

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4489**

4 (By Delegates Pethtel, Duke, Guthrie, Canterbury, Stowers and
5 Givens)
6

7 (Originating in the Committee on Finance)

8 [February 23, 2012]
9

10 A BILL to amend and reenact §8-22-18a, §8-22-19a and §8-22-25 of
11 the Code of West Virginia, 1931, as amended; and to amend said
12 code by adding thereto a new section, designated §8-22-18c,
13 all relating to municipal policemen and firemen pensions;
14 providing powers and duties of the West Virginia Municipal
15 Oversight Board; requiring certain notice of lawsuit to the
16 West Virginia Municipal Oversight Board; limiting certain
17 court orders under certain circumstances; clarifying refunds
18 to members; and clarifying circumstances in which a member may
19 retire when the member's service has been interrupted by duty
20 with the Armed Forces of the United States.

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

22 That §8-22-18a, §8-22-19a and §8-22-25 of the Code of West
23 Virginia, 1931, as amended, be amended and reenacted; and that said
24 code be amended by adding thereto a new section, designated §8-22-
25 18c, all to read as follows:

26 **ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION**
27 **AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF**
28 **FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS**
29 **SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND**

1 **SEWERAGE SYSTEM.**

2 **§8-22-18a. West Virginia Municipal Pensions Oversight Board**
3 **created; powers and duties; management;**
4 **composition; terms; quorum; expenses; reports.**

5 (a) (1) ~~There is established, on the effective date of the~~
6 ~~enactment of this section during the fourth extraordinary session~~
7 ~~of the Legislature in 2009,~~ The West Virginia Municipal Pensions
8 Oversight Board, established in 2009, is hereby continued as a
9 public body corporate for the purpose of monitoring and improving
10 the 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
25 active members, beneficiaries or others to initiate legal action to
26 protect interests in the funds. Further, the oversight board may,
27 in its discretion, investigate the actions or practices of
28 municipal boards of trustees or of their administrators or

1 employees that, in the oversight board's judgment, have the
2 potential to threaten the security or fiscal integrity of the
3 pension funds and the boards of trustees, administrators and
4 employees shall cooperate with the oversight board in any
5 investigation. Regardless of whether it has previously conducted
6 an investigation, the oversight board may initiate or intervene in
7 legal actions to challenge or prevent any action or practice which,
8 in the oversight board's judgment has the potential to threaten the
9 security or fiscal integrity of the pension funds. ~~The oversight~~
10 board is created as a public body corporate. Establishment of the
11 oversight board does not relieve the municipal funds' boards of
12 trustees from their fiduciary and other duties to the funds, nor
13 does it create any liability for the funds on the part of the
14 state. The failure of the oversight board to investigate or
15 initiate legal actions regarding the actions or practices of
16 municipal boards of trustees, their administrators or employees
17 does not render the oversight board liable for the actions or
18 practices. Members and employees of the oversight board are not
19 liable personally, either jointly or severally, for debts or
20 obligations of the municipal pension and relief funds. Except as
21 otherwise provided herein, members and employees of the oversight
22 board have a fiduciary duty toward the municipal pension and relief
23 funds and are liable for malfeasance or gross negligence.
24 Employees of the oversight board are ~~nonclassified~~ classified-
25 exempt state employees.

26 (2) The oversight board shall consist of nine members. The
27 executive director of the state's Investment Management Board and
28 the executive director of the state's Consolidated Public

1 Retirement Board, or their designees, shall serve as voting ex
2 officio members. The other seven members shall be citizens of the
3 state who have been qualified electors of the state for a period of
4 at least one year next preceding their appointment and shall be as
5 follows: An active or retired member of a Municipal Policemen's
6 Pension and Relief Fund chosen from a list of three persons
7 submitted to the Governor by the state's largest professional
8 municipal police officers organization, an active or retired member
9 of a Municipal Firemen's Pension and Relief Fund chosen from a list
10 of three persons submitted to the Governor by the state's largest
11 professional firefighters organization, an attorney experienced in
12 finance and investment matters related to pensions management, two
13 persons experienced in pension funds management, one person who is
14 a certified public accountant experienced in auditing and one
15 person chosen from a list of three persons submitted to the
16 Governor by the state's largest association of municipalities.

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

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

24 (1) Enter into contracts, to sue and be sued, to implead and
25 be impleaded;

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

28 (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 thirty-
4 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
25 for terms of five years. Subsequent appointments shall be for
26 terms of five years. A member serving two full consecutive terms
27 may not be reappointed for one year after completion of his or her
28 second full-term. Each member shall serve until that member's

1 successor is appointed and qualified. Any member may be removed by
2 the Governor in case of incompetency, neglect of duty, gross
3 immorality or malfeasance in office. Any vacancy on the oversight
4 board shall be filled by appointment by the Governor for the
5 balance of the unexpired term.

