

COMMITTEE SUBSTITUTE

FOR

**H. B. 4489**

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(BY DELEGATES PETHTEL, DUKE, GUTHRIE,  
CANTERBURY, STOWERS AND GIVENS)

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(Originating in the Committee on Finance)  
[February 23, 2012]

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; and to amend said code by adding thereto a new section, designated §8-22-18c, all relating to municipal policemen and firemen pensions; providing powers and duties of the West Virginia Municipal Oversight Board; requiring certain notice of lawsuit to the West Virginia Municipal Oversight Board; limiting certain court orders under certain circumstances; clarifying refunds to members; and 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.

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

That §8-22-18a, §8-22-19a and §8-22-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §8-22-18c, 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  
4 Municipal Pensions Oversight Board, established in 2009, is  
5 hereby continued as a public body corporate for the purpose  
6 of monitoring and improving the performance of municipal  
7 policemen's and firemen's pension and relief funds to assure  
8 prudent administration, investment and management of the  
9 funds. Management of the oversight board shall be vested  
10 solely in the members of the oversight board. Duties of the  
11 oversight board shall include, but not be limited to, assisting

12 municipal boards of trustees in performing their duties,  
13 assuring the funds' compliance with applicable laws,  
14 providing for actuarial studies, distributing tax revenues to  
15 the funds, initiating or joining legal actions on behalf of  
16 active or retired pension fund members or municipal boards  
17 of trustees to protect interests of the members in the funds,  
18 and taking other actions as may be reasonably necessary to  
19 provide for the security and fiscal integrity of the pension  
20 funds. The oversight board's authority to initiate legal action  
21 does not preempt the authority of municipalities; municipal  
22 policemen's and firemen's boards of trustees; or pension fund  
23 active members, beneficiaries or others to initiate legal action  
24 to protect interests in the funds. Further, the oversight board  
25 may, in its discretion, investigate the actions or practices of  
26 municipal boards of trustees or of their administrators or  
27 employees that, in the oversight board's judgment, have the  
28 potential to threaten the security or fiscal integrity of the  
29 pension funds and the boards of trustees, administrators and  
30 employees shall cooperate with the oversight board in any  
31 investigation. Regardless of whether it has previously  
32 conducted an investigation, the oversight board may initiate  
33 or intervene in legal actions to challenge or prevent any

34 action or practice which, in the oversight board's judgment  
35 has the potential to threaten the security or fiscal integrity of  
36 the pension funds. ~~The oversight board is created as a public~~  
37 ~~body corporate.~~ Establishment of the oversight board does  
38 not relieve the municipal funds' boards of trustees from their  
39 fiduciary and other duties to the funds, nor does it create any  
40 liability for the funds on the part of the state. The failure of  
41 the oversight board to investigate or initiate legal actions  
42 regarding the actions or practices of municipal boards of  
43 trustees, their administrators or employees does not render  
44 the oversight board liable for the actions or practices.  
45 Members and employees of the oversight board are not liable  
46 personally, either jointly or severally, for debts or obligations  
47 of the municipal pension and relief funds. Except as  
48 otherwise provided herein, members and employees of the  
49 oversight board have a fiduciary duty toward the municipal  
50 pension and relief funds and are liable for malfeasance or  
51 gross negligence. Employees of the oversight board are  
52 ~~nonclassified~~ classified-exempt state employees.

53 (2) The oversight board shall consist of nine members.  
54 The executive director of the state's Investment Management  
55 Board and the executive director of the state's Consolidated

56 Public Retirement Board, or their designees, shall serve as  
57 voting ex officio members. The other seven members shall  
58 be citizens of the state who have been qualified electors of  
59 the state for a period of at least one year next preceding their  
60 appointment and shall be as follows: An active or retired  
61 member of a Municipal Policemen's Pension and Relief Fund  
62 chosen from a list of three persons submitted to the Governor  
63 by the state's largest professional municipal police officers  
64 organization, an active or retired member of a Municipal  
65 Firemen's Pension and Relief Fund chosen from a list of  
66 three persons submitted to the Governor by the state's largest  
67 professional firefighters organization, an attorney  
68 experienced in finance and investment matters related to  
69 pensions management, two persons experienced in pension  
70 funds management, one person who is a certified public  
71 accountant experienced in auditing and one person chosen  
72 from a list of three persons submitted to the Governor by the  
73 state's largest association of municipalities.

74 (3) On the effective date of the enactment of this section  
75 as amended during the fourth extraordinary session of the  
76 Legislature in 2009, the Governor shall forthwith appoint the  
77 members, with the advice and consent of the Senate. The

78 Governor may remove any member from the oversight board  
79 for neglect of duty, incompetency or official misconduct.

