or retired
61 member of a Municipal Policemen's Pension and Relief Fund
62 chosen from a list of three persons submitted to the Governor
63 by the state's largest professional municipal police officers
64 organization, an active or retired member of a Municipal
65 Firemen's Pension and Relief Fund chosen from a list of
66 three persons submitted to the Governor by the state's largest
67 professional firefighters organization, an attorney
68 experienced in finance and investment matters related to
69 pensions management, two persons experienced in pension
70 funds management, one person who is a certified public
71 accountant experienced in auditing and one person chosen
72 from a list of three persons submitted to the Governor by the
73 state's largest association of municipalities.

74 (3) On the effective date of the enactment of this section
75 as amended during the fourth extraordinary session of the
76 Legislature in 2009, the Governor shall forthwith appoint the
77 members, with the advice and consent of the Senate. The

78 Governor may remove any member from the oversight board
79 for neglect of duty, incompetency or official misconduct.

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

81 (1) Enter into contracts, to sue and be sued, to implead
82 and be impleaded;

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

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

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

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

95 (6) Do all things necessary and appropriate to implement
96 and operate the board in performance of its duties. Expenses
97 shall be paid from the moneys in the Municipal Pensions
98 Security Fund created in section eighteen-b of this article or,
99 prior to the transition provided in section eighteen-b of this

100 article, the Municipal Pensions and Protection Fund:
101 *Provided*, That the board may request special appropriation
102 for special projects. The oversight board is exempt from
103 provisions of article three, chapter five-a of this code for the
104 purpose of contracting for actuarial services, including the
105 services of a reviewing actuary.

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

122 (d) A majority of the full authorized membership of the
123 oversight board constitutes a quorum. The board shall meet
124 at least quarterly each year, but more often as duties require,
125 at times and places that it determines. The oversight board
126 shall elect a chairperson and a vice chairperson from their
127 membership who shall serve for terms of two years and shall
128 select annually a secretary/treasurer who may be either a
129 member or employee of the board. The oversight board shall
130 employ an executive director and other staff as needed and
131 shall fix their duties and compensation. The compensation of
132 the executive director shall be subject to approval of the
133 Governor. Except for any special appropriation as provided
134 in subsection (b) of this section, all personnel and other
135 expenses of the board shall be paid from revenue collected
136 and allocated for municipal policemen's or municipal
137 firemen's pension and relief funds pursuant to section
138 fourteen-d, article three, chapter thirty-three of this code and
139 distributed through the Municipal Pensions and Protection
140 Fund or the Municipal Pensions Security Fund created in
141 section eighteen-b of this article. Expenses during the initial
142 year of the board's operation shall be from proceeds of the
143 allocation for the municipal pensions and relief funds.

144 Expenditures in years thereafter shall be by appropriation
145 from the Municipal Pensions Security Fund. Money allocated
146 for municipal policemen's and firemen's pension and relief
147 funds to be distributed from the Municipal Pensions and
148 Protection Fund or the Municipal Pensions Security Fund
149 shall be first allocated to pay expenses of the oversight board
150 and the remainder in the fund distributed among the various
151 municipal pension and relief funds as provided in section
152 fourteen-d, article three, chapter thirty-three of this code.
153 The board is exempt from the provisions of sections seven
154 and eleven, article three, chapter twelve of this code relating
155 to compensation and expenses of members, including travel
156 expenses.

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

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

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

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

186 (i) The oversight board shall cooperate with the West
187 Virginia Investment Management Board and the board of

188 Treasury Investments to educate members of the local
189 pension boards of trustees on the services offered by the two
190 state investment boards. No later than October 31, 2013, the
191 board shall report to the Joint Committee on Government and
192 Finance and the Joint Committee on Pensions and Retirement
193 a detailed comparison of returns on long-term investments of
194 moneys held by or allocated to municipal pension and relief
195 funds managed by the West Virginia Investment
196 Management Board and those managed by others than the
197 Investment Management Board. The oversight board shall
198 also report at that time on short-term investment returns by
199 local pension boards using the West Virginia Board of
200 Treasury Investments compared to short-term investment
201 returns by those local boards of trustees not using the board
202 of Treasury Investments.

