

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 544**

5 (SENATORS FOSTER, WELLS, McCABE, WILLS, EDGELL, SNYDER, PALUMBO, YOST,
6 KLEMPA AND KESSLER (ACTING PRESIDENT), *original sponsors*)

7 _____
8 [Passed March 11, 2011; in effect from passage.]
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11
12 AN ACT to amend and reenact §8-22-16 and §8-22-20 of the Code of
13 West Virginia, 1931, as amended; and to amend and reenact §8-
14 22A-28 of said code, all relating to municipal policemen's and
15 firemen's pension and relief funds and Municipal Police
16 Officers and Fire Fighters Retirement System; providing
17 additional method for municipalities to finance policemen's
18 and firemen's pension and relief funds; authorizing Municipal
19 Pensions Oversight Board to contract for actuarial services
20 without certain statutory restrictions; requiring certain
21 information in certain actuarial reports; and extending time
22 to submit plan to extend Social Security benefits to certain
23 individuals.

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

25 That §8-22-16 and §8-22-20 of the Code of West Virginia, 1931,

1 as amended, be amended and reenacted; and that §8-22A-28 of said
2 code be amended and reenacted, all to read as follows:

3 **ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND**
4 **RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS**
5 **FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR**
6 **COMBINED WATERWORKS AND SEWERAGE SYSTEM.**

7 **§8-22-16. Pension and relief funds for policemen and firemen;**
8 **creation of boards of trustees; definitions; continuance of**
9 **funds; average adjusted salary.**

10 (a) Except as provided in subsection (e) of this section,
11 passed into law during the fourth extraordinary session of the
12 Legislature in 2009, in every Class I and Class II city having, or
13 which may hereafter have, a paid police department and a paid fire
14 department, or either of such departments, the governing body
15 shall, and in every Class III city and Class IV town or village
16 having, or which may hereafter have, a paid police department and
17 a paid fire department, or either of such departments, the
18 governing body may, by ordinance provide for the establishment and
19 maintenance of a policemen's pension and relief fund and for a
20 firemen's pension and relief fund for the purposes hereinafter
21 enumerated and, thereupon, there shall be created boards of
22 trustees which shall administer and distribute the moneys
23 authorized to be raised by this section and the following sections
24 of this article. For the purposes of this section and sections
25 seventeen through twenty-eight, inclusive, of this article, the

1 term "paid police department" or "paid fire department" means only
2 a municipal police department or municipal fire department, as the
3 case may be, maintained and paid for out of public funds and whose
4 employees are paid on a full-time basis out of public funds. The
5 term shall not be taken to mean any department whose employees are
6 paid nominal salaries or wages or are only paid for services
7 actually rendered on an hourly basis.

8 (b) Any policemen's pension and relief fund and any firemen's
9 pension and relief fund established in accordance with the
10 provisions of former article six of this chapter or this article
11 shall be or remain mandatory and shall be governed by the
12 provisions of sections sixteen through twenty-eight, inclusive, of
13 this article (with like effect, in the case of a Class III city or
14 Class IV town or village, as if such Class III city or Class IV
15 town or village were a Class I or Class II city) and shall not be
16 affected by the transition from one class of municipal corporation
17 to a lower class as specified in section three, article one of this
18 chapter: *Provided*, That any Class III or Class IV town or village
19 that hereafter becomes a Class I or Class II city shall not be
20 required to establish a pension and relief fund if the town or
21 village is a participant in an existing pension plan regarding paid
22 firemen and/or policemen.

23 (c) After June 30, 1981, for the purposes of sections sixteen
24 through twenty-eight, inclusive, of this article, the word "member"
25 means any paid police officer or firefighter who at time of
26 appointment to a paid police or fire department met the medical

1 requirements of chapter 2-2 of the National Fire Protection
2 Association Standards Number 1001 -- Firefighters Professional
3 Qualifications '74 as updated from year to year: *Provided*, That any
4 police officer or firefighter who was a member of the fund prior to
5 July 1, 1981, shall be considered a member after June 30, 1981.

