

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 634**

5 (SENATOR FOSTER, *original sponsor*)

6 _____
7 [Passed March 10, 2012; in effect ninety days from passage.]
8 _____
9

10 AN ACT to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §8-13-13a; and to
12 amend and reenact §8-22-20 of said code, all relating to
13 authorizing certain municipalities with policemen's pension
14 and relief funds or firemen's pension and relief funds to
15 impose by ordinance a limited public safety assessment fee to
16 be used to reduce actuarially accrued liabilities of municipal
17 policemen's or firemen's pension and relief funds; and minimum
18 standards for annual municipal contributions to the pension
19 and relief funds.

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

21 That the Code of West Virginia, 1931, as amended, be amended
22 by adding thereto a new section, designated §8-13-13a; and that §8-
23 22-20 of said code be amended and reenacted, all to read as
24 follows:

25 **ARTICLE 13. TAXATION AND FINANCE.**

1 **§8-13-13a. Special public safety assessments for reduction of**
2 **unfunded liabilities of municipal policemen's and**
3 **firemen's pension and relief funds.**

4 (a) Notwithstanding any charter provisions to the contrary,
5 any municipality which participates in a policemen's pension and
6 relief fund or a firemen's pension and relief fund, pursuant to
7 article twenty-two of this chapter, and has adopted the standard,
8 optional or conservation method of financing those pension plans as
9 provided in section twenty, article twenty-two of this chapter, may
10 provide by ordinance for a public safety assessment fee, the
11 revenues from which shall be dedicated to reducing any unfunded
12 actuarial liability of a policemen's or firemen's pension and
13 relief fund. The assessment shall be based on the square footage
14 of structures, shall not exceed an annual assessment of two cents
15 per square foot, and shall be for the purpose of reducing the
16 unfunded liability of a policemen's or firemen's pension and relief
17 fund.

18 (b) Any municipality which has selected the conservation
19 method of financing its municipal policemen's or firemen's pension
20 and relief fund, as authorized in subsection (f), section twenty,
21 article twenty-two of this chapter, shall dedicate any proceeds
22 from the assessment authorized in this section, to the trust of
23 either the policemen's or firemen's pension fund, or allocate the
24 proceeds in a manner chosen by the municipality between the plan
25 trusts, to remain in the trust or trusts and accumulate investment

1 return as provided in subsection (f), section twenty, article
2 twenty-two of this chapter.

3 (c) Any municipality which has selected the standard or
4 optional method of financing its municipal policemen's or firemen's
5 pension and relief fund, as authorized in section twenty, article
6 twenty-two of this chapter, shall dedicate any proceeds from the
7 assessment authorized in this section to either of the pension and
8 relief funds or allocate the proceeds in a manner chosen by the
9 municipality between the plan trusts. The payments into the plan
10 trusts from assessment proceeds are to be treated as additional
11 payments and shall not be included as another income source toward
12 meeting the minimum standard for annual municipality contributions
13 as established in subsections (c)(1) or (e)(2), section twenty,
14 article twenty-two of this chapter, as applicable.

15 (d) A municipality does not have a lien on any property as
16 security for payments due under subsection (a) of this section
17 except as provided in subsection (e) of this section.

18 (e) A municipality may enact an ordinance, pursuant to this
19 section, permitting it to file a lien on real property located
20 within the municipal corporate limits for unpaid and delinquent
21 public safety assessment fees. The ordinance shall provide an
22 administrative procedure for the municipality's assessment and
23 collection of the fees. The administrative procedure shall require
24 that, before any lien is filed, the municipality shall give notice
25 to the property owner, by certified mail, return receipt requested,
26 and that the municipality shall file the lien unless the

1 delinquency is paid by a date stated in the notice, which must be
2 no less than ninety days from the date the notice is mailed. The
3 administrative procedure shall include the right to appeal to the
4 circuit court of the county in which the real property is located.
5 The circuit court shall consider the appeal under its general
6 authority, including, but not limited to, subsection (f), section
7 two, article two of chapter fifty-one of this code.

8 (f) Notwithstanding the provisions of section four, article
9 eleven of this chapter, any ordinance enacted or substantially
10 amended under the provisions of this section shall be published as
11 a Class II legal advertisement in compliance with the provisions of
12 article three, chapter fifty-nine of this code. The publication
13 area for the publication is the municipality.

