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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

Committee Substitute for
SENATE BILL NO. 511

(By Senator Foster, et al)

PASSED March 11, 2006

In Effect 90 days from Passage

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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 511

(SENATORS FOSTER, MCCABE, HARRISON, SPROUSE
AND BARNES, *original sponsors*)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §8-22-19 and §8-22-20 of the Code of West Virginia, 1931, as amended, all relating to municipal policemen's and firemen's pension and relief funds; allowing increases for employee contributions; allowing the basis for calculating alternative contributions to be modified; and allowing increases for municipal contributions.

Be it enacted by the Legislature of West Virginia:

That §8-22-19 and §8-22-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted, 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.

§8-22-19. Levy to maintain fund.

1 (a) (1) The provisions of this subsection shall remain in
2 effect through the thirtieth day of June, one thousand nine
3 hundred eighty-three.

4 (2) In every municipality in which there is a policemen's
5 pension and relief fund or a firemen's pension and relief
6 fund, or both, the same shall be maintained as follows: The
7 governing body of the municipality shall levy annually and
8 in the manner provided by law for other municipal levies,
9 and include within the maximum levy or levies permitted
10 by law, and if necessary in excess of any charter provision,
11 a tax at such rate as will, after crediting the amount of the
12 contributions received during such year from the members
13 of the respective paid police department or paid fire
14 department, provide funds equal to the sum of: (1) The full
15 amount of estimated expenditures of the boards of trustees
16 of the respective funds; and (2) an additional amount equal
17 to ten percent of the estimated expenditures, said ten
18 percent amount to be taken, accumulated and invested, if
19 possible, as surplus reserve: *Provided*, That in no event
20 shall the levy for each of the respective boards of trustees
21 be less than one cent nor more than eight cents on each one
22 hundred dollars of all real and personal property as listed
23 for taxation in the municipality: *Provided, however*, That
24 in the event that the funds derived above are not sufficient
25 to meet the annual expenditures and the surplus reserve
26 funds for any fiscal year do not contain a sufficient
27 balance to maintain full retirement benefits for that fiscal
28 year, the municipality shall for only that fiscal year levy
29 an amount not to exceed an additional two cents on each
30 one hundred dollars of all real and personal property listed
31 for taxation in such municipality: *Provided further*, That
32 in the event that a municipality is required to levy an
33 amount for any fiscal year in excess of eight cents on each
34 one hundred dollars of all real and personal property as
35 provided above, the municipality shall assess and collect
36 for only that fiscal year from each member an additional

37 amount of one percent of the actual salary or compensa-
38 tion for each one cent that the municipality has levied in
39 excess of the eight cents which shall become a required
40 part of the pension and relief fund to which the member
41 belongs.

42 (3) The levies authorized under the provisions of this
43 section, or any part of them, may by the governing body be
44 laid in addition to all other municipal levies, and to that
45 extent, beyond the limit of levy imposed by the charter of
46 the municipality; and the levies shall supersede and if
47 necessary exclude levies for other purposes if priority or
48 exclusion is necessary under limitations upon taxes or tax
49 levies imposed by law.

50 (4) The public corporations are authorized to take by
51 gift, grant, devise or bequest, any money or real or per-
52 sonal property, upon such terms as to the investment and
53 expenditures thereof as may be fixed by the grantor or
54 determined by the trustees.

55 (5) In addition to all other sums provided for pensions in
56 this section, it shall be the duty of every municipality in
57 which any policemen's pension and relief fund or firemen's
58 pension and relief fund or funds have been or shall be
59 established to assess and collect from each member of the
60 paid police department or paid fire department or both
61 each month, the sum of six percent of the actual salary or
62 compensation of the member; and the amount so collected
63 shall become a regular part of the policemen's pension and
64 relief fund, if collected from a policeman, and of the
65 firemen's pension and relief fund, if collected from a
66 fireman.