6 (d) For purposes of sections sixteen through twenty-eight,
7 inclusive, of this article, the words "salary or compensation" mean
8 remuneration actually received by a member, plus the member's
9 deferred compensation under sections 125, 401(k), 414(h)(2) and 457
10 of the United States Internal Revenue Code of 1986, as amended:
11 *Provided*, That the remuneration received by the member during any
12 twelve-consecutive-month period used in determining benefits which
13 is in excess of an amount which is twenty percent greater than the
14 "average adjusted salary" received by the member in the two
15 consecutive twelve-consecutive-month periods immediately preceding
16 the twelve-consecutive-month period used in determining benefits
17 shall be disregarded: *Provided, however*, That the "average adjusted
18 salary" means the arithmetic average of each year's adjusted
19 salary, the adjustment made to reflect current salary rate and such
20 average adjusted salary shall be determined as follows: Assuming
21 "year-one" means the second twelve-consecutive-month period
22 preceding such twelve-consecutive-month period used in determining
23 benefits, "year-two" means the twelve-consecutive-month period
24 immediately preceding the twelve-consecutive-month period used in
25 determining benefits and "year-three" means the twelve-consecutive-
26 month period used in determining benefits, year-one total

1 remuneration shall be multiplied by the ratio of year-three base
2 salary, exclusive of all overtime and other remuneration, to year-
3 one base salary, exclusive of all overtime and other remuneration,
4 such product shall equal "year-one adjusted salary"; year-two total
5 remuneration shall be multiplied by the ratio of year-three base
6 salary, exclusive of all overtime and other remuneration, to year-
7 two base salary, exclusive of all overtime and other remuneration,
8 such product shall equal "year-two adjusted salary"; and the
9 arithmetic average of year-one adjusted salary and year-two
10 adjusted salary shall equal the average adjusted salary.

11 (e) (1) Any municipality, as that term is defined in section
12 two, article one of this chapter, or municipal subdivision as
13 defined in section two, article twenty-two-a of this chapter may,
14 by a majority vote of its governing body, close its existing
15 policemen's or firemen's pension and relief fund to employees newly
16 hired on or after January 1, 2010, if the municipality enrolls
17 those newly hired police officers or firefighters in a retirement
18 plan created in article twenty-two-a of this chapter and approved
19 and administered by the West Virginia Consolidated Public
20 Retirement Board. On and after July 1, 2010, no new policemen's or
21 firemen's pension and relief fund may be established under this
22 section. A Class I or Class II municipality forming a new paid
23 police department or paid fire department after June 30, 2010,
24 shall, notwithstanding the provisions of section two, article
25 twenty-two-a of this chapter, enroll the department members in the
26 Municipal Police Officers and Firefighters Retirement System

1 established in article twenty-two-a of this chapter.

2 (2) Any municipality using the alternative method of financing
3 that elects to close an existing pension and relief fund to new
4 hires pursuant to this subsection shall also adopt either the
5 optional method of financing the unfunded actuarial accrued
6 liability of the existing policemen's or firemen's pension and
7 relief fund as provided in subsection (e), or the conservation
8 method as provided in subsection (f), section twenty of this
9 article.

10 (3) Except as provided in section thirty-two, article twenty-
11 two-a of this chapter, if the qualifying municipality elects to
12 close enrollment in an existing municipal pension and relief fund
13 to newly hired police officers and firefighters pursuant to this
14 section, all current active members, retirees and other
15 beneficiaries covered by the existing policemen's or firemen's
16 pension and relief fund shall remain covered by that plan and shall
17 be paid all benefits of that plan in accordance with Part III of
18 this article.

19 **§8-22-20. Actuary; actuarial valuation report; minimum standards**
20 **for annual municipality contributions to the fund;**
21 **definitions; actuarial review and audit.**

22 (a) The West Virginia Municipal Pensions Oversight Board shall
23 contract with or employ a qualified actuary to annually prepare an
24 actuarial valuation report on each pension and relief fund. The
25 selection of contract vendors to provide actuarial services,

1 including the reviewing actuary as provided in subsection (c) of
2 this section, shall be by competitive bid process but is
3 specifically exempt from purchasing provisions of article three,
4 chapter five-a of this code. The expense of the actuarial report
5 shall be paid from moneys in the Municipal Pensions Security Fund.
6 Uses of the actuarial valuations from the qualified actuary shall
7 include, but not be limited to, determining a municipal policemen's
8 or firemen's pension and relief fund's eligibility to receive state
9 money and to provide supplemental benefits.

10 (b) The actuarial valuation report provided pursuant to
11 subsection (a) of this section shall consist of, but is not limited
12 to, the following disclosures: (1) The financial objective of the
13 fund and how the objective is to be attained; (2) the progress
14 being made toward realization of the financial objective; (3)
15 recent changes in the nature of the fund, benefits provided or
16 actuarial assumptions or methods; (4) the frequency of actuarial
17 valuation reports and the date of the most recent actuarial
18 valuation report; (5) the method used to value fund assets; (6) the
19 extent to which the qualified actuary relies on the data provided
20 and whether the data was certified by the fund's Auditor or
21 examined by the qualified actuary for reasonableness; (7) a
22 description and explanation of the actuarial assumptions and
23 methods; (8) an evaluation of each plan using the alternative
24 funding method, to assess advantages of changing to other funding
25 methods as provided in this article; and (9) any other information
26 required in section twenty-a of this article or that the qualified

1 actuary feels is necessary or would be useful in fully and fairly
2 disclosing the actuarial condition of the fund.

