

Senate Bill No. 546

(By Senators Foster, Wells, McCabe, Wills, Edgell, Palumbo,
Klempa and Kessler (Acting President))

[Introduced February 18, 2011; referred to
the Committee on Pensions; and then to
the Committee on Government Organization.]

A BILL to amend and reenact §8-22-18a of the Code of West Virginia, 1931, as amended; and to amend and reenact §8-22A-28 of said code, all relating to municipal police and firefighter pensions; authorizing the West Virginia Municipal Pensions Oversight Board to purchase actuarial services; and extending the time for certain municipalities to request referendum on Social Security coverage.

Be it enacted by the Legislature of West Virginia:

That §8-22-18a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8-22A-28 of said code 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.

§8-22-18a. 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 Muni-
4 pal Pensions Oversight Board for the purpose of monitoring
5 and improving the performance of municipal policemen's
6 and firemen's pension and relief funds to assure prudent
7 administration, investment and management of the funds.
8 Management of the oversight board shall be vested solely in
9 the members of the oversight board. Duties of the oversight
10 board shall include, but not be limited to, assisting muni-
11 cipal boards of trustees in performing their duties, assuring the
12 funds' compliance with applicable laws, providing for
13 actuarial studies, distributing tax revenues to the funds,
14 initiating or joining legal actions on behalf of active or

15 retired pension fund members or municipal boards of
16 trustees to protect interests of the members in the funds, and
17 taking other actions as may be reasonably necessary to
18 provide for the security and fiscal integrity of the pension
19 funds. The oversight board's authority to initiate legal action
20 does not preempt the authority of municipalities; municipal
21 policemen's and firemen's boards of trustees; or pension fund
22 active members, beneficiaries or others to initiate legal
23 action to protect interests in the funds. The oversight board
24 is created as a public body corporate. Establishment of the
25 oversight board does not relieve the municipal funds' boards
26 of trustees from their fiduciary and other duties to the funds,
27 nor does it create any liability for the funds on the part of the
28 state. Members and employees of the oversight board are not
29 liable personally, either jointly or severally, for debts or
30 obligations of the municipal pension and relief funds.
31 Members and employees of the oversight board have a
32 fiduciary duty toward the municipal pension and relief funds
33 and are liable for malfeasance or gross negligence. Employ-
34 ees of the oversight board are nonclassified state employees.

35 (2) The oversight board shall consist of nine members. The
36 executive director of the state's Investment Management

37 Board and the executive director of the state's Consolidated
38 Public Retirement Board, or their designees, shall serve as
39 voting ex officio members. The other seven members shall be
40 citizens of the state who have been qualified electors of the
41 state for a period of at least one year next preceding their
42 appointment and shall be as follows: An active or retired
43 member of a Municipal Policemen's Pension and Relief Fund
44 chosen from a list of three persons submitted to the Governor
45 by the state's largest professional municipal police officers
46 organization, an active or retired member of a Municipal
47 Firemen's Pension and Relief Fund chosen from a list of
48 three persons submitted to the Governor by the state's
49 largest professional firefighters organization, an attorney
50 experienced in finance and investment matters related to
51 pensions management, two persons experienced in pension
52 funds management, one person who is a certified public
53 accountant experienced in auditing and one person chosen
54 from a list of three persons submitted to the Governor by the
55 state's largest association of municipalities.

56 (3) On the effective date of the enactment of this section as
57 amended during the fourth extraordinary session of the
58 Legislature in 2009, the Governor shall forthwith appoint the

59 members, with the advice and consent of the Senate. The
60 Governor may remove any member from the oversight board
61 for neglect of duty, incompetency or official misconduct.

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

63 (1) Enter into contracts, to sue and be sued, to implead and
64 be impleaded;

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

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

69 (4) Make, amend and repeal bylaws, rules and procedures
70 consistent with the provisions of this article and article
71 thirty-three of this code;

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

77 (6) Do all things necessary and appropriate to implement
78 and operate the board in performance of its duties. Expenses
79 shall be paid from the moneys in the Municipal Pensions
80 Security Fund created in section eighteen-b of this article or,

81 prior to the transition provided in section eighteen-b of this
82 article, the Municipal Pensions and Protection Fund:
83 *Provided*, That the board may request special appropriation
84 for special projects. The oversight board is exempt from
85 provisions of article three, chapter five-a of this code for the
86 purpose of contracting for actuarial services, including the
87 services of a reviewing actuary.

88 (c) Except for ex officio members, the terms of oversight
89 board members shall be staggered initially from January 1,
90 2010. The Governor shall appoint initially one member for a
91 term of one year, one member for a term of two years, two
92 members for terms of three years, one member for a term of
93 four years and two members for terms of five years. Subse-
94 quent appointments shall be for terms of five years. A
95 member serving two full consecutive terms may not be
96 reappointed for one year after completion of his or her
97 second full term. Each member shall serve until that mem-
98 ber's successor is appointed and qualified. Any member may
99 be removed by the Governor in case of incompetency, neglect
100 of duty, gross immorality or malfeasance in office. Any
101 vacancy on the oversight board shall be filled by appoint-
102 ment by the Governor for the balance of the unexpired term.

