

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 358**

5 (SENATORS JENKINS, PLYMALE, CHAFIN AND MCCABE, *original sponsors*)

6 _____
7 [Passed April 11, 2013; in effect from passage.]
8 _____
9
10

11 AN ACT to amend and reenact §8-22-18a, §8-22-19a and §8-22-25 of
12 the Code of West Virginia, 1931, as amended; to amend said
13 code by adding thereto a new section, designated §8-22-18c;
14 and to amend and reenact §8-22A-4 and §8-22A-9 of said code,
15 all relating to municipal policemen and firemen pensions;
16 providing additional investigatory and legal powers and duties
17 of the West Virginia Municipal Pensions Oversight Board;
18 liability disclaimer for board acts or omissions concerning
19 investigatory or legal actions; requiring certain notice of
20 lawsuit to the West Virginia Municipal Pensions Oversight
21 Board; limiting certain court orders under certain
22 circumstances; clarifying refunds to members; clarifying
23 circumstances under which a member may retire when the
24 member's service has been interrupted by duty with the armed

1 forces of the United States; extending the cut-off date for
2 the West Virginia Municipal Police Officers and Firefighters
3 Retirement System plan to 2017; and continuing the
4 municipality's disability retirement purchase requirement
5 until 2017.

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

7 That §8-22-18a, §8-22-19a and §8-22-25 of the Code of West
8 Virginia, 1931, as amended, be amended and reenacted; that said
9 code be amended by adding thereto a new section, designated
10 §8-22-18c; and that §8-22A-4 and §8-22A-9 of said code be amended
11 and reenacted, all to read as follows:

12 **ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION**
13 **AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF**
14 **FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS**
15 **SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND**
16 **SEWERAGE SYSTEM.**

17 **§8-22-18a. West Virginia Municipal Pensions Oversight Board**
18 **created; powers and duties; management;**
19 **composition; terms; quorum; expenses; reports.**

20 (a) (1) The West Virginia Municipal Pensions Oversight Board,
21 established in 2009, is hereby continued as a public body corporate
22 for the purpose of monitoring and improving the performance of
23 municipal policemen's and firemen's pension and relief funds to
24 assure prudent administration, investment and management of the

1 funds. Management of the oversight board shall be vested solely in
2 the members of the oversight board. Duties of the oversight board
3 shall include, but not be limited to, assisting municipal boards of
4 trustees in performing their duties, assuring the funds' compliance
5 with applicable laws, providing for actuarial studies, distributing
6 tax revenues to the funds, initiating or joining legal actions on
7 behalf of active or retired pension fund members or municipal
8 boards of trustees to protect interests of the members in the funds
9 and taking other actions as may be reasonably necessary to provide
10 for the security and fiscal integrity of the pension funds. The
11 oversight board's authority to initiate legal action does not
12 preempt the authority of municipalities, municipal policemen's and
13 firemen's boards of trustees or pension fund active members,
14 beneficiaries or others to initiate legal action to protect
15 interests in the funds. Further, the oversight board may, in its
16 discretion, investigate the actions or practices of municipal
17 boards of trustees or of their administrators or employees that, in
18 the oversight board's judgment, have the potential to threaten the
19 security or fiscal integrity of the pension funds, and the boards
20 of trustees, administrators and employees shall cooperate with the
21 oversight board in any investigation. Regardless of whether it has
22 previously conducted an investigation, the oversight board may
23 initiate or intervene in legal actions to challenge or prevent any
24 action or practice which, in the oversight board's judgment, has

1 the potential to threaten the security or fiscal integrity of the
2 pension funds. Establishment of the oversight board does not
3 relieve the municipal funds' boards of trustees from their
4 fiduciary and other duties to the funds, nor does it create any
5 liability for the funds on the part of the state. The failure of
6 the oversight board to investigate or initiate legal actions
7 regarding the actions or practices of municipal boards of trustees,
8 their administrators or employees does not render the oversight
9 board liable for the actions or practices. Members and employees
10 of the oversight board are not liable personally, either jointly or
11 severally, for debts or obligations of the municipal pension and
12 relief funds. Except as otherwise provided herein, members and
13 employees of the oversight board have a fiduciary duty toward the
14 municipal pension and relief funds and are liable for malfeasance
15 or gross negligence. Employees of the oversight board are
16 classified-exempt state employees.

