

H. B. 2896

(By Delegates Pethtel, Jones, Stowers, Craig, Canterbury,
Lynch and Kump)

[Introduced March 11, 2013; referred to the
Committee on Pensions and Retirement then Finance.]

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; to amend said
code by adding thereto a new section, designated §8-22-18c;
and to amend and reenact §8-22A-4 of said code, all relating
to municipal policemen and firemen pensions; providing
additional investigatory and legal powers and duties of the
West Virginia Municipal Pensions Oversight Board; requiring
certain notice of lawsuit to the West Virginia Municipal
Pensions Oversight Board; limiting certain court orders under
certain circumstances; clarifying refunds to members;
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; and extending the cut-off date
for the West Virginia Municipal Police Officers and

1 Firefighters Retirement System plan to 2017.

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

3 That §8-22-18a, §8-22-19a and §8-22-25 of the Code of West
4 Virginia, 1931, as amended, be amended and reenacted; that said
5 code be amended by adding thereto a new section, designated
6 §8-22-18c; and to amend and reenact §8-22A-4 of said code, all to
7 read as follows:

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

13 **§8-22-18a. West Virginia Municipal Pensions Oversight Board**
14 **created; powers and duties; management;**
15 **composition; terms; quorum; expenses; reports.**

16 (a) (1) ~~There is established, on the effective date of the~~
17 ~~enactment of this section during the fourth extraordinary session~~
18 ~~of the Legislature in 2009,~~ The West Virginia Municipal Pensions
19 Oversight Board, established in 2009, is hereby continued as a
20 public body corporate for the purpose of monitoring and improving
21 the performance of municipal policemen's and firemen's pension and
22 relief funds to assure prudent administration, investment and
23 management of the funds. Management of the oversight board shall

1 be vested solely in the members of the oversight board. Duties of
2 the oversight board shall include, but not be limited to, assisting
3 municipal boards of trustees in performing their duties, assuring
4 the funds' compliance with applicable laws, providing for actuarial
5 studies, distributing tax revenues to the funds, initiating or
6 joining legal actions on behalf of active or retired pension fund
7 members or municipal boards of trustees to protect interests of the
8 members in the funds, and taking other actions as may be reasonably
9 necessary to provide for the security and fiscal integrity of the
10 pension funds. The oversight board's authority to initiate legal
11 action does not preempt the authority of municipalities; municipal
12 policemen's and firemen's boards of trustees; or pension fund
13 active members, beneficiaries or others to initiate legal action to
14 protect interests in the funds. Further, the oversight board may,
15 in its discretion, investigate the actions or practices of
16 municipal boards of trustees or of their administrators or
17 employees that, in the oversight board's judgment, have the
18 potential to threaten the security or fiscal integrity of the
19 pension funds and the boards of trustees, administrators and
20 employees shall cooperate with the oversight board in any
21 investigation. Regardless of whether it has previously conducted
22 an investigation, the oversight board may initiate or intervene in
23 legal actions to challenge or prevent any action or practice which,
24 in the oversight board's judgment has the potential to threaten the

1 security or fiscal integrity of the pension funds. ~~The oversight~~
2 ~~board is created as a public body corporate.~~ Establishment of the
3 oversight board does not relieve the municipal funds' boards of
4 trustees from their fiduciary and other duties to the funds, nor
5 does it create any liability for the funds on the part of the
6 state. The failure of the oversight board to investigate or
7 initiate legal actions regarding the actions or practices of
8 municipal boards of trustees, their administrators or employees
9 does not render the oversight board liable for the actions or
10 practices. Members and employees of the oversight board are not
11 liable personally, either jointly or severally, for debts or
12 obligations of the municipal pension and relief funds. Except as
13 otherwise provided herein, members and employees of the oversight
14 board have a fiduciary duty toward the municipal pension and relief
15 funds and are liable for malfeasance or gross negligence.
16 Employees of the oversight board are ~~nonclassified~~
17 classified-exempt state employees.