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

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

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

18 (f) The board may contract with other state boards or state
19 agencies to share offices, personnel and other administrative
20 functions as authorized under this article: *Provided*, That no
21 provision of this subsection may be construed to authorize the
22 board to contract with other state boards or state agencies to
23 otherwise perform the duties or exercise the responsibilities
24 imposed on the board by this code.

25 (g) The board shall propose rules for legislative approval in
26 accordance with the provisions of article three, chapter twenty-
27 nine-a of this code as necessary to implement the provisions of
28 this article, and may initially promulgate emergency rules pursuant

1 to the provisions of section fifteen, article three, chapter
2 twenty-nine-a of this code.

3 (h) The oversight board shall report annually to the
4 Legislature's Joint Committee on Government and Finance and the
5 Joint Committee on Pensions and Retirement concerning the status of
6 municipal policemen's and firemen's pension and relief funds and
7 shall present recommendations for strengthening and protecting the
8 funds and the benefit interests of the funds' members.

9 (i) The oversight board shall cooperate with the West Virginia
10 Investment Management Board and the board of Treasury Investments
11 to educate members of the local pension boards of trustees on the
12 services offered by the two state investment boards. No later than
13 October 31, 2013, the board shall report to the Joint Committee on
14 Government and Finance and the Joint Committee on Pensions and
15 Retirement a detailed comparison of returns on long-term
16 investments of moneys held by or allocated to municipal pension and
17 relief funds managed by the West Virginia Investment Management
18 Board and those managed by others than the Investment Management
19 Board. The oversight board shall also report at that time on
20 short-term investment returns by local pension boards using the
21 West Virginia Board of Treasury Investments compared to short-term
22 investment returns by those local boards of trustees not using the
23 board of Treasury Investments.

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

1 **§8-22-18c. Notice of legal actions by or against municipal**
2 **policemen's and firemen's pension funds.**

3 In any legal action in which a municipal policemen's or
4 firemen's pension and relief fund, or the fund's board of trustees,
5 employee or administrator, is named as a party, the plaintiff or
6 petitioner shall serve a copy of the complaint or petition upon the
7 oversight board by certified mail, return receipt requested, within
8 seven days of filing the legal action. Until proof of service is
9 filed with the clerk of the court in which the action was filed,
10 and for sixty days after the filing of the proof of service, no
11 order may be entered by the court that directly or indirectly
12 requires the expenditure or other disposition of pension funds or
13 that determines the eligibility or entitlement of any member to any
14 pension benefit payable from the pension and relief fund: *Provided,*
15 That the court may enter such temporary or interim orders as may be
16 needed to preserve and protect the assets of the fund. In any legal
17 action involving a municipal policemen's or firemen's pension and
18 relief fund the oversight board is entitled to intervene for the
19 purpose of preserving the security or fiscal integrity of the
20 pension fund.

21 **§8-22-19a. Refunds of member contributions.**

22 After January 1, 2010, any member of a paid police department
23 or fire department who is removed or discharged or who before
24 retirement on any retirement pension or disability pension severs
25 his or her connection with said department, whether or not
26 consecutive, shall, upon request, be refunded all pension and
27 relief fund deductions made from ~~his~~ the member's salary or
28 compensation, but without interest from the fund. The refund shall

1 come from the accounts which originally received the member
2 deductions. For municipalities using the conservation method of
3 funding, the member contributions are to be refunded from both the
4 Municipal Pension and Relief Fund and the city benefit account, in
5 the exact percentages that were initially deposited to the
6 respective accounts. Any member who receives ~~such~~ a refund and
7 ~~such member~~ subsequently wishes to reenter ~~the~~ his or her
8 department, ~~such police officer or fire fighter~~ shall not be
9 allowed to reenter the department unless ~~such~~ the police officer or
10 fire fighter repays to the pension and relief fund all sums
11 refunded to him or her in a lump sum at the date of reentry, or by
12 monthly payroll deductions within thirty-six months from the date
13 he or she reenters the department, with interest at the rate of
14 eight percent per annum. In the event such refund is made prior to
15 January 1, 1981, and such member subsequently reenters the
16 department such police officer or firefighter shall be allowed
17 membership in such pension and relief fund; however, no credit may
18 be allowed such member for any former service, unless such member
19 repays to the pension and relief fund all sums refunded to ~~him~~ the
20 member within one year from the date ~~he~~ the member reenters the
21 department with interest at the rate of eight percent per annum:
22 *Provided, That ~~any member who, on or before June 3, 1955, reentered~~*
23 ~~the paid police or fire department shall be allowed credit for any~~
24 ~~former service in the same department reentered if he, within one~~
25 ~~year from said June 3, 1955, repaid all sums withdrawn or refunded~~
26 ~~to him with interest at the rate of six percent per annum, but for~~
27 such member who receives such refund prior to January 1, 1980,
28 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
25 percent of such member's average annual salary or compensation
26 received during the three twelve-consecutive-month periods of
27 employment with such department in which such member received ~~his~~
28 the member's highest salary or compensation while a member of the

1 department, or an amount of \$500 per month, whichever is greater.