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

81 (1) Enter into contracts, to sue and be sued, to implead  
82 and be impleaded;

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

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

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

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

95 (6) Do all things necessary and appropriate to implement  
96 and operate the board in performance of its duties. Expenses  
97 shall be paid from the moneys in the Municipal Pensions  
98 Security Fund created in section eighteen-b of this article or,  
99 prior to the transition provided in section eighteen-b of this

100 article, the Municipal Pensions and Protection Fund:  
101 *Provided*, That the board may request special appropriation  
102 for special projects. The oversight board is exempt from  
103 provisions of article three, chapter five-a of this code for the  
104 purpose of contracting for actuarial services, including the  
105 services of a reviewing actuary.

106 (c) Except for ex officio members, the terms of oversight  
107 board members shall be staggered initially from January 1,  
108 2010. The Governor shall appoint initially one member for  
109 a term of one year, one member for a term of two years, two  
110 members for terms of three years, one member for a term of  
111 four years and two members for terms of five years.  
112 Subsequent appointments shall be for terms of five years. A  
113 member serving two full consecutive terms may not be  
114 reappointed for one year after completion of his or her  
115 second full-term. Each member shall serve until that  
116 member's successor is appointed and qualified. Any member  
117 may be removed by the Governor in case of incompetency,  
118 neglect of duty, gross immorality or malfeasance in office.  
119 Any vacancy on the oversight board shall be filled by  
120 appointment by the Governor for the balance of the  
121 unexpired term.

122 (d) A majority of the full authorized membership of the  
123 oversight board constitutes a quorum. The board shall meet  
124 at least quarterly each year, but more often as duties require,  
125 at times and places that it determines. The oversight board  
126 shall elect a chairperson and a vice chairperson from their  
127 membership who shall serve for terms of two years and shall  
128 select annually a secretary/treasurer who may be either a  
129 member or employee of the board. The oversight board shall  
130 employ an executive director and other staff as needed and  
131 shall fix their duties and compensation. The compensation of  
132 the executive director shall be subject to approval of the  
133 Governor. Except for any special appropriation as provided  
134 in subsection (b) of this section, all personnel and other  
135 expenses of the board shall be paid from revenue collected  
136 and allocated for municipal policemen's or municipal  
137 firemen's pension and relief funds pursuant to section  
138 fourteen-d, article three, chapter thirty-three of this code and  
139 distributed through the Municipal Pensions and Protection  
140 Fund or the Municipal Pensions Security Fund created in  
141 section eighteen-b of this article. Expenses during the initial  
142 year of the board's operation shall be from proceeds of the  
143 allocation for the municipal pensions and relief funds.

144 Expenditures in years thereafter shall be by appropriation  
145 from the Municipal Pensions Security Fund. Money allocated  
146 for municipal policemen's and firemen's pension and relief  
147 funds to be distributed from the Municipal Pensions and  
148 Protection Fund or the Municipal Pensions Security Fund  
149 shall be first allocated to pay expenses of the oversight board  
150 and the remainder in the fund distributed among the various  
151 municipal pension and relief funds as provided in section  
152 fourteen-d, article three, chapter thirty-three of this code.  
153 The board is exempt from the provisions of sections seven  
154 and eleven, article three, chapter twelve of this code relating  
155 to compensation and expenses of members, including travel  
156 expenses.

157 (e) Members of the oversight board shall serve the board  
158 without compensation for their services: *Provided*, That no  
159 public employee member may suffer any loss of salary or  
160 wages on account of his or her service on the board. Each  
161 member of the board shall be reimbursed, on approval of the  
162 board, for any necessary expenses actually incurred by the  
163 member in carrying out his or her duties. All reimbursement  
164 of expenses shall be paid out of the Municipal Pensions  
165 Security Fund.

166 (f) The board may contract with other state boards or state  
167 agencies to share offices, personnel and other administrative  
168 functions as authorized under this article: *Provided*, That no  
169 provision of this subsection may be construed to authorize the  
170 board to contract with other state boards or state agencies to  
171 otherwise perform the duties or exercise the responsibilities  
172 imposed on the board by this code.

173 (g) The board shall propose rules for legislative approval  
174 in accordance with the provisions of article three, chapter  
175 twenty-nine-a of this code as necessary to implement the  
176 provisions of this article, and may initially promulgate  
177 emergency rules pursuant to the provisions of section fifteen,  
178 article three, chapter twenty-nine-a of this code.

