

SB 544

FILED

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OFFICE WEST VIRGINIA  
GOVERNMENT OF STATE

**WEST VIRGINIA LEGISLATURE**  
**EIGHTIETH LEGISLATURE**  
**REGULAR SESSION, 2011**



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 544**

(SENATORS FOSTER, WELLS, McCABE, WILLS, EDGELL,  
SNYDER, PALUMBO, YOST, KLEMPA AND  
KESSLER (ACTING PRESIDENT), ORIGINAL SPONSORS)

[PASSED MARCH 11, 2011; IN EFFECT FROM PASSAGE.]

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OFFICE OF THE CLERK  
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

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KESSLER (ACTING PRESIDENT), *original sponsors*)

[Passed March 11, 2011; in effect from passage.]

AN ACT to amend and reenact §8-22-16 and §8-22-20 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8-22A-28 of said code, all relating to municipal policemen's and firemen's pension and relief funds and Municipal Police Officers and Fire Fighters Retirement System; providing additional method for municipalities to finance policemen's and firemen's pension and relief funds; authorizing Municipal Pensions Oversight Board to contract for actuarial services without certain statutory restrictions; requiring certain information in certain actuarial reports; and extending time to submit plan to extend Social Security benefits to certain individuals.

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

That §8-22-16 and §8-22-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8-22A-28 of said code be amended and reenacted, all to read as follows:

**CHAPTER 8. MUNICIPAL CORPORATIONS.**

**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.**

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

1 (a) Except as provided in subsection (e) of this section,  
2 passed into law during the fourth extraordinary session of  
3 the Legislature in 2009, in every Class I and Class II city  
4 having, or which may hereafter have, a paid police depart-  
5 ment and a paid fire department, or either of such depart-  
6 ments, the governing body shall, and in every Class III city  
7 and Class IV town or village having, or which may hereafter  
8 have, a paid police department and a paid fire department,  
9 or either of such departments, the governing body may, by  
10 ordinance provide for the establishment and maintenance of  
11 a policemen's pension and relief fund and for a firemen's  
12 pension and relief fund for the purposes hereinafter enumer-  
13 ated and, thereupon, there shall be created boards of trustees  
14 which shall administer and distribute the moneys authorized  
15 to be raised by this section and the following sections of this  
16 article. For the purposes of this section and sections seven-  
17 teen through twenty-eight, inclusive, of this article, the term  
18 "paid police department" or "paid fire department" means  
19 only a municipal police department or municipal fire  
20 department, as the case may be, maintained and paid for out  
21 of public funds and whose employees are paid on a full-time  
22 basis out of public funds. The term shall not be taken to  
23 mean any department whose employees are paid nominal  
24 salaries or wages or are only paid for services actually  
25 rendered on an hourly basis.

26 (b) Any policemen's pension and relief fund and any  
27 firemen's pension and relief fund established in accordance

28 with the provisions of former article six of this chapter or  
29 this article shall be or remain mandatory and shall be  
30 governed by the provisions of sections sixteen through  
31 twenty-eight, inclusive, of this article (with like effect, in the  
32 case of a Class III city or Class IV town or village, as if such  
33 Class III city or Class IV town or village were a Class I or  
34 Class II city) and shall not be affected by the transition from  
35 one class of municipal corporation to a lower class as  
36 specified in section three, article one of this chapter: *Pro-*  
37 *vided*, That any Class III or Class IV town or village that  
38 hereafter becomes a Class I or Class II city shall not be  
39 required to establish a pension and relief fund if the town or  
40 village is a participant in an existing pension plan regarding  
41 paid firemen and/or policemen.

42 (c) After June 30, 1981, for the purposes of sections sixteen  
43 through twenty-eight, inclusive, of this article, the word  
44 “member” means any paid police officer or firefighter who  
45 at time of appointment to a paid police or fire department  
46 met the medical requirements of chapter 2-2 of the National  
47 Fire Protection Association Standards Number 1001 –  
48 Firefighters Professional Qualifications ‘74 as updated from  
49 year to year: *Provided*, That any police officer or firefighter  
50 who was a member of the fund prior to July 1, 1981, shall be  
51 considered a member after June 30, 1981.