67 (b) (1) After the thirtieth day of June, one thousand nine
68 hundred eighty-three: In order for a municipal policemen's
69 or firemen's pension and relief fund to receive the alloca-
70 ble portion of moneys from the municipal pensions and
71 protection fund established in section fourteen-d, article
72 three, chapter thirty-three of this code, the governing body

73 of the municipality shall levy annually and in the manner
74 provided by law for other municipal levies, and include
75 within the maximum levy or levies permitted by law, and
76 if necessary in excess of any charter provision, a tax at
77 such rate as will, after crediting: (A) The amount of the
78 contributions received during the year from the members
79 of the respective paid police department or paid fire
80 department; and (B) the allocable portion of the municipal
81 pensions and protection fund established in section
82 fourteen-d, article three, chapter thirty-three of this code
83 provide funds equal to the amount necessary to meet the
84 minimum standards for actuarial soundness as provided in
85 section twenty of this article, said amount to be irrevoca-
86 bly contributed, accumulated and invested as fund assets
87 described in sections twenty-one and twenty-two of this
88 article. The municipality contributions shall be deposited
89 as fund assets on at least a quarterly basis and any reve-
90 nues received from any source by a municipality which are
91 specifically collected for the purpose of allocation for
92 deposit into the policemen's pension and relief fund or
93 firemen's pension and relief fund shall be so deposited
94 within thirty days of receipt by the municipality. Hereto-
95 fore surplus reserves accumulated before the first day of
96 July, one thousand nine hundred eighty-three, shall be
97 irrevocably contributed, aggregated and invested as fund
98 assets described in sections twenty-one and twenty-two of
99 this article. Any actuarial deficiency arising under this
100 section and section twenty of this article shall not be the
101 obligation of the State of West Virginia.

102 (2) The levies authorized under the provisions of this
103 section, or any part of them, may by the governing body be
104 laid in addition to all other municipal levies, and to that
105 extent, beyond the limit of levy imposed by the charter of
106 the municipality; and the levies shall supersede and if
107 necessary exclude levies for other purposes, where other
108 purposes have not already attained priority, and within
109 the limitations upon taxes or tax levies imposed by the
110 constitution and laws.

111 (3) The public corporations are authorized to take by
112 gift, grant, devise or bequest, any money or real or per-
113 sonal property, upon such terms as to the investment and
114 expenditures thereof as may be fixed by the grantor or
115 determined by the trustees.

116 (4) Notwithstanding provisions in section six of this
117 article, in addition to all other sums provided for pensions
118 in this section, it is the duty of every municipality in which
119 any fund or funds have been or shall be established to
120 assess and collect from each member of the paid police
121 department or paid fire department or both each month,
122 the sum of seven percent of the actual salary or compensa-
123 tion of such member; and the amount so collected shall
124 become a regular part of the policemen's pension and relief
125 fund, if collected from a policeman, and of the firemen's
126 pension and relief fund, if collected from a fireman:
127 *Provided*, That the board of trustees for each pension and
128 relief fund may assess and collect from each member of the
129 paid police department or paid fire department or both
130 each month no more than an additional two and one half
131 percent of the actual salary or compensation of each
132 member: *Provided, however*, That if any board of trustees
133 decides to assess and collect any additional amount
134 pursuant to this subdivision above the member contribu-
135 tion required by this section, then that board of trustees
136 may not reduce the additional amount until the respective
137 pension and relief fund no longer has any actuarial
138 deficiency: *Provided further*, That if any board of trustees
139 decides to assess and collect any additional amount, any
140 board of trustees decision and any additional amount is
141 not the liability of the State of West Virginia. Member
142 contributions shall be deposited in the pension and relief
143 fund on at least a monthly basis.

144 (5) For the fiscal year beginning on the first day of July,
145 one thousand nine hundred eighty-three and for each
146 fiscal year thereafter, the State Treasurer shall retain the
147 allocable portion of the Municipal Pensions and Protection

148 Fund, established in section fourteen-d, article three,
149 chapter thirty-three of this code, until such time as the
150 treasurer of the municipality applies for the allocable
151 portion and certifies in writing to the State Auditor that:

152 (A) The municipality has irrevocably contributed the
153 amount required under this section and section twenty of
154 this article to the pension and relief fund for the fiscal
155 year; and

156 (B) The board of trustees of the pension and relief fund
157 has made a report to the governing body of the municipal-
158 ity on the condition of its fund with respect to the fiscal
159 year.