17 (2) The oversight board shall consist of nine members. The
18 Executive Director of the state's Investment Management Board and
19 the Executive Director of the state's Consolidated Public
20 Retirement Board, or their designees, shall serve as voting ex
21 officio members. The other seven members shall be citizens of the
22 state who have been qualified electors of the state for a period of
23 at least one year next preceding their appointment and shall be as
24 follows: An active or retired member of a Municipal Policemen's

1 Pension and Relief Fund chosen from a list of three persons
2 submitted to the Governor by the state's largest professional
3 municipal police officers organization, an active or retired member
4 of a Municipal Firemen's Pension and Relief Fund chosen from a list
5 of three persons submitted to the Governor by the state's largest
6 professional firefighters organization, an attorney experienced in
7 finance and investment matters related to pensions management, two
8 persons experienced in pension funds management, one person who is
9 a certified public accountant experienced in auditing and one
10 person chosen from a list of three persons submitted to the
11 Governor by the state's largest association of municipalities.

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

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

19 (1) Enter into contracts, to sue and be sued, to implead and
20 be impleaded;

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

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

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

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

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

19 (c) Except for ex officio members, the terms of oversight
20 board members shall be staggered initially from January 1, 2010.
21 The Governor shall appoint initially one member for a term of one
22 year, one member for a term of two years, two members for terms of
23 three years, one member for a term of four years and two members
24 for terms of five years. Subsequent appointments shall be for

1 terms of five years. A member serving two full consecutive terms
2 may not be reappointed for one year after completion of his or her
3 second full term. Each member shall serve until that member's
4 successor is appointed and qualified. Any member may be removed by
5 the Governor in case of incompetency, neglect of duty, gross
6 immorality or malfeasance in office. Any vacancy on the oversight
7 board shall be filled by appointment by the Governor for the
8 balance of the unexpired term.

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

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

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

1 (f) The board may contract with other state boards or state
2 agencies to share offices, personnel and other administrative
3 functions as authorized under this article: *Provided*, That no
4 provision of this subsection may be construed to authorize the
5 board to contract with other state boards or state agencies to
6 otherwise perform the duties or exercise the responsibilities
7 imposed on the board by this code.

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

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

20 (i) The oversight board shall cooperate with the West Virginia
21 Investment Management Board and the Board of Treasury Investments
22 to educate members of the local pension boards of trustees on the
23 services offered by the two state investment boards. No later than
24 October 31, 2013, the board shall report to the Joint Committee on

1 Government and Finance and the Joint Committee on Pensions and
2 Retirement a detailed comparison of returns on long-term
3 investments of moneys held by or allocated to municipal pension and
4 relief funds managed by the West Virginia Investment Management
5 Board and those managed by others than the Investment Management
6 Board. The oversight board shall also report at that time on
7 short-term investment returns by local pension boards using the
8 West Virginia Board of Treasury Investments compared to short-term
9 investment returns by those local boards of trustees not using the
10 Board of Treasury Investments.

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

16 **§8-22-18c. Notice of legal actions by or against municipal**
17 **policemen's and firemen's pension funds.**

18 In any legal action in which a municipal policemen's or
19 firemen's pension and relief fund, or the fund's board of trustees,
20 employee or administrator, is named as a party, the plaintiff or
21 petitioner shall serve a copy of the complaint or petition upon the
22 oversight board by certified mail, return receipt requested, within
23 seven days of filing the legal action. Until proof of service is
24 filed with the clerk of the court in which the action was filed,

1 and for sixty days after the filing of the proof of service, no
2 order may be entered by the court that directly or indirectly
3 requires the expenditure or other disposition of pension funds or
4 that determines the eligibility or entitlement of any member to any
5 pension benefit payable from the pension and relief fund: *Provided,*
6 That the court may enter such temporary or interim orders as may be
7 needed to preserve and protect the assets of the fund. In any
8 legal action involving a municipal policemen's or firemen's pension
9 and relief fund the oversight board is entitled to intervene for
10 the purpose of preserving the security or fiscal integrity of the
11 pension fund.