52 (d) For purposes of sections sixteen through twenty-eight,  
53 inclusive, of this article, the words “salary or compensation”  
54 mean remuneration actually received by a member, plus the  
55 member’s deferred compensation under sections 125, 401(k),  
56 414(h)(2) and 457 of the United States Internal Revenue Code  
57 of 1986, as amended: *Provided*, That the remuneration  
58 received by the member during any twelve-consecutive-  
59 month period used in determining benefits which is in excess  
60 of an amount which is twenty percent greater than the  
61 “average adjusted salary” received by the member in the two  
62 consecutive twelve-consecutive-month periods immediately  
63 preceding the twelve-consecutive-month period used in  
64 determining benefits shall be disregarded: *Provided, how-*  
65 *ever*, That the “average adjusted salary” means the arithme-

66 tic average of each year's adjusted salary, the adjustment  
67 made to reflect current salary rate and such average adjusted  
68 salary shall be determined as follows: Assuming "year-one"  
69 means the second twelve-consecutive-month period preced-  
70 ing such twelve-consecutive-month period used in determin-  
71 ing benefits, "year-two" means the twelve-consecutive-  
72 month period immediately preceding the twelve-consecutive-  
73 month period used in determining benefits and "year-three"  
74 means the twelve-consecutive-month period used in deter-  
75 mining benefits, year-one total remuneration shall be  
76 multiplied by the ratio of year-three base salary, exclusive of  
77 all overtime and other remuneration, to year-one base salary,  
78 exclusive of all overtime and other remuneration, such  
79 product shall equal "year-one adjusted salary"; year-two  
80 total remuneration shall be multiplied by the ratio of year-  
81 three base salary, exclusive of all overtime and other remu-  
82 nation, to year-two base salary, exclusive of all overtime  
83 and other remuneration, such product shall equal "year-two  
84 adjusted salary"; and the arithmetic average of year-one  
85 adjusted salary and year-two adjusted salary shall equal the  
86 average adjusted salary.

87 (e)(1) Any municipality, as that term is defined in section  
88 two, article one of this chapter, or municipal subdivision as  
89 defined in section two, article twenty-two-a of this chapter  
90 may, by a majority vote of its governing body, close its  
91 existing policemen's or firemen's pension and relief fund to  
92 employees newly hired on or after January 1, 2010, if the  
93 municipality enrolls those newly hired police officers or  
94 firefighters in a retirement plan created in article twenty-  
95 two-a of this chapter and approved and administered by the  
96 West Virginia Consolidated Public Retirement Board. On and  
97 after July 1, 2010, no new policemen's or firemen's pension  
98 and relief fund may be established under this section. A  
99 Class I or Class II municipality forming a new paid police  
100 department or paid fire department after June 30, 2010,  
101 shall, notwithstanding the provisions of section two, article  
102 twenty-two-a of this chapter, enroll the department members  
103 in the Municipal Police Officers and Firefighters Retirement  
104 System established in article twenty-two-a of this chapter.

105 (2) Any municipality using the alternative method of  
106 financing that elects to close an existing pension and relief  
107 fund to new hires pursuant to this subsection shall also adopt  
108 either the optional method of financing the unfunded  
109 actuarial accrued liability of the existing policemen's or  
110 firemen's pension and relief fund as provided in subsection  
111 (e), or the conservation method as provided in subsection (f),  
112 section twenty of this article.

113 (3) Except as provided in section thirty-two, article  
114 twenty-two-a of this chapter, if the qualifying municipality  
115 elects to close enrollment in an existing municipal pension  
116 and relief fund to newly hired police officers and firefighters  
117 pursuant to this section, all current active members, retirees  
118 and other beneficiaries covered by the existing policemen's  
119 or firemen's pension and relief fund shall remain covered by  
120 that plan and shall be paid all benefits of that plan in  
121 accordance with Part III of this article.