160 (6) When the aforementioned application and certifica-
161 tion are made the allocable portion of moneys from the
162 Municipal Pensions and Protection Fund shall be paid to
163 the corresponding policemen's or firemen's pension and
164 relief fund.

165 (7) The State Auditor has the power and duty as the
166 Auditor deems necessary to perform or review audits on
167 the pension and relief funds or to employ an independent
168 consulting actuary or accountant to determine the compli-
169 ance of the aforementioned certification with the require-
170 ments of this section and section twenty of this article.
171 The expense of the audit or determination shall be paid
172 from the portion of the municipal pensions and protection
173 fund allocable to municipal policemen's and firemen's
174 pension and relief funds. If the allocable portion of the
175 Municipal Pensions and Protection Fund is not paid to the
176 pension and relief fund within thirty-six months, the
177 portion is forfeited by the pension and relief fund and is
178 allocable to other eligible municipal policemen's and
179 firemen's pension and relief funds in accordance with
180 section fourteen-d, article three, chapter thirty-three of
181 this code.

§8-22-20. Minimum standards for actuarial soundness.

1 The board of trustees for each pension and relief fund
2 shall have regularly scheduled actuarial valuation reports
3 prepared by a qualified actuary. All of the following
4 standards must be met:

5 (a) An actuarial valuation report shall be prepared at
6 least once every three years commencing with the later of:
7 (1) The first day of July, one thousand nine hundred
8 eighty-three; or (2) three years following the most recently
9 prepared actuarial valuation report: *Provided*, That this
10 most recently prepared actuarial valuation report meets
11 all of the standards of this section.

12 (b) The actuarial valuation report shall consist of, but is
13 not limited to, the following disclosures: (1) The financial
14 objective of the fund and how the objective is to be
15 attained; (2) the progress being made toward realization of
16 the financial objective; (3) recent changes in the nature of
17 the fund, benefits provided, or actuarial assumptions or
18 methods; (4) the frequency of actuarial valuation reports
19 and the date of the most recent actuarial valuation report;
20 (5) the method used to value fund assets; (6) the extent to
21 which the qualified actuary relies on the data provided
22 and whether the data was certified by the fund's Auditor
23 or examined by the qualified actuary for reasonableness;
24 (7) a description and explanation of the actuarial assump-
25 tions and methods; and (8) any other information the
26 qualified actuary feels is necessary or would be useful in
27 fully and fairly disclosing the actuarial condition of the
28 fund.

29 (c) (1) After the thirtieth day of June, one thousand nine
30 hundred ninety-one, and thereafter, the financial objective
31 of each municipality shall not be less than to contribute to
32 the fund annually an amount which, together with the
33 contributions from the members and the allocable portion
34 of the Municipal Pensions and Protection Fund for municipi-
35 pal pension and relief funds established under section
36 fourteen-d, article three, chapter thirty-three of this code
37 and other income sources as authorized by law, will be

38 sufficient to meet the normal cost of the fund and amortize
39 any actuarial deficiency over a period of not more than
40 forty years beginning from the first day of July, one
41 thousand nine hundred ninety-one: *Provided*, That in the
42 fiscal year ending the thirtieth day of June, one thousand
43 nine hundred ninety-one, the municipality may elect to
44 make its annual contribution to the fund using an alterna-
45 tive contribution in an amount not less than: (i) One
46 hundred seven percent of the amount contributed for the
47 fiscal year ending the thirtieth day of June, one thousand
48 nine hundred ninety; or (ii) an amount equal to the average
49 of the contribution payments made in the five highest
50 fiscal years beginning with the fiscal year ending one
51 thousand nine hundred eighty-four, whichever is greater:
52 *Provided, however*, That contribution payments in subse-
53 quent fiscal years under this alternative contribution
54 method may not be less than one hundred seven percent of
55 the amount contributed in the prior fiscal year: *Provided*
56 *further*, That in order to avoid penalizing municipalities
57 and to provide flexibility when making contributions,
58 municipalities using the alternative contribution method
59 may exclude a one-time additional contribution made in
60 any one year in excess of the minimum required by this
61 section: *And provided further*, That the governing body of
62 any municipality may elect to provide an employer
63 continuing contribution of one percent more than the
64 municipality's required minimum under the alternative
65 contribution plan authorized in this subsection: *And*
66 *provided further*, That if any municipality decides to
67 contribute an additional one percent, then that municipal-
68 ity may not reduce the additional contribution until the
69 respective pension and relief fund no longer has any
70 actuarial deficiency: *And provided further*, That any
71 decision and any contribution payment by the municipal-
72 ity is not the liability of the State of West Virginia: *And*
73 *provided further*, That if any municipality or any pension
74 fund board of trustees makes a voluntary election and
75 thereafter fails to contribute the voluntarily increase as