18 (2) The oversight board shall consist of nine members. The
19 executive director of the state's Investment Management Board and
20 the executive director of the state's Consolidated Public
21 Retirement Board, or their designees, shall serve as voting ex
22 officio members. The other seven members shall be citizens of the
23 state who have been qualified electors of the state for a period of
24 at least one year next preceding their appointment and shall be as

1 follows: An active or retired member of a Municipal Policemen's
2 Pension and Relief Fund chosen from a list of three persons
3 submitted to the Governor by the state's largest professional
4 municipal police officers organization, an active or retired member
5 of a Municipal Firemen's Pension and Relief Fund chosen from a list
6 of three persons submitted to the Governor by the state's largest
7 professional firefighters organization, an attorney experienced in
8 finance and investment matters related to pensions management, two
9 persons experienced in pension funds management, one person who is
10 a certified public accountant experienced in auditing and one
11 person chosen from a list of three persons submitted to the
12 Governor by the state's largest association of municipalities.

13 (3) On the effective date of the enactment of this section as
14 amended during the fourth extraordinary session of the Legislature
15 in 2009, the Governor shall forthwith appoint the members, with the
16 advice and consent of the Senate. The Governor may remove any
17 member from the oversight board for neglect of duty, incompetency
18 or official misconduct.

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

20 (1) Enter into contracts, to sue and be sued, to implead and
21 be impleaded;

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

24 (3) Maintain accounts and invest those funds which the

1 oversight board is charged with receiving and distributing;

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

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

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

20 (c) Except for ex officio members, the terms of oversight
21 board members shall be staggered initially from January 1, 2010.
22 The Governor shall appoint initially one member for a term of one
23 year, one member for a term of two years, two members for terms of
24 three years, one member for a term of four years and two members

1 for terms of five years. Subsequent appointments shall be for
2 terms of five years. A member serving two full consecutive terms
3 may not be reappointed for one year after completion of his or her
4 second full-term. Each member shall serve until that member's
5 successor is appointed and qualified. Any member may be removed by
6 the Governor in case of incompetency, neglect of duty, gross
7 immorality or malfeasance in office. Any vacancy on the oversight
8 board shall be filled by appointment by the Governor for the
9 balance of the unexpired term.

10 (d) A majority of the full authorized membership of the
11 oversight board constitutes a quorum. The board shall meet at
12 least quarterly each year, but more often as duties require, at
13 times and places that it determines. The oversight board shall
14 elect a chairperson and a vice chairperson from their membership
15 who shall serve for terms of two years and shall select annually a
16 secretary/treasurer who may be either a member or employee of the
17 board. The oversight board shall employ an executive director and
18 other staff as needed and shall fix their duties and compensation.
19 The compensation of the executive director shall be subject to
20 approval of the Governor. Except for any special appropriation as
21 provided in subsection (b) of this section, all personnel and other
22 expenses of the board shall be paid from revenue collected and
23 allocated for municipal policemen's or municipal firemen's pension
24 and relief funds pursuant to section fourteen-d, article three,

1 chapter thirty-three of this code and distributed through the
2 Municipal Pensions and Protection Fund or the Municipal Pensions
3 Security Fund created in section eighteen-b of this article.
4 Expenses during the initial year of the board's operation shall be
5 from proceeds of the allocation for the municipal pensions and
6 relief funds. Expenditures in years thereafter shall be by
7 appropriation from the Municipal Pensions Security Fund. Money
8 allocated for municipal policemen's and firemen's pension and
9 relief funds to be distributed from the Municipal Pensions and
10 Protection Fund or the Municipal Pensions Security Fund shall be
11 first allocated to pay expenses of the oversight board and the
12 remainder in the fund distributed among the various municipal
13 pension and relief funds as provided in section fourteen-d, article
14 three, chapter thirty-three of this code. The board is exempt from
15 the provisions of sections seven and eleven, article three, chapter
16 twelve of this code relating to compensation and expenses of
17 members, including travel expenses.

18 (e) Members of the oversight board shall serve the board
19 without compensation for their services: *Provided*, That no public
20 employee member may suffer any loss of salary or wages on account
21 of his or her service on the board. Each member of the board shall
22 be reimbursed, on approval of the board, for any necessary expenses
23 actually incurred by the member in carrying out his or her duties.
24 All reimbursement of expenses shall be paid out of the Municipal

1 Pensions Security Fund.

2 (f) The board may contract with other state boards or state
3 agencies to share offices, personnel and other administrative
4 functions as authorized under this article: *Provided*, That no
5 provision of this subsection may be construed to authorize the
6 board to contract with other state boards or state agencies to
7 otherwise perform the duties or exercise the responsibilities
8 imposed on the board by this code.