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

1 (a) The West Virginia Municipal Pensions Oversight Board  
2 shall contract with or employ a qualified actuary to annually  
3 prepare an actuarial valuation report on each pension and  
4 relief fund. The selection of contract vendors to provide  
5 actuarial services, including the reviewing actuary as  
6 provided in subsection (c) of this section, shall be by compet-  
7 itive bid process but is specifically exempt from purchasing  
8 provisions of article three, chapter five-a of this code. The  
9 expense of the actuarial report shall be paid from moneys in  
10 the Municipal Pensions Security Fund. Uses of the actuarial  
11 valuations from the qualified actuary shall include, but not  
12 be limited to, determining a municipal policemen's or  
13 firemen's pension and relief fund's eligibility to receive state  
14 money and to provide supplemental benefits.

15 (b) The actuarial valuation report provided pursuant to  
16 subsection (a) of this section shall consist of, but is not

17 limited to, the following disclosures: (1) The financial  
18 objective of the fund and how the objective is to be attained;  
19 (2) the progress being made toward realization of the  
20 financial objective; (3) recent changes in the nature of the  
21 fund, benefits provided or actuarial assumptions or methods;  
22 (4) the frequency of actuarial valuation reports and the date  
23 of the most recent actuarial valuation report; (5) the method  
24 used to value fund assets; (6) the extent to which the quali-  
25 fied actuary relies on the data provided and whether the data  
26 was certified by the fund's Auditor or examined by the  
27 qualified actuary for reasonableness; (7) a description and  
28 explanation of the actuarial assumptions and methods; (8) an  
29 evaluation of each plan using the alternative funding  
30 method, to assess advantages of changing to other funding  
31 methods as provided in this article; and (9) any other  
32 information required in section twenty-a of this article or  
33 that the qualified actuary feels is necessary or would be  
34 useful in fully and fairly disclosing the actuarial condition of  
35 the fund.

36 (c) (1) Except as provided in subsections (e) and (f) of this  
37 section, beginning June 30, 1991, and thereafter, the finan-  
38 cial objective of each municipality shall not be less than to  
39 contribute to the fund annually an amount which, together  
40 with the contributions from the members and the allocable  
41 portion of the Municipal Pensions and Protection Fund for  
42 municipal pension and relief funds established under section  
43 fourteen-d, article three, chapter thirty-three of this code or  
44 a municipality's allocation from the Municipal Pensions  
45 Security Fund created in section eighteen-b of this article  
46 and other income sources as authorized by law will be  
47 sufficient to meet the normal cost of the fund and amortize  
48 any actuarial deficiency over a period of not more than forty  
49 years beginning from July 1, 1991: *Provided*, That in the  
50 fiscal year ending June 30, 1991, the municipality may elect  
51 to make its annual contribution to the fund using an alterna-  
52 tive contribution in an amount not less than: (i) One hundred  
53 seven percent of the amount contributed for the fiscal year  
54 ending June 30, 1990; or (ii) an amount equal to the average  
55 of the contribution payments made in the five highest fiscal

56 years beginning with the fiscal year ending 1984, whichever  
57 is greater: *Provided, however*, That contribution payments in  
58 subsequent fiscal years under this alternative contribution  
59 method may not be less than one hundred seven percent of  
60 the amount contributed in the prior fiscal year: *Provided*  
61 *further*, That in order to avoid penalizing municipalities and  
62 to provide flexibility when making contributions, municipal-  
63 ities using the alternative contribution method may exclude  
64 a one-time additional contribution made in any one year in  
65 excess of the minimum required by this section: *And pro-*  
66 *vided further*, That the governing body of any municipality  
67 may elect to provide an employer continuing contribution of  
68 one percent more than the municipality's required minimum  
69 under the alternative contribution plan authorized in this  
70 subsection: *And provided further*, That if any municipality  
71 decides to contribute an additional one percent, then that  
72 municipality may not reduce the additional contribution  
73 until the respective pension and relief fund no longer has any  
74 actuarial deficiency: *And provided further*, That any decision  
75 and any contribution payment by the municipality is not the  
76 liability of the State of West Virginia: *And provided further*,  
77 That if any municipality or any pension fund board of  
78 trustees makes a voluntary election and thereafter fails to  
79 contribute the voluntarily increase as provided in this  
80 section and in subsection (c), section nineteen of this article,  
81 then the board of trustees is not eligible to receive funds  
82 allocated under section fourteen-d, article three, chapter  
83 thirty-three of this code: *And provided further*, That prior to  
84 using this alternative contribution method the actuary of the  
85 fund shall certify in writing that the fund is projected to be  
86 solvent under the alternative contribution method for the  
87 next consecutive fifteen-year period. For purposes of  
88 determining this minimum financial objective: (i) The value  
89 of the fund's assets shall be determined on the basis of any  
90 reasonable actuarial method of valuation which takes into  
91 account fair market value; and (ii) all costs, deficiencies, rate  
92 of interest and other factors under the fund shall be deter-  
93 mined on the basis of actuarial assumptions and methods  
94 which, in aggregate, are reasonable (taking into account the  
95 experience of the fund and reasonable expectations) and

