

1 **Senate Bill No. 546**

2 (By Senators Foster, Wells, McCabe, Wills, Edgell, Palumbo,  
3 Klempa and Kessler (Acting President))  
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5 [Introduced February 18, 2011; referred to the Committee on  
6 Pensions; and then to the Committee on Government Organization.]  
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11 A BILL to amend and reenact §8-22-18a of the Code of West Virginia,  
12 1931, as amended; and to amend and reenact §8-22A-28 of said  
13 code, all relating to municipal police and firefighter  
14 pensions; authorizing the West Virginia Municipal Pensions  
15 Oversight Board to purchase actuarial services; and extending  
16 the time for certain municipalities to request referendum on  
17 Social Security coverage.

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

19 That §8-22-18a of the Code of West Virginia, 1931, as amended,  
20 be amended and reenacted; and that §8-22A-28 of said code be  
21 amended and reenacted, all to read as follows:

22 **ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION**  
23 **AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF**  
24 **FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS**

1                   **SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND**  
2                   **SEWERAGE SYSTEM.**

3 **§8-22-18a.   West Virginia Municipal Pensions Oversight Board**  
4                   **created; powers and duties; management;**  
5                   **composition; terms; quorum; expenses; reports.**

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

1 active members, beneficiaries or others to initiate legal action to  
2 protect interests in the funds. The oversight board is created as  
3 a public body corporate. Establishment of the oversight board does  
4 not relieve the municipal funds' boards of trustees from their  
5 fiduciary and other duties to the funds, nor does it create any  
6 liability for the funds on the part of the state. Members and  
7 employees of the oversight board are not liable personally, either  
8 jointly or severally, for debts or obligations of the municipal  
9 pension and relief funds. Members and employees of the oversight  
10 board have a fiduciary duty toward the municipal pension and relief  
11 funds and are liable for malfeasance or gross negligence.  
12 Employees of the oversight board are nonclassified state employees.

13 (2) The oversight board shall consist of nine members. The  
14 executive director of the state's Investment Management Board and  
15 the executive director of the state's Consolidated Public  
16 Retirement Board, or their designees, shall serve as voting ex  
17 officio members. The other seven members shall be citizens of the  
18 state who have been qualified electors of the state for a period of  
19 at least one year next preceding their appointment and shall be as  
20 follows: An active or retired member of a Municipal Policemen's  
21 Pension and Relief Fund chosen from a list of three persons  
22 submitted to the Governor by the state's largest professional  
23 municipal police officers organization, an active or retired member  
24 of a Municipal Firemen's Pension and Relief Fund chosen from a list

1 of three persons submitted to the Governor by the state's largest  
2 professional firefighters organization, an attorney experienced in  
3 finance and investment matters related to pensions management, two  
4 persons experienced in pension funds management, one person who is  
5 a certified public accountant experienced in auditing and one  
6 person chosen from a list of three persons submitted to the  
7 Governor by the state's largest association of municipalities.

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

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

15 (1) Enter into contracts, to sue and be sued, to implead and  
16 be impleaded;

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

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

21 (4) Make, amend and repeal bylaws, rules and procedures  
22 consistent with the provisions of this article and article thirty-  
23 three of this code;

24 (5) Notwithstanding any other provision of law, retain or

1 employ, fix compensation, prescribe duties and pay expenses of  
2 legal, accounting, financial, investment, management and other  
3 staff, advisors or consultants as it considers necessary, including  
4 the hiring of legal counsel and actuary; and

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

15 (c) Except for ex officio members, the terms of oversight  
16 board members shall be staggered initially from January 1, 2010.  
17 The Governor shall appoint initially one member for a term of one  
18 year, one member for a term of two years, two members for terms of  
19 three years, one member for a term of four years and two members  
20 for terms of five years. Subsequent appointments shall be for  
21 terms of five years. A member serving two full consecutive terms  
22 may not be reappointed for one year after completion of his or her  
23 second full term. Each member shall serve until that member's  
24 successor is appointed and qualified. Any member may be removed by

1 the Governor in case of incompetency, neglect of duty, gross  
2 immorality or malfeasance in office. Any vacancy on the oversight  
3 board shall be filled by appointment by the Governor for the  
4 balance of the unexpired term.

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

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

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

21 (f) The board may contract with other state boards or state  
22 agencies to share offices, personnel and other administrative  
23 functions as authorized under this article: *Provided*, That no  
24 provision of this subsection may be construed to authorize the

1 board to contract with other state boards or state agencies to  
2 otherwise perform the duties or exercise the responsibilities  
3 imposed on the board by this code.

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

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

16 (i) The oversight board shall cooperate with the West Virginia  
17 Investment Management Board and the Board of Treasury Investments  
18 to educate members of the local pension boards of trustees on the  
19 services offered by the two state investment boards. No later than  
20 October 31, 2013, the board shall report to the Joint Committee on  
21 Government and Finance and the Joint Committee on Pensions and  
22 Retirement a detailed comparison of returns on long-term  
23 investments of moneys held by or allocated to municipal pension and  
24 relief funds managed by the West Virginia Investment Management



1 Board and those managed by others than the Investment Management  
2 Board. The oversight board shall also report at that time on  
3 short-term investment returns by local pension boards using the  
4 West Virginia Board of Treasury Investments compared to short-term  
5 investment returns by those local boards of trustees not using the  
6 Board of Treasury Investments.

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

12 ~~(k) The Joint Committee on Pensions and Retirement shall study~~  
13 ~~deferred retirement option programs (DROPs) and shall provide~~  
14 ~~opportunities for professional police officer and firefighter~~  
15 ~~organizations to present information on DROPs to the committee, to~~  
16 ~~consider and evaluate elements of the programs to assess how the~~  
17 ~~programs may best serve the public interest. The committee shall~~  
18 ~~report any findings, conclusions or recommendations, along with~~  
19 ~~drafts of any proposed legislation, to the Joint Committee on~~  
20 ~~Government and Finance by November 30, 2010.~~

21 **ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND**  
22 **FIREFIGHTERS RETIREMENT SYSTEM.**

23 **§8-22A-28. How a municipality or municipal subdivision becomes a**  
24 **participating public employer; duty to request**

1                                   **referendum on Social Security coverage.**

2           (a) Subject to section sixteen, article twenty-two of this  
3 chapter, any municipality or municipal subdivision employing  
4 municipal police officers or firefighters may by a majority of the  
5 members of its governing body eligible to vote, elect to become a  
6 participating public employer and thereby include its police  
7 officers and firefighters in the membership of the plan. The clerk  
8 or secretary of each municipality or municipal subdivision electing  
9 to become a participating public employer shall certify the  
10 determination of the municipality or municipal subdivision by  
11 corporate resolution to the Consolidated Public Retirement Board  
12 within ten days from and after the vote of the governing body.  
13 Separate resolutions are required for municipal police officers and  
14 municipal firefighters. Once a municipality or municipal  
15 subdivision elects to participate in the plan, the action is final  
16 and it may not, at a later date, elect to terminate its  
17 participation in the plan.

18           (b) On or before October 1, ~~2011~~ 2015, the participating  
19 employers shall jointly submit a plan to the State Auditor,  
20 pursuant to section five, article seven, chapter five of this code,  
21 to extend Social Security benefits to members of the retirement  
22 system.

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(NOTE: The purpose of this bill is to permit the Municipal Pensions Oversight Board to purchase actuarial services exempt from

Purchasing Division requirements, and to extend the date by which municipalities participating in the Municipal Police Officers and Firefighters Retirement System must request a referendum on Social Security coverage. Obsolete language is removed.

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