203 (j) The oversight board shall establish minimum
204 requirements for training to be completed by each member of
205 the board of trustees of a Municipal Policemen's or
206 Firemen's Pension and Relief Fund. The requirements
207 should include, but not be limited to, training in ethics,
208 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 ~~his~~ 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 ~~such~~
15 a refund and ~~such member~~ subsequently wishes to reenter ~~the~~
16 his or her department, ~~such police officer or fire fighter~~ shall
17 not be allowed to reenter the department unless ~~such~~ the
18 police officer or fire fighter repays to the pension and relief
19 fund all sums refunded to him or her in a lump sum at the
20 date of reentry, or by monthly payroll deductions within
21 thirty-six months from the date he or she reenters the

22 department, with interest at the rate of eight percent per
23 annum. In the event such refund is made prior to January 1,
24 1981, and such member subsequently reenters the department
25 such police officer or firefighter shall be allowed membership
26 in such pension and relief fund; however, no credit may be
27 allowed such member for any former service, unless such
28 member repays to the pension and relief fund all sums
29 refunded to ~~him~~ the member within one year from the date ~~he~~
30 the member reenters the department with interest at the rate
31 of eight percent per annum: *Provided, That any member who,*
32 ~~on or before June 3, 1955, reentered the paid police or fire~~
33 ~~department shall be allowed credit for any former service in~~
34 ~~the same department reentered if he, within one year from~~
35 ~~said June 3, 1955, repaid all sums withdrawn or refunded to~~
36 ~~him with interest at the rate of six percent per annum, but for~~
37 such member who receives such refund prior to January 1,
38 1980, interest may not be charged for more than three years.
39 Any probationary member of a paid police or fire department
40 who is not given an absolute appointment at the end of ~~his~~
41 the member's probationary period shall, upon request, be
42 refunded all pension and relief fund deductions made from
43 ~~his~~ the member's salary or compensation, but without

44 interest. Any member contribution made in fiscal years
45 beginning on July 1, 1981 and thereafter by any members of
46 such fund, which is in excess of the percentages, required in
47 section nineteen of this article of such member's salary or
48 compensation as defined in section sixteen of this article shall
49 be refunded with eight percent interest to such member upon
50 completion of the calculation of ~~his~~ the member's retirement
51 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 ~~his~~ the
9 member's retirement or upon ~~his~~ the member's attaining the
10 age of fifty years, whichever is later, payable in twelve
11 monthly installments for each year of the remainder of ~~his~~ the
12 member's life, in an amount equal to sixty percent of such
13 member's average annual salary or compensation received

14 during the three twelve-consecutive-month periods of
15 employment with such department in which such member
16 received ~~his~~ the member's highest salary or compensation
17 while a member of the department, or an amount of \$500 per
18 month, whichever 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 ~~his~~
23 the 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 ~~his~~ the member's age, if ~~he~~ the member shall otherwise be
42 eligible 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 prior to 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 ~~his~~ the
81 member's life in an amount equal to sixty percent of such
82 member's average annual salary or compensation received
83 during the three twelve-consecutive-month periods of
84 employment with such department in which such member
85 received ~~his~~ the member's highest salary or compensation
86 while a member of the department, or an amount of \$500 per
87 month, whichever is greater. If such member has been
88 employed in said department for more than twenty years, the
89 provisions of 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 ~~his~~ the member's date of birth
93 to the said board of trustees, as specified in section twenty-
94 three of this article, within a reasonable length of time, said
95 length of time to be determined by the said board of trustees.
96 Then the board of trustees and the mayor shall proceed to act
97 in the manner provided in subsection (d) of this section and
98 shall cause all members of the paid police or fire department
99 who are over the age of sixty-five years to retire in not less
100 than sixty days from the date the fund is established. Upon
101 retirement under the provisions of this subsection (e), such

102 member, whether ~~he~~ 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 ~~his~~ the member's life in an
106 amount equal to sixty percent of such member's average
107 annual salary or compensation received during the three
108 twelve-consecutive-month periods of employment with such
109 department in which such member received ~~his~~ 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.