179 (h) The oversight board shall report annually to the  
180 Legislature's Joint Committee on Government and Finance  
181 and the Joint Committee on Pensions and Retirement  
182 concerning the status of municipal policemen's and firemen's  
183 pension and relief funds and shall present recommendations  
184 for strengthening and protecting the funds and the benefit  
185 interests of the funds' members.

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

188 Treasury Investments to educate members of the local  
189 pension boards of trustees on the services offered by the two  
190 state investment boards. No later than October 31, 2013, the  
191 board shall report to the Joint Committee on Government and  
192 Finance and the Joint Committee on Pensions and Retirement  
193 a detailed comparison of returns on long-term investments of  
194 moneys held by or allocated to municipal pension and relief  
195 funds managed by the West Virginia Investment  
196 Management Board and those managed by others than the  
197 Investment Management Board. The oversight board shall  
198 also report at that time on short-term investment returns by  
199 local pension boards using the West Virginia Board of  
200 Treasury Investments compared to short-term investment  
201 returns by those local boards of trustees not using the board  
202 of Treasury Investments.

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

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

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

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

1        After January 1, 2010, any member of a paid police  
2        department or fire department who is removed or discharged  
3        or who before retirement on any retirement pension or  
4        disability pension severs his or her connection with said  
5        department, whether or not consecutive, shall, upon request,  
6        be refunded all pension and relief fund deductions made from  
7        ~~his~~ the member's salary or compensation, but without interest  
8        from the fund. The refund shall come from the accounts  
9        which originally received the member deductions. For  
10       municipalities using the conservation method of funding, the  
11       member contributions are to be refunded from both the  
12       Municipal Pension and Relief Fund and the city benefit  
13       account, in the exact percentages that were initially deposited  
14       to the respective accounts. Any member who receives ~~such~~  
15       a refund and ~~such member~~ subsequently wishes to reenter ~~the~~  
16       his or her department, ~~such police officer or fire fighter~~ shall  
17       not be allowed to reenter the department unless ~~such~~ the  
18       police officer or fire fighter repays to the pension and relief  
19       fund all sums refunded to him or her in a lump sum at the  
20       date of reentry, or by monthly payroll deductions within  
21       thirty-six months from the date he or she reenters the

22 department, with interest at the rate of eight percent per  
23 annum. In the event such refund is made prior to January 1,  
24 1981, and such member subsequently reenters the department  
25 such police officer or firefighter shall be allowed membership  
26 in such pension and relief fund; however, no credit may be  
27 allowed such member for any former service, unless such  
28 member repays to the pension and relief fund all sums  
29 refunded to ~~him~~ the member within one year from the date ~~he~~  
30 the member reenters the department with interest at the rate  
31 of eight percent per annum: *Provided*, That ~~any member who;~~  
32 ~~on or before June 3, 1955, reentered the paid police or fire~~  
33 ~~department shall be allowed credit for any former service in~~  
34 ~~the same department reentered if he, within one year from~~  
35 ~~said June 3, 1955, repaid all sums withdrawn or refunded to~~  
36 ~~him with interest at the rate of six percent per annum, but for~~  
37 such member who receives such refund prior to January 1,  
38 1980, interest may not be charged for more than three years.  
39 Any probationary member of a paid police or fire department  
40 who is not given an absolute appointment at the end of ~~his~~  
41 the member's probationary period shall, upon request, be  
42 refunded all pension and relief fund deductions made from  
43 ~~his~~ the member's salary or compensation, but without

44 interest. Any member contribution made in fiscal years  
45 beginning on July 1, 1981 and thereafter by any members of  
46 such fund, which is in excess of the percentages, required in  
47 section nineteen of this article of such member's salary or  
48 compensation as defined in section sixteen of this article shall  
49 be refunded with eight percent interest to such member upon  
50 completion of the calculation of ~~his~~ the member's retirement  
51 benefit.

**§8-22-25. Retirement pensions.**

1 (a) Any member of a paid police or fire department who  
2 is entitled to a retirement pension hereunder, and who has  
3 been in the honorable service of such department for twenty  
4 years, may, upon written application to the board of trustees,  
5 be retired from all service in such department without  
6 medical examination or disability. On such retirement the  
7 board of trustees shall authorize the payment of annual  
8 retirement pension benefits commencing upon ~~his~~ the  
9 member's retirement or upon ~~his~~ the member's attaining the  
10 age of fifty years, whichever is later, payable in twelve  
11 monthly installments for each year of the remainder of ~~his~~ the  
12 member's life, in an amount equal to sixty percent of such  
13 member's average annual salary or compensation received

14 during the three twelve-consecutive-month periods of  
15 employment with such department in which such member  
16 received ~~his~~ the member's highest salary or compensation  
17 while a member of the department, or an amount of \$500 per  
18 month, whichever is greater.