9 (g) The board shall propose rules for legislative approval in
10 accordance with the provisions of article three, chapter
11 twenty-nine-a of this code as necessary to implement the provisions
12 of this article, and may initially promulgate emergency rules
13 pursuant to the provisions of section fifteen, article three,
14 chapter twenty-nine-a of this code.

15 (h) The oversight board shall report annually to the
16 Legislature's Joint Committee on Government and Finance and the
17 Joint Committee on Pensions and Retirement concerning the status of
18 municipal policemen's and firemen's pension and relief funds and
19 shall present recommendations for strengthening and protecting the
20 funds and the benefit interests of the funds' members.

21 (i) The oversight board shall cooperate with the West Virginia
22 Investment Management Board and the Board of Treasury Investments
23 to educate members of the local pension boards of trustees on the
24 services offered by the two state investment boards. No later than

1 October 31, 2013, the board shall report to the Joint Committee on
2 Government and Finance and the Joint Committee on Pensions and
3 Retirement a detailed comparison of returns on long-term
4 investments of moneys held by or allocated to municipal pension and
5 relief funds managed by the West Virginia Investment Management
6 Board and those managed by others than the Investment Management
7 Board. The oversight board shall also report at that time on
8 short-term investment returns by local pension boards using the
9 West Virginia Board of Treasury Investments compared to short-term
10 investment returns by those local boards of trustees not using the
11 Board of Treasury Investments.

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

17 **§8-22-18c. Notice of legal actions by or against municipal**
18 **policemen's and firemen's pension funds.**

19 In any legal action in which a municipal policemen's or
20 firemen's pension and relief fund, or the fund's board of trustees,
21 employee or administrator, is named as a party, the plaintiff or
22 petitioner shall serve a copy of the complaint or petition upon the
23 oversight board by certified mail, return receipt requested, within
24 seven days of filing the legal action. Until proof of service is

1 filed with the clerk of the court in which the action was filed,
2 and for sixty days after the filing of the proof of service, no
3 order may be entered by the court that directly or indirectly
4 requires the expenditure or other disposition of pension funds or
5 that determines the eligibility or entitlement of any member to any
6 pension benefit payable from the pension and relief fund: *Provided,*
7 That the court may enter such temporary or interim orders as may be
8 needed to preserve and protect the assets of the fund. In any legal
9 action involving a municipal policemen's or firemen's pension and
10 relief fund the oversight board is entitled to intervene for the
11 purpose of preserving the security or fiscal integrity of the
12 pension fund.

13 **§8-22-19a. Refunds of member contributions.**

14 After January 1, 2010, any member of a paid police department
15 or fire department who is removed or discharged or who before
16 retirement on any retirement pension or disability pension severs
17 his or her connection with said department, whether or not
18 consecutive, shall, upon request, be refunded all pension and
19 relief fund deductions made from ~~his~~ the member's salary or
20 compensation, but without interest from the fund. The refund shall
21 come from the accounts which originally received the member
22 deductions. For municipalities using the conservation method of
23 funding, the member contributions are to be refunded from both the
24 Municipal Pension and Relief Fund and the city benefit account, in

1 the exact percentages that were initially deposited to the
2 respective accounts. Any member who receives ~~such~~ a refund and
3 ~~such member~~ subsequently wishes to reenter ~~the~~ his or her
4 department, ~~such police officer or fire fighter~~ shall not be
5 allowed to reenter the department unless ~~such~~ the police officer or
6 fire fighter repays to the pension and relief fund all sums
7 refunded to him or her in a lump sum at the date of reentry, or by
8 monthly payroll deductions within thirty-six months from the date
9 he or she reenters the department, with interest at the rate of
10 eight percent per annum. In the event such refund is made prior to
11 January 1, 1981, and such member subsequently reenters the
12 department such police officer or firefighter shall be allowed
13 membership in such pension and relief fund; however, no credit may
14 be allowed such member for any former service, unless such member
15 repays to the pension and relief fund all sums refunded to ~~him~~ the
16 member within one year from the date ~~he~~ the member reenters the
17 department with interest at the rate of eight percent per annum:
18 *Provided, That* ~~any member who, on or before June 3, 1955, reentered~~
19 ~~the paid police or fire department shall be allowed credit for any~~
20 ~~former service in the same department reentered if he, within one~~
21 ~~year from said June 3, 1955, repaid all sums withdrawn or refunded~~
22 ~~to him with interest at the rate of six percent per annum, but for~~
23 such member who receives such refund prior to January 1, 1980,
24 interest may not be charged for more than three years. Any