96 which, in combination, offer the qualified actuary's best  
97 estimate of anticipated experience under the fund: *And*  
98 *provided further*, That any municipality which elected the  
99 alternative funding method under this section and which has  
100 an unfunded actuarial liability of not more than twenty-five  
101 percent of fund assets, may, beginning September 1, 2003,  
102 elect to revert to the standard funding method, which is to  
103 contribute to the fund annually an amount which is not less  
104 than an amount which, together with the contributions from  
105 the members and the allocable portion of the Municipal  
106 Pensions and Protection Fund for municipal pension and  
107 relief funds established under section fourteen-d, article  
108 three, chapter thirty-three of this code and other income  
109 sources as authorized by law, will be sufficient to meet the  
110 normal cost of the fund and amortize any actuarial defi-  
111 ciency over a period of not more than forty years, beginning  
112 from July 1, 1991.

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

117 (3) Notwithstanding any other provision of this section or  
118 article to the contrary, each municipality shall contribute  
119 annually to the fund an amount which may not be less than  
120 the normal cost, as determined by the actuarial report.

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

127 (5) The oversight board shall hire an independent review-  
128 ing actuary to perform an actuarial audit of the work  
129 performed by the qualified actuary no less than once every  
130 seven years.

131 (d) For purposes of this section, the term “qualified  
132 actuary” means only an actuary who is a member of the  
133 Society of Actuaries or the American Academy of Actuaries.  
134 The qualified actuary shall be designated a fiduciary and  
135 shall discharge his or her duties with respect to a fund solely  
136 in the interest of the members and members’ beneficiaries of  
137 that fund. In order for the standards of this section to be met,  
138 the qualified actuary shall certify that the actuarial valua-  
139 tion report is complete and accurate and that in his or her  
140 opinion the technique and assumptions used are reasonable  
141 and meet the requirements of this section.

142 (e)(1) Beginning January 1, 2010, municipalities may  
143 choose the optional method of financing municipal police-  
144 men’s or firemen’s pension and relief funds as outlined in  
145 this subsection in lieu of the standard or alternative methods  
146 as provided in subdivision (1), subsection (c) of this section.

147 (2) For those municipalities choosing the optional method  
148 of finance, the minimum standard for annual municipality  
149 contributions to each policemen’s or firemen’s pension and  
150 relief fund shall be an amount which, together with the  
151 contributions from the members and allocable portion of the  
152 Municipal Pensions and Protection Fund or Municipal  
153 Pensions Security Fund created in section eighteen-b of this  
154 article, and other income sources as authorized by law, will  
155 be sufficient to meet the normal cost of the fund and amor-  
156 tize any actuarial deficiency over a period of not more than  
157 forty years beginning January 1, 2010: *Provided*, That those  
158 municipalities using the standard method of financing in  
159 2009 shall continue to amortize their actuarial deficiencies  
160 over a period of not more than forty years beginning July 1,  
161 1991. The required contribution shall be determined each  
162 plan year as described above by the actuary retained by the  
163 oversight board, based on an actuarial valuation reflecting  
164 actual demographic and investment experience and consis-  
165 tent with the Actuarial Standards of Practice published by  
166 the Actuarial Standards Board.

167 (3) A municipality choosing the optional method of  
168 financing a policemen’s or firemen’s pension and relief fund

169 as provided in this subsection shall close the fund to police  
170 officers or fire fighters newly hired on or after January 1,  
171 2010, and provide for those employees to be members of the  
172 Municipal Police Officers and Firefighters Retirement  
173 System as established in article twenty-two-a of this chap-  
174 ter.