14 (g) In the event fifteen percent of the qualified voters of
15 the municipality, by petition duly signed by them in their own
16 handwriting and filed with the recorder of the municipality within
17 forty-five days after the expiration of the publication, protest
18 against the ordinance as enacted or amended, the ordinance shall
19 not become effective until it is ratified by a majority of the
20 legal votes cast by the qualified voters of the municipality at a
21 regular municipal election or special municipal election, as
22 directed by the governing body. Voting may not take place until
23 after notice of the submission is given by publication as provided
24 in subsection (f) of this section.

25 (h) The powers and authority granted to municipalities and to
26 the governing bodies of municipalities in this section are in

1 addition and supplemental to the powers and authority named in any
2 charters of the municipalities.

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

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

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

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

1 to, the following disclosures: (1) The financial objective of the
2 fund and how the objective is to be attained; (2) the progress
3 being made toward realization of the financial objective; (3)
4 recent changes in the nature of the fund, benefits provided or
5 actuarial assumptions or methods; (4) the frequency of actuarial
6 valuation reports and the date of the most recent actuarial
7 valuation report; (5) the method used to value fund assets; (6) the
8 extent to which the qualified actuary relies on the data provided
9 and whether the data was certified by the fund's Auditor or
10 examined by the qualified actuary for reasonableness; (7) a
11 description and explanation of the actuarial assumptions and
12 methods; (8) an evaluation of each plan using the alternative
13 funding method, to assess advantages of changing to other funding
14 methods as provided in this article; and (9) any other information
15 required in section twenty-a of this article or that the qualified
16 actuary feels is necessary or would be useful in fully and fairly
17 disclosing the actuarial condition of the fund.

18 (c) (1) Except as provided in subsections (e) and (f) of this
19 section, beginning June 30, 1991, and thereafter, the financial
20 objective of each municipality shall not be less than to contribute
21 to the fund annually an amount which, together with the
22 contributions from the members and the allocable portion of the
23 Municipal Pensions and Protection Fund for municipal pension and
24 relief funds established under section fourteen-d, article three,
25 chapter thirty-three of this code or a municipality's allocation
26 from the Municipal Pensions Security Fund created in section

1 eighteen-b of this article and other income sources as authorized
2 by law except from public safety assessments as provided in section
3 thirteen-a, article thirteen of this chapter, will be sufficient to
4 meet the normal cost of the fund and amortize any actuarial
5 deficiency over a period of not more than forty years beginning
6 from July 1, 1991: *Provided*, That in the fiscal year ending June
7 30, 1991, the municipality may elect to make its annual
8 contribution to the fund using an alternative contribution in an
9 amount not less than: (i) One hundred seven percent of the amount
10 contributed for the fiscal year ending June 30, 1990; or (ii) an
11 amount equal to the average of the contribution payments made in
12 the five highest fiscal years beginning with the fiscal year ending
13 1984, whichever is greater: *Provided, however*, That contribution
14 payments in subsequent fiscal years under this alternative
15 contribution method may not be less than one hundred seven percent
16 of the amount contributed in the prior fiscal year: *Provided*
17 *further*, That in order to avoid penalizing municipalities and to
18 provide flexibility when making contributions, municipalities using
19 the alternative contribution method may exclude a one-time
20 additional contribution made in any one year in excess of the
21 minimum required by this section: *And provided further*, That the
22 governing body of any municipality may elect to provide an employer
23 continuing contribution of one percent more than the municipality's
24 required minimum under the alternative contribution plan authorized
25 in this subsection: *And provided further*, That if any municipality
26 decides to contribute an additional one percent, then that

1 municipality may not reduce the additional contribution until the
2 respective pension and relief fund no longer has any actuarial
3 deficiency: *And provided further,* That any decision and any
4 contribution payment by the municipality is not the liability of
5 the State of West Virginia: *And provided further,* That if any
6 municipality or any pension fund board of trustees makes a
7 voluntary election and thereafter fails to contribute the voluntary
8 increase as provided in this section and in subsection (c), section
9 nineteen of this article, then the board of trustees is not
10 eligible to receive funds allocated under section fourteen-d,
11 article three, chapter thirty-three of this code: *And provided*
12 *further,* That prior to using this alternative contribution method
13 the actuary of the fund shall certify in writing that the fund is
14 projected to be solvent under the alternative contribution method
15 for the next consecutive fifteen-year period. For purposes of
16 determining this minimum financial objective: (i) The value of the
17 fund's assets shall be determined on the basis of any reasonable
18 actuarial method of valuation which takes into account fair market
19 value; and (ii) all costs, deficiencies, rate of interest and other
20 factors under the fund shall be determined on the basis of
21 actuarial assumptions and methods which, in aggregate, are
22 reasonable (taking into account the experience of the fund and
23 reasonable expectations) and which, in combination, offer the
24 qualified actuary's best estimate of anticipated experience under
25 the fund: *And provided further,* That any municipality which elected
26 the alternative funding method under this section and which has an