12 **§8-22-19a. Refunds of member contributions.**

13 After January 1, 2010, any member of a paid police department
14 or fire department who is removed or discharged or who before
15 retirement on any retirement pension or disability pension severs
16 his or her connection with said department, whether or not
17 consecutive, shall, upon request, be refunded all pension and
18 relief fund deductions made from the member's salary or
19 compensation, but without interest from the fund. The refund shall
20 come from the accounts which originally received the member
21 deductions. For municipalities using the conservation method of
22 funding, the member contributions are to be refunded from both the
23 Municipal Pension and Relief Fund and the city benefit account, in
24 the exact percentages that were initially deposited to the

1 respective accounts. Any member who receives a refund and
2 subsequently wishes to reenter his or her department shall not be
3 allowed to reenter the department unless the police officer or
4 firefighter repays to the pension and relief fund all sums refunded
5 to him or her in a lump sum at the date of reentry, or by monthly
6 payroll deductions within thirty-six months from the date he or she
7 reenters the department, with interest at the rate of eight percent
8 per annum. In the event such refund is made prior to January 1,
9 1981, and such member subsequently reenters the department such
10 police officer or firefighter shall be allowed membership in such
11 pension and relief fund; however, no credit may be allowed such
12 member for any former service, unless such member repays to the
13 pension and relief fund all sums refunded to the member within one
14 year from the date the member reenters the department with interest
15 at the rate of eight percent per annum: *Provided*, That for such
16 member who receives such refund prior to January 1, 1980, interest
17 may not be charged for more than three years. Any probationary
18 member of a paid police or fire department who is not given an
19 absolute appointment at the end of the member's probationary period
20 shall, upon request, be refunded all pension and relief fund
21 deductions made from the member's salary or compensation, but
22 without interest. Any member contribution made in fiscal years
23 beginning on July 1, 1981, and thereafter by any members of such
24 fund, which is in excess of the percentages, required in section

1 nineteen of this article of such member's salary or compensation as
2 defined in section sixteen of this article, shall be refunded with
3 eight percent interest to such member upon completion of the
4 calculation of the member's retirement benefit.

5 **§8-22-25. Retirement pensions.**

6 (a) Any member of a paid police or fire department who is
7 entitled to a retirement pension hereunder, and who has been in the
8 honorable service of such department for twenty years, may, upon
9 written application to the board of trustees, be retired from all
10 service in such department without medical examination or
11 disability. On such retirement the board of trustees shall
12 authorize the payment of annual retirement pension benefits
13 commencing upon the member's retirement or upon the member's
14 attaining the age of fifty years, whichever is later, payable in
15 twelve monthly installments for each year of the remainder of the
16 member's life, in an amount equal to sixty percent of such member's
17 average annual salary or compensation received during the three
18 twelve-consecutive-month periods of employment with such department
19 in which such member received the member's highest salary or
20 compensation while a member of the department, or an amount of \$500
21 per month, whichever is greater.

22 (b) Any member of any such department who is entitled to a
23 retirement pension under the provisions of subsection (a) of this
24 section and who has been in the honorable service of such

1 department for more than twenty years at the time of the member's
2 retirement shall receive, in addition to the sixty percent
3 authorized in said subsection (a):

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

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

13 The total additional credit provided for in this subsection
14 may not exceed fifteen additional percent.

15 (c) Any member of any such department whose service has been
16 interrupted by duty with the armed forces of the United States as
17 provided in section twenty-seven of this article prior to July 1,
18 1981, shall be eligible for retirement pension benefits immediately
19 upon retirement, regardless of the member's age, if the member
20 shall otherwise be eligible for such retirement pension benefits.
21 In no event are provisions of this subsection to be interpreted to
22 permit retirement before age fifty unless the interruption of the
23 member's service by duty with the armed forces of the United States
24 actually occurred before July 1, 1981. The amendment made to this

1 subsection during the 2013 regular session of the Legislature is
2 not for the purpose of changing the existing law regarding benefits
3 provided to veterans for military service prior to July 1, 1981,
4 but to further clarify that the provisions of this section and any
5 previous enactments of this section do not make a member eligible
6 for retirement before age fifty for a member's service with the
7 armed forces of the United States after July 1, 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 authorized in subsection (b) of this section, one additional
16 percent for each year so served in active military duty, up to a
17 maximum of four additional percent. In no event, however, may the
18 total benefit granted to any member exceed seventy-five percent of
19 the member's annual average salary calculated in accordance with
20 subsection (a) of this section.