3 (c) (1) Except as provided in subsections (e) and (f) of this
4 section, beginning June 30, 1991, and thereafter, the financial
5 objective of each municipality shall not be less than to contribute
6 to the fund annually an amount which, together with the
7 contributions from the members and the allocable portion of the
8 Municipal Pensions and Protection Fund for municipal pension and
9 relief funds established under section fourteen-d, article three,
10 chapter thirty-three of this code or a municipality's allocation
11 from the Municipal Pensions Security Fund created in section
12 eighteen-b of this article and other income sources as authorized
13 by law will be sufficient to meet the normal cost of the fund and
14 amortize any actuarial deficiency over a period of not more than
15 forty years beginning from July 1, 1991: *Provided*, That in the
16 fiscal year ending June 30, 1991, the municipality may elect to
17 make its annual contribution to the fund using an alternative
18 contribution in an amount not less than: (i) One hundred seven
19 percent of the amount contributed for the fiscal year ending June
20 30, 1990; or (ii) an amount equal to the average of the
21 contribution payments made in the five highest fiscal years
22 beginning with the fiscal year ending 1984, whichever is greater:
23 *Provided, however*, That contribution payments in subsequent fiscal
24 years under this alternative contribution method may not be less
25 than one hundred seven percent of the amount contributed in the
26 prior fiscal year: *Provided further*, That in order to avoid

1 penalizing municipalities and to provide flexibility when making
2 contributions, municipalities using the alternative contribution
3 method may exclude a one-time additional contribution made in any
4 one year in excess of the minimum required by this section: *And*
5 *provided further*, That the governing body of any municipality may
6 elect to provide an employer continuing contribution of one percent
7 more than the municipality's required minimum under the alternative
8 contribution plan authorized in this subsection: *And provided*
9 *further*, That if any municipality decides to contribute an
10 additional one percent, then that municipality may not reduce the
11 additional contribution until the respective pension and relief
12 fund no longer has any actuarial deficiency: *And provided further*,
13 That any decision and any contribution payment by the municipality
14 is not the liability of the State of West Virginia: *And provided*
15 *further*, That if any municipality or any pension fund board of
16 trustees makes a voluntary election and thereafter fails to
17 contribute the voluntarily increase as provided in this section and
18 in subsection (c), section nineteen of this article, then the board
19 of trustees is not eligible to receive funds allocated under
20 section fourteen-d, article three, chapter thirty-three of this
21 code: *And provided further*, That prior to using this alternative
22 contribution method the actuary of the fund shall certify in
23 writing that the fund is projected to be solvent under the
24 alternative contribution method for the next consecutive fifteen-
25 year period. For purposes of determining this minimum financial

1 objective: (i) The value of the fund's assets shall be determined
2 on the basis of any reasonable actuarial method of valuation which
3 takes into account fair market value; and (ii) all costs,
4 deficiencies, rate of interest and other factors under the fund
5 shall be determined on the basis of actuarial assumptions and
6 methods which, in aggregate, are reasonable (taking into account
7 the experience of the fund and reasonable expectations) and which,
8 in combination, offer the qualified actuary's best estimate of
9 anticipated experience under the fund: *And provided further,* That
10 any municipality which elected the alternative funding method under
11 this section and which has an unfunded actuarial liability of not
12 more than twenty-five percent of fund assets, may, beginning
13 September 1, 2003, elect to revert to the standard funding method,
14 which is to contribute to the fund annually an amount which is not
15 less than an amount which, together with the contributions from the
16 members and the allocable portion of the Municipal Pensions and
17 Protection Fund for municipal pension and relief funds established
18 under section fourteen-d, article three, chapter thirty-three of
19 this code and other income sources as authorized by law, will be
20 sufficient to meet the normal cost of the fund and amortize any
21 actuarial deficiency over a period of not more than forty years,
22 beginning from July 1, 1991.

23 (2) No municipality may anticipate or use in any manner any
24 state funds accruing to the police or firemen's pension fund to
25 offset the minimum required funding amount for any fiscal year.

26 (3) Notwithstanding any other provision of this section or

1 article to the contrary, each municipality shall contribute
2 annually to the fund an amount which may not be less than the
3 normal cost, as determined by the actuarial report.

4 (4) The actuarial process, which includes the selection of
5 methods and assumptions, shall be reviewed by the qualified actuary
6 no less than once every five years. Furthermore, the qualified
7 actuary shall provide a report to the oversight board with
8 recommendations on any changes to the actuarial process.