1 probationary member of a paid police or fire department who is not
2 given an absolute appointment at the end of ~~his~~ the member's
3 probationary period shall, upon request, be refunded all pension
4 and relief fund deductions made from ~~his~~ the member's salary or
5 compensation, but without interest. Any member contribution made
6 in fiscal years beginning on July 1, 1981 and thereafter by any
7 members of such fund, which is in excess of the percentages,
8 required in section nineteen of this article of such member's
9 salary or compensation as defined in section sixteen of this
10 article shall be refunded with eight percent interest to such
11 member upon completion of the calculation of ~~his~~ the member's
12 retirement benefit.

13 **§8-22-25. Retirement pensions.**

14 (a) Any member of a paid police or fire department who is
15 entitled to a retirement pension hereunder, and who has been in the
16 honorable service of such department for twenty years, may, upon
17 written application to the board of trustees, be retired from all
18 service in such department without medical examination or
19 disability. On such retirement the board of trustees shall
20 authorize the payment of annual retirement pension benefits
21 commencing upon ~~his~~ the member's retirement or upon ~~his~~ the
22 member's attaining the age of fifty years, whichever is later,
23 payable in twelve monthly installments for each year of the
24 remainder of ~~his~~ the member's life, in an amount equal to sixty

1 percent of such member's average annual salary or compensation
2 received during the three twelve-consecutive-month periods of
3 employment with such department in which such member received ~~his~~
4 the member's highest salary or compensation while a member of the
5 department, or an amount of \$500 per month, whichever is greater.

6 (b) Any member of any such department who is entitled to a
7 retirement pension under the provisions of subsection (a) of this
8 section and who has been in the honorable service of such
9 department for more than twenty years at the time of ~~his~~ the
10 member's retirement shall receive, in addition to the sixty percent
11 authorized in said subsection (a):

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

16 (2) One additional percent, to be added to such maximum of
17 seventy percent, for each of the first five additional years of
18 service completed at the time of retirement in excess of
19 twenty-five years of service up to a maximum of seventy-five
20 percent.

21 The total additional credit provided for in this subsection
22 may not exceed fifteen additional percent.

23 (c) Any member of any such department whose service has been
24 interrupted by duty with the Armed Forces of the United States as

1 provided in section twenty-seven of this article prior to July 1,
2 1981, shall be eligible for retirement pension benefits immediately
3 upon retirement, regardless of ~~his~~ the member's age, if ~~he~~ the
4 member shall otherwise be eligible for such retirement pension
5 benefits. In no event are provisions of this subsection to be
6 interpreted to permit retirement before age fifty unless the
7 interruption of the member's service by duty with the Armed Forces
8 of the United States actually occurred before July 1, 1981. The
9 amendment made to this subsection during the 2013 Regular Session
10 of the Legislature is not for the purpose of changing the existing
11 law regarding benefits provided to veterans for military service
12 prior to July 1, 1981, but to further clarify that the provisions
13 of this section and any previous enactments of this section do not
14 make a member eligible for retirement before age fifty for a
15 member's service with the Armed Forces of the United States prior
16 to July 1, 1981.

17 Any member or previously retired member of any such department
18 who has served in active duty with the Armed Forces of the United
19 States as described in section twenty-seven of this article,
20 whether prior to or subsequent to becoming a member of a paid
21 police or fire department covered by the provisions of this
22 article, shall receive, in addition to the sixty percent authorized
23 in subsection (a) of this section and the additional percent credit
24 authorized in subsection (b) of this section, one additional

1 percent for each year so served in active military duty, up to a
2 maximum of four additional percent. In no event, however, may the
3 total benefit granted to any member exceed seventy-five percent of
4 the member's annual average salary calculated in accordance with
5 subsection (a) of this section.