1 unfunded actuarial liability of not more than twenty-five percent
2 of fund assets, may, beginning September 1, 2003, elect to revert
3 to the standard funding method, which is to contribute to the fund
4 annually an amount which is not less than an amount which, together
5 with the contributions from the members and the allocable portion
6 of the Municipal Pensions and Protection Fund for municipal pension
7 and relief funds established under section fourteen-d, article
8 three, chapter thirty-three of this code and other income sources
9 as authorized by law, will be sufficient to meet the normal cost of
10 the fund and amortize any actuarial deficiency over a period of not
11 more than forty years, beginning from July 1, 1991.

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

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

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

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

1 (d) For purposes of this section, the term "qualified actuary"
2 means only an actuary who is a member of the Society of Actuaries
3 or the American Academy of Actuaries. The qualified actuary shall
4 be designated a fiduciary and shall discharge his or her duties
5 with respect to a fund solely in the interest of the members and
6 members' beneficiaries of that fund. In order for the standards of
7 this section to be met, the qualified actuary shall certify that
8 the actuarial valuation report is complete and accurate and that in
9 his or her opinion the technique and assumptions used are
10 reasonable and meet the requirements of this section.

11 (e) (1) Beginning January 1, 2010, municipalities may choose
12 the optional method of financing municipal policemen's or firemen's
13 pension and relief funds as outlined in this subsection in lieu of
14 the standard or alternative methods as provided in subdivision (1),
15 subsection (c) of this section.

16 (2) For those municipalities choosing the optional method of
17 finance, the minimum standard for annual municipality contributions
18 to each policemen's or firemen's pension and relief fund shall be
19 an amount which, together with the contributions from the members
20 and allocable portion of the Municipal Pensions and Protection Fund
21 or Municipal Pensions Security Fund created in section eighteen-b
22 of this article, and other income sources as authorized by law
23 except from public safety assessments as provided in section
24 thirteen-a, article thirteen of this chapter, will be sufficient to
25 meet the normal cost of the fund and amortize any actuarial
26 deficiency over a period of not more than forty years beginning

1 January 1, 2010: *Provided*, That those municipalities using the
2 standard method of financing in 2009 shall continue to amortize
3 their actuarial deficiencies over a period of not more than forty
4 years beginning July 1, 1991. The required contribution shall be
5 determined each plan year as described above by the actuary
6 retained by the oversight board, based on an actuarial valuation
7 reflecting actual demographic and investment experience and
8 consistent with the Actuarial Standards of Practice published by
9 the Actuarial Standards Board.

10 (3) A municipality choosing the optional method of financing
11 a policemen's or firemen's pension and relief fund as provided in
12 this subsection shall close the fund to police officers or
13 firefighters newly hired on or after January 1, 2010, and provide
14 for those employees to be members of the Municipal Police Officers
15 and Firefighters Retirement System as established in article
16 twenty-two-a of this chapter.

17 (f) (1) Beginning April 1, 2011, any municipality using the
18 alternative method of financing may choose a conservation method of
19 financing its municipal policemen's and firemen's pension and
20 relief funds as outlined in this subsection, in lieu of the
21 alternative method as provided in subdivision (1), subsection (c),
22 or the optional method as provided in subsection (e) of this
23 section.

24 (2) For those municipalities choosing the conservation method
25 of finance, until a plan is funded at one hundred percent, a part
26 of each plan member's employee contribution to the fund equal to

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

18 (3) Upon adoption of the conservation method of finance, the
19 municipality shall close its pension and relief funds to new
20 members and shall place police officers and firefighters newly
21 hired after adoption of the conservation method into the Municipal
22 Police Officers and Firefighters Retirement System created in
23 article twenty-two-a of this chapter.

24 (4) Upon adoption of the conservation method of financing, the
25 minimum standard for annual municipality contributions to each
26 policemen's or firemen's pension and relief fund shall be an amount

1 which, together with member contributions and premium tax proceeds
2 not required to be retained in the trust pursuant to this
3 subsection, and other income sources as authorized by law, is
4 sufficient to meet the annual benefit and administrative expense
5 payments from the funds on a pay-as-you-go basis: *Provided*, That at
6 the time the actuarial report required by this section indicates no
7 actuarial deficiency in the municipal policemen's or firemen's
8 pension and relief fund, the minimum annual required contribution
9 of the municipality may not be less than an amount which together
10 with all member contributions and other income authorized by law,
11 is sufficient to pay normal cost.