76 provided in this section and in subdivision (4), subsection
77 (b), section nineteen of this article, then the board of
78 trustees is not eligible to receive funds allocated under
79 section fourteen-d, article three, chapter thirty-three of
80 this code: *And provided further*, That prior to using this
81 alternative contribution method the actuary of the fund
82 shall certify in writing that the fund is projected to be
83 solvent under the alternative contribution method for the
84 next consecutive fifteen-year period. For purposes of
85 determining this minimum financial objective: (i) The
86 value of the fund's assets shall be determined on the basis
87 of any reasonable actuarial method of valuation which
88 takes into account fair market value; and (ii) all costs,
89 deficiencies, rate of interest and other factors under the
90 fund shall be determined on the basis of actuarial assump-
91 tions and methods which, in aggregate, are reasonable
92 (taking into account the experience of the fund and
93 reasonable expectations) and which, in combination, offer
94 the qualified actuary's best estimate of anticipated
95 experience under the fund: *And provided further*, That any
96 municipality which elected the alternative funding method
97 under this section and which has an unfunded actuarial
98 liability of not more than twenty-five percent of fund
99 assets, may, beginning the first day of September, two
100 thousand three, elect to revert to the standard funding
101 method, which is to contribute to the fund annually an
102 amount which is not less than an amount which, together
103 with the contributions from the members and the allocable
104 portion of the Municipal Pensions and Protection Fund for
105 municipal pension and relief funds established under
106 section fourteen-d, article three, chapter thirty-three of
107 this code and other income sources as authorized by law,
108 will be sufficient to meet the normal cost of the fund and
109 amortize any actuarial deficiency over a period of not
110 more than forty years, beginning from the first day of July,
111 one thousand nine hundred ninety-one.

112 (2) No municipality may anticipate or use in any manner
113 any state funds accruing to the police or firemen's pension

114 fund to offset the minimum required funding amount for
115 any fiscal year.

116 (3) Notwithstanding any other provision of this section
117 or article to the contrary, each municipality shall contrib-
118 ute annually to the fund an amount which may not be less
119 than the normal cost, as determined by the actuarial
120 report.

121 (d) For purposes of this section the term "qualified
122 actuary" means only an actuary who is a member of the
123 Society of Actuaries or the American Academy of Actuar-
124 ies. The qualified actuary shall be designated a fiduciary
125 and shall discharge his or her duties with respect to a fund
126 solely in the interest of the members and member's benefi-
127 ciaries of that fund. In order for the standards of this
128 section to be met, the qualified actuary shall certify that
129 the actuarial valuation report is complete and accurate
130 and that in his or her opinion the technique and assump-
131 tions used are reasonable and meet the requirements of
132 this section of this article.

133 (e) The cost of the preparation of the actuarial valuation
134 report shall be paid by the fund.

135 (f) Notwithstanding any other provision of this section,
136 for the fiscal year ending the thirtieth day of June, one
137 thousand nine hundred ninety-one, the municipality may
138 calculate its annual contribution based upon the provi-
139 sions of the supplemental benefit provided in this article
140 enacted during the one thousand nine hundred ninety-one
141 regular session of the Legislature.

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

Chandy White
.....
Chairman Senate Committee

ReBeuz
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell E. Osborne
.....
Clerk of the Senate

Suzanne D. Boy
.....
Clerk of the House of Delegates

Carl Roy Tomblin
.....
President of the Senate

Robert S. Taylor
.....
Speaker House of Delegates

The within *is approved* this the *4th*
April Day of, 2006.

Paul Hancock
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 03 2006

Time 2:03 pm