

H. B. 4489

(By Delegates Pethtel, Duke, Guthrie, Canterbury,
Stowers and Givens)

[Introduced February 9, 2012; referred to the
Committee on Pensions and Retirement then Finance.]

A BILL to amend and reenact §8-22-18a and §8-22-19a of the Code of
West Virginia, 1931, as amended; and to amend said code by
adding thereto a new section, designated §8-22-18c, all
relating to strengthening authority of the West Virginia
Municipal Pensions Oversight Board and clarifying practices.

Be it enacted by the Legislature of West Virginia:

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

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

§8-22-18a. West Virginia Municipal Pensions Oversight Board

1 **created; powers and duties; management;**
2 **composition; terms; quorum; expenses; reports.**

3 (a) (1) ~~There is established, on the effective date of the~~
4 ~~enactment of this section during the fourth extraordinary session~~
5 ~~of the Legislature in 2009,~~ The West Virginia Municipal Pensions
6 Oversight Board, established in 2009, is hereby continued as a
7 public body corporate for the purpose of monitoring and improving
8 the performance of municipal policemen's and firemen's pension and
9 relief funds to assure prudent administration, investment and
10 management of the funds. Management of the oversight board shall
11 be vested solely in the members of the oversight board. Duties of
12 the oversight board shall include, but not be limited to, assisting
13 municipal boards of trustees in performing their duties, assuring
14 the funds' compliance with applicable laws, providing for actuarial
15 studies, distributing tax revenues to the funds, initiating or
16 joining legal actions on behalf of active or retired pension fund
17 members or municipal boards of trustees to protect interests of the
18 members in the funds, and taking other actions as may be reasonably
19 necessary to provide for the security and fiscal integrity of the
20 pension funds. The oversight board's authority to initiate legal
21 action does not preempt the authority of municipalities; municipal
22 policemen's and firemen's boards of trustees; or pension fund
23 active members, beneficiaries or others to initiate legal action to
24 protect interests in the funds. Further, the oversight board may,

1 in its discretion, investigate the actions or practices of
2 municipal boards of trustees or of their administrators or
3 employees that, in the oversight board's judgment, have the
4 potential to threaten the security or fiscal integrity of the
5 pension funds and the boards of trustees, administrators and
6 employees shall cooperate with the oversight board in any
7 investigation. Regardless of whether it has previously conducted
8 an investigation, the oversight board may initiate or intervene in
9 legal actions to challenge or prevent any action or practice which,
10 in the oversight board's judgment has the potential to threaten the
11 security or fiscal integrity of the pension funds. ~~The oversight~~
12 board is created as a public body corporate. Establishment of the
13 oversight board does not relieve the municipal funds' boards of
14 trustees from their fiduciary and other duties to the funds, nor
15 does it create any liability for the funds on the part of the
16 state. The failure of the oversight board to investigate or
17 initiate legal actions regarding the actions or practices of
18 municipal boards of trustees, their administrators or employees
19 does not render the oversight board liable for the actions or
20 practices. Members and employees of the oversight board are not
21 liable personally, either jointly or severally, for debts or
22 obligations of the municipal pension and relief funds. Except as
23 otherwise provided herein, members and employees of the oversight
24 board have a fiduciary duty toward the municipal pension and relief

1 funds and are liable for malfeasance or gross negligence that
2 constitutes a breach of fiduciary duty and that has the reasonably
3 foreseeable effect of depleting or impairing any fund. Employees
4 of the oversight board are ~~nonclassified~~ classified-exempt state
5 employees.

6 (2) The oversight board shall consist of nine members. The
7 executive director of the state's Investment Management Board and
8 the executive director of the state's Consolidated Public
9 Retirement Board, or their designees, shall serve as voting ex
10 officio members. The other seven members shall be citizens of the
11 state who have been qualified electors of the state for a period of
12 at least one year next preceding their appointment and shall be as
13 follows: An active or retired member of a Municipal Policemen's
14 Pension and Relief Fund chosen from a list of three persons
15 submitted to the Governor by the state's largest professional
16 municipal police officers organization, an active or retired member
17 of a Municipal Firemen's Pension and Relief Fund chosen from a list
18 of three persons submitted to the Governor by the state's largest
19 professional firefighters organization, an attorney experienced in
20 finance and investment matters related to pensions management, two
21 persons experienced in pension funds management, one person who is
22 a certified public accountant experienced in auditing and one
23 person chosen from a list of three persons submitted to the
24 Governor by the state's largest association of municipalities.

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

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

8 (1) Enter into contracts, to sue and be sued, to implead and
9 be impleaded;

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

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

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

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

22 (6) Do all things necessary and appropriate to implement and
23 operate the board in performance of its duties. Expenses shall be
24 paid from the moneys in the Municipal Pensions Security Fund

1 created in section eighteen-b of this article or, prior to the
2 transition provided in section eighteen-b of this article, the
3 Municipal Pensions and Protection Fund: *Provided*, That the board
4 may request special appropriation for special projects. The
5 oversight board is exempt from provisions of article three, chapter
6 five-a of this code for the purpose of contracting for actuarial
7 services, including the services of a reviewing actuary.

8 (c) Except for ex officio members, the terms of oversight
9 board members shall be staggered initially from January 1, 2010.
10 The Governor shall appoint initially one member for a term of one
11 year, one member for a term of two years, two members for terms of
12 three years, one member for a term of four years and two members
13 for terms of five years. Subsequent appointments shall be for
14 terms of five years. A member serving two full consecutive terms
15 may not be reappointed for one year after completion of his or her
16 second full-term. Each member shall serve until that member's
17 successor is appointed and qualified. Any member may be removed by
18 the Governor in case of incompetency, neglect of duty, gross
19 immorality or malfeasance in office. Any vacancy on the oversight
20 board shall be filled by appointment by the Governor for the
21 balance of the unexpired term.