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

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

29 (2) One additional percent, to be added to such maximum  
30 of seventy percent, for each of the first five additional years  
31 of service completed at the time of retirement in excess of  
32 twenty-five years of service up to a maximum of seventy-five  
33 percent.

34 The total additional credit provided for in this subsection  
35 may not exceed fifteen additional percent.

36 (c) Any member of any such department whose service  
37 has been interrupted by duty with the Armed Forces of the  
38 United States as provided in section twenty-seven of this  
39 article prior to July 1, 1981, shall be eligible for retirement  
40 pension benefits immediately upon retirement, regardless of  
41 ~~his~~ the member's age, if ~~he~~ the member shall otherwise be  
42 eligible for such retirement pension benefits. In no event are  
43 provisions of this subsection to be interpreted to permit  
44 retirement before age 50 unless the interruption of the  
45 member's service by duty with the Armed Forces of the  
46 United States actually occurred before July 1, 1981. The  
47 amendment made to this subsection during the 2012 Regular  
48 Session of the Legislature is not for the purpose of changing  
49 the existing law regarding benefits provided to veterans for  
50 military service prior to July 1, 1981, but to further clarify  
51 that the provisions of this section and any previous  
52 enactments of this section do not make a member eligible for  
53 retirement before age 50 for a member's service with the  
54 Armed Forces of the United States prior to July 1, 1981.

55 Any member or previously retired member of any such  
56 department who has served in active duty with the Armed  
57 Forces of the United States as described in section twenty-

58 seven of this article, whether prior to or subsequent to  
59 becoming a member of a paid police or fire department  
60 covered by the provisions of this article, shall receive, in  
61 addition to the sixty percent authorized in subsection (a) of  
62 this section and the additional percent credit authorized in  
63 subsection (b) of this section, one additional percent for each  
64 year so served in active military duty, up to a maximum of  
65 four additional percent. In no event, however, may the total  
66 benefit granted to any member exceed seventy-five percent  
67 of the member's annual average salary calculated in  
68 accordance with subsection (a) of this section.

69 (d) Any member of a paid police or fire department shall  
70 be retired at the age of sixty-five years in the manner  
71 provided in this subsection. When a member of the paid  
72 police or fire department reaches the age of sixty-five years,  
73 the said board of trustees shall notify the mayor of this fact,  
74 within thirty days of such member's sixty-fifth birthday. The  
75 mayor shall cause such sixty-five-year-old member of the  
76 paid police or fire department to retire within a period of not  
77 more than thirty additional days. Upon retirement under the  
78 provisions of this subsection, such member shall receive  
79 retirement pension benefits payable in twelve monthly

80 installments for each year of the remainder of ~~his~~ the  
81 member's life in an amount equal to sixty percent of such  
82 member's average annual salary or compensation received  
83 during the three twelve-consecutive-month periods of  
84 employment with such department in which such member  
85 received ~~his~~ the member's highest salary or compensation  
86 while a member of the department, or an amount of \$500 per  
87 month, whichever is greater. If such member has been  
88 employed in said department for more than twenty years, the  
89 provisions of subsection (b) of this section shall apply.

90 (e) It shall be the duty of each member of a paid police or  
91 fire department at the time a fund is hereafter established to  
92 furnish the necessary proof of ~~his~~ the member's date of birth  
93 to the said board of trustees, as specified in section twenty-  
94 three of this article, within a reasonable length of time, said  
95 length of time to be determined by the said board of trustees.  
96 Then the board of trustees and the mayor shall proceed to act  
97 in the manner provided in subsection (d) of this section and  
98 shall cause all members of the paid police or fire department  
99 who are over the age of sixty-five years to retire in not less  
100 than sixty days from the date the fund is established. Upon  
101 retirement under the provisions of this subsection (e), such

102 member, whether ~~he~~ the member has been employed in said  
103 department for twenty years or not, shall receive retirement  
104 pension benefits payable in twelve monthly installments for  
105 each year of the remainder of ~~his~~ the member's life in an  
106 amount equal to sixty percent of such member's average  
107 annual salary or compensation received during the three  
108 twelve-consecutive-month periods of employment with such  
109 department in which such member received ~~his~~ the member's  
110 highest salary or compensation while a member of the  
111 department, or an amount of \$500 per month, whichever is  
112 greater. If such member has been employed in said  
113 department for more than twenty years, the provisions of  
114 subsection (b) of this section shall apply.