21 (d) Any member of a paid police or fire department shall be
22 retired at the age of sixty-five years in the manner provided in
23 this subsection. When a member of the paid police or fire
24 department reaches the age of sixty-five years, the said board of

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

16 (e) It shall be the duty of each member of a paid police or
17 fire department at the time a fund is hereafter established to
18 furnish the necessary proof of the member's date of birth to the
19 said board of trustees, as specified in section twenty-three of
20 this article, within a reasonable length of time, said length of
21 time to be determined by the said board of trustees. Then the
22 board of trustees and the mayor shall proceed to act in the manner
23 provided in subsection (d) of this section and shall cause all
24 members of the paid police or fire department who are over the age

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

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

17 **§8-22A-4. Creation and administration of West Virginia Municipal**
18 **Police Officers and Firefighters Retirement System;**
19 **specification of actuarial assumptions.**

20 There is hereby created the West Virginia Municipal Police
21 Officers and Firefighters Retirement System. The purpose of this
22 system is to provide for the orderly retirement of certain police
23 officers and firefighters who become superannuated because of age
24 or permanent disability and to provide certain survivor death

1 benefits. Substantially all of the members of the retirement
2 system shall be qualified public safety employees as defined in
3 section two of this article. The retirement system shall come into
4 effect January 1, 2010: *Provided*, That if the number of members in
5 the system are fewer than one hundred on January 1, 2017, then all
6 of the provisions of this article are void and of no force and
7 effect, and memberships in the system will be merged into the
8 Emergency Medical Services Retirement System created in article
9 five-v, chapter sixteen of this code. If merger is required, the
10 board shall take all necessary steps to see that the voluntary
11 transfers of persons and assets authorized by this article do not
12 affect the qualified status with the Internal Revenue Service of
13 either retirement plan. All business of the system shall be
14 transacted in the name of the West Virginia Municipal Police
15 Officers and Firefighters Retirement System. The board shall
16 specify and adopt all actuarial assumptions for the plan at its
17 first meeting of every calendar year or as soon thereafter as may
18 be practicable, which assumptions shall become part of the plan.

19 **§8-22A-9. Retirement; commencement of benefits; insurance**
20 **requirements during early period.**

21 (a) To ensure the fiscal integrity of the retirement system
22 during the start-up phase, no member is entitled to retirement,
23 disability or death benefits under this retirement system until
24 January 1, 2017. Participating municipalities shall purchase

1 insurance for their new plan members to provide coverage in an
2 amount equal to disability coverage otherwise provided in sections
3 seventeen and eighteen of this article and death benefits otherwise
4 provided in sections twenty, twenty-two and twenty-three of this
5 article for claims arising before January 1, 2013: *Provided*, That
6 pursuant to the amendments made to this subsection during the 2013
7 regular session of the Legislature, participating municipalities
8 shall reinstate or purchase the insurance coverage for all plan
9 members no later than July 1, 2013, and continue coverage through
10 January 1, 2017.

11 (b) A member may retire and commence to receive retirement
12 income payments on the first day of the calendar month following
13 written application for his or her voluntary petition for
14 retirement coincident with or next following the later of the date
15 the member ceases employment, or the date the member attains early
16 or normal retirement age, in an amount as provided under this
17 article: *Provided*, That retirement income payments under this plan
18 are subject to the provisions of this article. On receipt of the
19 petition, the board shall promptly provide the member with an
20 explanation of his or her optional forms of retirement benefits and
21 on receipt of properly executed forms from the member, the board
22 shall process a member's request for and commence payments as soon
23 as administratively feasible.