175 (f) (1) Beginning April 1, 2011, any municipality using the  
176 alternative method of financing may choose a conservation  
177 method of financing its municipal policemen's and firemen's  
178 pension and relief funds as outlined in this subsection, in lieu  
179 of the alternative method as provided in subdivision (1),  
180 subsection (c), or the optional method as provided in subsec-  
181 tion (e) of this section.

182 (2) For those municipalities choosing the conservation  
183 method of finance, until a plan is funded at one hundred  
184 percent, a part of each plan member's employee contribution  
185 to the fund equal to one and one-half percent of the em-  
186 ployee's compensation, shall be deposited into and remain in  
187 the trust and accumulate investment return. In addition,  
188 until a plan is funded at one hundred percent, an actuarially  
189 determined portion of the premium tax allocation to each  
190 fund provided in accordance with section fourteen-d, article  
191 three, and section seven, article twelve-c of chapter thirty-  
192 three of this code shall also be deposited into and remain in  
193 the trust and accumulate investment return. This variable  
194 percentage of premium tax allocation to be retained in each  
195 fund shall be determined annually by the qualified actuary  
196 provided pursuant to subsection (a) of this section to be an  
197 amount required, along with other assets of the fund as  
198 necessary to reach a funded level of one hundred percent in  
199 thirty-five years from the time of adoption of the conserva-  
200 tion financing method. The variable percentage shall be  
201 calculated using a prospective four-year rolling average.

202 (3) Upon adoption of the conservation method of finance,  
203 the municipality shall close its pension and relief funds to  
204 new members and shall place police officers and firefighters  
205 newly hired after adoption of the conservation method into

206 the Municipal Police Officers and Firefighters Retirement  
207 System created in article twenty-two-a of this chapter.

208 (4) Upon adoption of the conservation method of financing,  
209 the minimum standard for annual municipality contributions  
210 to each policemen's or firemen's pension and relief fund shall  
211 be an amount which, together with member contributions  
212 and premium tax proceeds not required to be retained in the  
213 trust pursuant to this subsection, and other income sources  
214 as authorized by law, is sufficient to meet the annual benefit  
215 and administrative expense payments from the funds on a  
216 pay-as-you-go basis: *Provided:* That at the time the actuarial  
217 report required by this section indicates no actuarial defi-  
218 ciency in the municipal policemen's or firemen's pension and  
219 relief fund, the minimum annual required contribution of the  
220 municipality may not be less than an amount which together  
221 with all member contributions and other income authorized  
222 by law, is sufficient to pay normal cost.

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

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

1 (a) Subject to section sixteen, article twenty-two of this  
2 chapter, any municipality or municipal subdivision employ-  
3 ing municipal police officers or firefighters may by a major-  
4 ity of the members of its governing body eligible to vote,  
5 elect to become a participating public employer and thereby  
6 include its police officers and firefighters in the membership  
7 of the plan. The clerk or secretary of each municipality or  
8 municipal subdivision electing to become a participating  
9 public employer shall certify the determination of the  
10 municipality or municipal subdivision by corporate resolu-  
11 tion to the Consolidated Public Retirement Board within ten  
12 days from and after the vote of the governing body. Separate  
13 resolutions are required for municipal police officers and  
14 municipal firefighters. Once a municipality or municipal

15 subdivision elects to participate in the plan, the action is  
16 final and it may not, at a later date, elect to terminate its  
17 participation in the plan.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Handwritten Signature]*

Chairman Senate Committee

*[Handwritten Signature]*

Vice Chairman House Committee

Originated in the Senate.

In effect from passage.

*[Handwritten Signature]*

Clerk of the Senate

*[Handwritten Signature]*  
Clerk of the House of Delegates

*[Handwritten Signature]*  
Acting President of the Senate

*[Handwritten Signature]*  
Speaker of the House of Delegates

The within *is appended* this the *5th*  
Day of *April*, 2011.

*[Handwritten Signature]*  
Governor

PRESENTED TO THE GOVERNMENT

MAR 23 2011

Time 10:50 am