9 (5) The oversight board shall hire an independent reviewing
10 actuary to perform an actuarial audit of the work performed by the
11 qualified actuary no less than once every seven years.

12 (d) For purposes of this section, the term "qualified actuary"
13 means only an actuary who is a member of the Society of Actuaries
14 or the American Academy of Actuaries. The qualified actuary shall
15 be designated a fiduciary and shall discharge his or her duties
16 with respect to a fund solely in the interest of the members and
17 members' beneficiaries of that fund. In order for the standards of
18 this section to be met, the qualified actuary shall certify that
19 the actuarial valuation report is complete and accurate and that in
20 his or her opinion the technique and assumptions used are
21 reasonable and meet the requirements of this section.

22 (e) (1) Beginning January 1, 2010, municipalities may choose
23 the optional method of financing municipal policemen's or firemen's
24 pension and relief funds as outlined in this subsection in lieu of
25 the standard or alternative methods as provided in subdivision (1),
26 subsection (c) of this section. (2) For those municipalities

1 choosing the optional method of finance, the minimum standard for
2 annual municipality contributions to each policemen's or firemen's
3 pension and relief fund shall be an amount which, together with the
4 contributions from the members and allocable portion of the
5 Municipal Pensions and Protection Fund or Municipal Pensions
6 Security Fund created in section eighteen-b of this article, and
7 other income sources as authorized by law, will be sufficient to
8 meet the normal cost of the fund and amortize any actuarial
9 deficiency over a period of not more than forty years beginning
10 January 1, 2010: *Provided*, That those municipalities using the
11 standard method of financing in 2009 shall continue to amortize
12 their actuarial deficiencies over a period of not more than forty
13 years beginning July 1, 1991. The required contribution shall be
14 determined each plan year as described above by the actuary
15 retained by the oversight board, based on an actuarial valuation
16 reflecting actual demographic and investment experience and
17 consistent with the Actuarial Standards of Practice published by
18 the Actuarial Standards Board.

19 (3) A municipality choosing the optional method of financing
20 a policemen's or firemen's pension and relief fund as provided in
21 this subsection shall close the fund to police officers or fire
22 fighters newly hired on or after January 1, 2010, and provide for
23 those employees to be members of the Municipal Police Officers and
24 Firefighters Retirement System as established in article twenty-
25 two-a of this chapter.

26 (f) (1) Beginning April 1, 2011, any municipality using the

1 alternative method of financing may choose a conservation method of
2 financing its municipal policemen's and firemen's pension and
3 relief funds as outlined in this subsection, in lieu of the
4 alternative method as provided in subdivision (1), subsection (c),
5 or the optional method as provided in subsection (e) of this
6 section.

7 (2) For those municipalities choosing the conservation method
8 of finance, until a plan is funded at one hundred percent, a part
9 of each plan member's employee contribution to the fund equal to
10 one and one-half percent of the employee's compensation, shall be
11 deposited into and remain in the trust and accumulate investment
12 return. In addition, until a plan is funded at one hundred
13 percent, an actuarially determined portion of the premium tax
14 allocation to each fund provided in accordance with section
15 fourteen-d, article three, and section seven, article twelve-c of
16 chapter thirty-three of this code shall also be deposited into and
17 remain in the trust and accumulate investment return. This
18 variable percentage of premium tax allocation to be retained in
19 each fund shall be determined annually by the qualified actuary
20 provided pursuant to subsection (a) of this section to be an amount
21 required, along with other assets of the fund as necessary to reach
22 a funded level of one hundred percent in thirty-five years from the
23 time of adoption of the conservation financing method. The
24 variable percentage shall be calculated using a prospective four-
25 year rolling average.

26 (3) Upon adoption of the conservation method of finance, the

1 municipality shall close its pension and relief funds to new
2 members and shall place police officers and firefighters newly
3 hired after adoption of the conservation method into the Municipal
4 Police Officers and Firefighters Retirement System created in
5 article twenty-two-a of this chapter.

6 (4) Upon adoption of the conservation method of financing, the
7 minimum standard for annual municipality contributions to each
8 policemen's or firemen's pension and relief fund shall be an amount
9 which, together with member contributions and premium tax proceeds
10 not required to be retained in the trust pursuant to this
11 subsection, and other income sources as authorized by law, is
12 sufficient to meet the annual benefit and administrative expense
13 payments from the funds on a pay-as-you-go basis: *Provided:* That at
14 the time the actuarial report required by this section indicates no
15 actuarial deficiency in the municipal policemen's or firemen's
16 pension and relief fund, the minimum annual required contribution
17 of the municipality may not be less than an amount which together
18 with all member contributions and other income authorized by law,
19 is sufficient to pay normal cost.

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

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

25 (a) Subject to section sixteen, article twenty-two of this

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

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