103 (d) A majority of the full authorized membership of the
104 oversight board constitutes a quorum. The board shall meet
105 at least quarterly each year, but more often as duties require,
106 at times and places that it determines. The oversight board
107 shall elect a chairperson and a vice chairperson from their
108 membership who shall serve for terms of two years and shall
109 select annually a secretary/treasurer who may be either a
110 member or employee of the board. The oversight board shall
111 employ an executive director and other staff as needed and
112 shall fix their duties and compensation. The compensation of
113 the executive director shall be subject to approval of the
114 Governor. Except for any special appropriation as provided
115 in subsection (b) of this section, all personnel and other
116 expenses of the board shall be paid from revenue collected
117 and allocated for municipal policemen's or municipal
118 firemen's pension and relief funds pursuant to section
119 fourteen-d, article three, chapter thirty-three of this code
120 and distributed through the Municipal Pensions and Protec-
121 tion Fund or the Municipal Pensions Security Fund created
122 in section eighteen-b of this article. Expenses during the
123 initial year of the board's operation shall be from proceeds
124 of the allocation for the municipal pensions and relief funds.

125 Expenditures in years thereafter shall be by appropriation
126 from the Municipal Pensions Security Fund. Money allocated
127 for municipal policemen's and firemen's pension and relief
128 funds to be distributed from the Municipal Pensions and
129 Protection Fund or the Municipal Pensions Security Fund
130 shall be first allocated to pay expenses of the oversight board
131 and the remainder in the fund distributed among the various
132 municipal pension and relief funds as provided in section
133 fourteen-d, article three, chapter thirty-three of this code.
134 The board is exempt from the provisions of sections seven
135 and eleven, article three, chapter twelve of this code relating
136 to compensation and expenses of members, including travel
137 expenses.

138 (e) Members of the oversight board shall serve the board
139 without compensation for their services: *Provided*, That no
140 public employee member may suffer any loss of salary or
141 wages on account of his or her service on the board. Each
142 member of the board shall be reimbursed, on approval of the
143 board, for any necessary expenses actually incurred by the
144 member in carrying out his or her duties. All reimbursement
145 of expenses shall be paid out of the Municipal Pensions
146 Security Fund.

147 (f) The board may contract with other state boards or state
148 agencies to share offices, personnel and other administrative
149 functions as authorized under this article: *Provided*, That no
150 provision of this subsection may be construed to authorize
151 the board to contract with other state boards or state
152 agencies to otherwise perform the duties or exercise the
153 responsibilities imposed on the board by this code.

154 (g) The board shall propose rules for legislative approval in
155 accordance with the provisions of article three, chapter
156 twenty-nine-a of this code as necessary to implement the
157 provisions of this article, and may initially promulgate
158 emergency rules pursuant to the provisions of section fifteen,
159 article three, chapter twenty-nine-a of this code.

160 (h) The oversight board shall report annually to the
161 Legislature's Joint Committee on Government and Finance
162 and the Joint Committee on Pensions and Retirement
163 concerning the status of municipal policemen's and firemen's
164 pension and relief funds and shall present recommendations
165 for strengthening and protecting the funds and the benefit
166 interests of the funds' members.

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

169 Treasury Investments to educate members of the local
170 pension boards of trustees on the services offered by the two
171 state investment boards. No later than October 31, 2013, the
172 board shall report to the Joint Committee on Government
173 and Finance and the Joint Committee on Pensions and
174 Retirement a detailed comparison of returns on long-term
175 investments of moneys held by or allocated to municipal
176 pension and relief funds managed by the West Virginia
177 Investment Management Board and those managed by others
178 than the Investment Management Board. The oversight
179 board shall also report at that time on short-term investment
180 returns by local pension boards using the West Virginia
181 Board of Treasury Investments compared to short-term
182 investment returns by those local boards of trustees not
183 using the Board of Treasury Investments.

184 (j) The oversight board shall establish minimum require-
185 ments for training to be completed by each member of the
186 board of trustees of a Municipal Policemen's or Firemen's
187 Pension and Relief Fund. The requirements should include,
188 but not be limited to, training in ethics, fiduciary duty and
189 investment responsibilities.

190 ~~(k) The Joint Committee on Pensions and Retirement shall~~
191 ~~study deferred retirement option programs (DROPs) and~~

192 shall provide opportunities for professional police officer and
193 firefighter organizations to present information on DROPs to
194 the committee, to consider and evaluate elements of the
195 programs to assess how the programs may best serve the
196 public interest. The committee shall report any findings,
197 conclusions or recommendations, along with drafts of any
198 proposed legislation, to the Joint Committee on Government
199 and Finance by November 30, 2010.

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

**§8-22A-28. How a municipality or municipal subdivision becomes
a participating public employer; duty to request
referendum on Social Security coverage.**

1 (a) Subject to section sixteen, article twenty-two of this
2 chapter, any municipality or municipal subdivision employ-
3 ing municipal police officers or firefighters may by a major-
4 ity of the members of its governing body eligible to vote,
5 elect to become a participating public employer and thereby
6 include its police officers and firefighters in the membership
7 of the plan. The clerk or secretary of each municipality or
8 municipal subdivision electing to become a participating
9 public employer shall certify the determination of the

10 municipality or municipal subdivision by corporate resolu-
11 tion to the Consolidated Public Retirement Board within ten
12 days from and after the vote of the governing body. Separate
13 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
16 final 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
21 code, to extend Social Security benefits to members of the
22 retirement system.

(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.)