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

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

12 (2) One additional percent, to be added to such maximum of
13 seventy percent, for each of the first five additional years of
14 service completed at the time of retirement in excess of twenty-
15 five years of service up to a maximum of seventy-five percent.

16 The total additional credit provided for in this subsection
17 may not exceed fifteen additional percent.

18 (c) Any member of any such department whose service has been
19 interrupted by duty with the Armed Forces of the United States as
20 provided in section twenty-seven of this article prior to July 1,
21 1981, shall be eligible for retirement pension benefits immediately
22 upon retirement, regardless of ~~his~~ the member's age, if ~~he~~ the
23 member shall otherwise be eligible for such retirement pension
24 benefits. In no event are provisions of this subsection to be
25 interpreted to permit retirement before age 50 unless the
26 interruption of the member's service by duty with the Armed Forces
27 of the United States actually occurred before July 1, 1981. The
28 amendment made to this subsection during the 2012 Regular Session

1 of the Legislature is not for the purpose of changing the existing
2 law regarding benefits provided to veterans for military service
3 prior to July 1, 1981, but to further clarify that the provisions
4 of this section and any previous enactments of this section do not
5 make a member eligible for retirement before age 50 for a member's
6 service with the Armed Forces of the United States prior to July 1,
7 1981.

8 Any member or previously retired member of any such department
9 who has served in active duty with the Armed Forces of the United
10 States as described in section twenty-seven of this article,
11 whether prior to or subsequent to becoming a member of a paid
12 police or fire department covered by the provisions of this
13 article, shall receive, in addition to the sixty percent authorized
14 in subsection (a) of this section and the additional percent credit
15
16
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18 authorized in subsection (b) of this section, one additional
19 percent for each year so served in active military duty, up to a
20 maximum of four additional percent. In no event, however, may the
21 total benefit granted to any member exceed seventy-five percent of
22 the member's annual average salary calculated in accordance with
23 subsection (a) of this section.

24 (d) Any member of a paid police or fire department shall be
25 retired at the age of sixty-five years in the manner provided in
26 this subsection. When a member of the paid police or fire
27 department reaches the age of sixty-five years, the said board of
28 trustees shall notify the mayor of this fact, within thirty days of

1 such member's sixty-fifth birthday. The mayor shall cause such
2 sixty-five-year-old member of the paid police or fire department to
3 retire within a period of not more than thirty additional days.
4 Upon retirement under the provisions of this subsection, such
5 member shall receive retirement pension benefits payable in twelve
6 monthly installments for each year of the remainder of ~~his~~ the
7 member's life in an amount equal to sixty percent of such member's
8 average annual salary or compensation received during the three
9 twelve-consecutive-month periods of employment with such department
10 in which such member received ~~his~~ the member's highest salary or
11 compensation while a member of the department, or an amount of \$500
12 per month, whichever is greater. If such member has been employed
13 in said department for more than twenty years, the provisions of
14 subsection (b) of this section shall apply.

15 (e) It shall be the duty of each member of a paid police or
16 fire department at the time a fund is hereafter established to
17 furnish the necessary proof of ~~his~~ the member's date of birth to
18 the said board of trustees, as specified in section twenty-three of
19 this article, within a reasonable length of time, said length of
20 time to be determined by the said board of trustees. Then the
21 board of trustees and the mayor shall proceed to act in the manner
22 provided in subsection (d) of this section and shall cause all
23 members of the paid police or fire department who are over the age
24 of sixty-five years to retire in not less than sixty days from the
25 date the fund is established. Upon retirement under the provisions
26 of this subsection (e), such member, whether ~~he~~ the member has been
27 employed in said department for twenty years or not, shall receive
28 retirement pension benefits payable in twelve monthly installments

1 for each year of the remainder of ~~his~~ the member's life in an
2 amount equal to sixty percent of such member's average annual
3 salary or compensation received during the three twelve-
4 consecutive-month periods of employment with such department in
5 which such member received ~~his~~ the member's highest salary or
6 compensation while a member of the department, or an amount of \$500
7 per month, whichever is greater. If such member has been employed
8 in said department for more than twenty years, the provisions of
9 subsection (b) of this section shall apply.