6 (d) Any member of a paid police or fire department shall be
7 retired at the age of sixty-five years in the manner provided in
8 this subsection. When a member of the paid police or fire
9 department reaches the age of sixty-five years, the said board of
10 trustees shall notify the mayor of this fact, within thirty days of
11 such member's sixty-fifth birthday. The mayor shall cause such
12 sixty-five-year-old member of the paid police or fire department to
13 retire within a period of not more than thirty additional days.
14 Upon retirement under the provisions of this subsection, such
15 member shall receive retirement pension benefits payable in twelve
16 monthly installments for each year of the remainder of ~~his~~ the
17 member's life in an amount equal to sixty percent of such member's
18 average annual salary or compensation received during the three
19 twelve-consecutive-month periods of employment with such department
20 in which such member received ~~his~~ the member's highest salary or
21 compensation while a member of the department, or an amount of \$500
22 per month, whichever is greater. If such member has been employed
23 in said department for more than twenty years, the provisions of
24 subsection (b) of this section shall apply.

1 (e) It shall be the duty of each member of a paid police or
2 fire department at the time a fund is hereafter established to
3 furnish the necessary proof of ~~his~~ the member's date of birth to
4 the said board of trustees, as specified in section twenty-three of
5 this article, within a reasonable length of time, said length of
6 time to be determined by the said board of trustees. Then the
7 board of trustees and the mayor shall proceed to act in the manner
8 provided in subsection (d) of this section and shall cause all
9 members of the paid police or fire department who are over the age
10 of sixty-five years to retire in not less than sixty days from the
11 date the fund is established. Upon retirement under the provisions
12 of this subsection (e), such member, whether ~~he~~ the member has been
13 employed in said department for twenty years or not, shall receive
14 retirement pension benefits payable in twelve monthly installments
15 for each year of the remainder of ~~his~~ the member's life in an
16 amount equal to sixty percent of such member's average annual
17 salary or compensation received during the three
18 twelve-consecutive-month periods of employment with such department
19 in which such member received ~~his~~ the member's highest salary or
20 compensation while a member of the department, or an amount of \$500
21 per month, whichever is greater. If such member has been employed
22 in said department for more than twenty years, the provisions of
23 subsection (b) of this section shall apply.

24 **ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND**

1 **FIREFIGHTERS RETIREMENT SYSTEM.**

2 **§8-22A-4. Creation and administration of West Virginia Municipal**
3 **Police Officers and Firefighters Retirement System;**
4 **specification of actuarial assumptions.**

5 There is hereby created the West Virginia Municipal Police
6 Officers and Firefighters Retirement System. The purpose of this
7 system is to provide for the orderly retirement of certain police
8 officers and firefighters who become superannuated because of age
9 or permanent disability and to provide certain survivor death
10 benefits. Substantially all of the members of the retirement
11 system shall be qualified public safety employees as defined in
12 section two of this article. The retirement system shall come into
13 effect January 1, 2010: *Provided*, That if the number of members in
14 the system are fewer than one hundred on January 1, ~~2014~~ 2017, then
15 all of the provisions of this article are void and of no force and
16 effect, and memberships in the system will be merged into the
17 Emergency Medical Services Retirement System created in article
18 five-v, chapter sixteen of this code. If merger is required, the
19 board shall take all necessary steps to see that the voluntary
20 transfers of persons and assets authorized by this article do not
21 affect the qualified status with the Internal Revenue Service of
22 either retirement plan. All business of the system shall be
23 transacted in the name of the West Virginia Municipal Police

1 Officers and Firefighters Retirement System. The board shall
2 specify and adopt all actuarial assumptions for the plan at its
3 first meeting of every calendar year or as soon thereafter as may
4 be practicable, which assumptions shall become part of the plan.

NOTE: This purpose of this bill is to grant additional investigatory and legal powers and duties of the West Virginia Municipal Pensions Oversight Board. The bill requires certain notices of lawsuits to the West Virginia Municipal Pensions Oversight Board. The bill limits certain court orders under certain circumstances. The bill clarifies that a member may retire when the member's service has been interrupted by duty with the Armed Forces of the United States. The bill extends the cut-off date for the West Virginia Municipal Police Officers and Firefighters Retirement System plan from 2014 to 2017.

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

§8-22-18c is new; therefore, it has been completely underscored.