22 (d) A majority of the full authorized membership of the
23 oversight board constitutes a quorum. The board shall meet at
24 least quarterly each year, but more often as duties require, at

1 times and places that it determines. The oversight board shall
2 elect a chairperson and a vice chairperson from their membership
3 who shall serve for terms of two years and shall select annually a
4 secretary/treasurer who may be either a member or employee of the
5 board. The oversight board shall employ an executive director and
6 other staff as needed and shall fix their duties and compensation.
7 The compensation of the executive director shall be subject to
8 approval of the Governor. Except for any special appropriation as
9 provided in subsection (b) of this section, all personnel and other
10 expenses of the board shall be paid from revenue collected and
11 allocated for municipal policemen's or municipal firemen's pension
12 and relief funds pursuant to section fourteen-d, article three,
13 chapter thirty-three of this code and distributed through the
14 Municipal Pensions and Protection Fund or the Municipal Pensions
15 Security Fund created in section eighteen-b of this article.
16 Expenses during the initial year of the board's operation shall be
17 from proceeds of the allocation for the municipal pensions and
18 relief funds. Expenditures in years thereafter shall be by
19 appropriation from the Municipal Pensions Security Fund. Money
20 allocated for municipal policemen's and firemen's pension and
21 relief funds to be distributed from the Municipal Pensions and
22 Protection Fund or the Municipal Pensions Security Fund shall be
23 first allocated to pay expenses of the oversight board and the
24 remainder in the fund distributed among the various municipal

1 pension and relief funds as provided in section fourteen-d, article
2 three, chapter thirty-three of this code. The board is exempt from
3 the provisions of sections seven and eleven, article three, chapter
4 twelve of this code relating to compensation and expenses of
5 members, including travel expenses.

6 (e) Members of the oversight board shall serve the board
7 without compensation for their services: *Provided*, That no public
8 employee member may suffer any loss of salary or wages on account
9 of his or her service on the board. Each member of the board shall
10 be reimbursed, on approval of the board, for any necessary expenses
11 actually incurred by the member in carrying out his or her duties.
12 All reimbursement of expenses shall be paid out of the Municipal
13 Pensions Security Fund.

14 (f) The board may contract with other state boards or state
15 agencies to share offices, personnel and other administrative
16 functions as authorized under this article: *Provided*, That no
17 provision of this subsection may be construed to authorize the
18 board to contract with other state boards or state agencies to
19 otherwise perform the duties or exercise the responsibilities
20 imposed on the board by this code.

21 (g) The board shall propose rules for legislative approval in
22 accordance with the provisions of article three, chapter twenty-
23 nine-a of this code as necessary to implement the provisions of
24 this article, and may initially promulgate emergency rules pursuant

1 to the provisions of section fifteen, article three, chapter
2 twenty-nine-a of this code.

3 (h) The oversight board shall report annually to the
4 Legislature's Joint Committee on Government and Finance and the
5 Joint Committee on Pensions and Retirement concerning the status of
6 municipal policemen's and firemen's pension and relief funds and
7 shall present recommendations for strengthening and protecting the
8 funds and the benefit interests of the funds' members.

9 (i) The oversight board shall cooperate with the West Virginia
10 Investment Management Board and the board of Treasury Investments
11 to educate members of the local pension boards of trustees on the
12 services offered by the two state investment boards. No later than
13 October 31, 2013, the board shall report to the Joint Committee on
14 Government and Finance and the Joint Committee on Pensions and
15 Retirement a detailed comparison of returns on long-term
16 investments of moneys held by or allocated to municipal pension and
17 relief funds managed by the West Virginia Investment Management
18 Board and those managed by others than the Investment Management
19 Board. The oversight board shall also report at that time on
20 short-term investment returns by local pension boards using the
21 West Virginia Board of Treasury Investments compared to short-term
22 investment returns by those local boards of trustees not using the
23 board of Treasury Investments.

24 (j) The oversight board shall establish minimum requirements

1 for training to be completed by each member of the board of
2 trustees of a Municipal Policemen's or Firemen's Pension and Relief
3 Fund. The requirements should include, but not be limited to,
4 training in ethics, fiduciary duty and investment responsibilities.

5 **§8-22-18c. Notice of legal actions by or against municipal**
6 **policemen's and firemen's pension funds.**

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

1 **§8-22-19a. Refunds of member contributions.**

2 After January 1, 2010, any member of a paid police department
3 or fire department who is removed or discharged or who before
4 retirement on any retirement pension or disability pension severs
5 his or her connection with said department, whether or not
6 consecutive, shall, upon request, be refunded all pension and
7 relief fund deductions made from ~~his~~ the member's salary or
8 compensation, but without interest from the fund. The refund shall
9 come from the accounts which originally received the member
10 deductions. For municipalities using the conservation method of
11 funding, the member contributions are to be refunded from both the
12 Municipal Pension and Relief Fund and the city benefit account, in
13 the exact percentages that were initially deposited to the
14 respective accounts. Any member who receives ~~such~~ a refund and
15 ~~such member~~ subsequently wishes to reenter ~~the~~ his or her
16 department, ~~such police officer or fire fighter~~ shall not be
17 allowed to reenter the department unless ~~such~~ the police officer or
18 fire fighter repays to the pension and relief fund all sums
19 refunded to him or her in a lump sum at the date of reentry, or by
20 monthly payroll deductions within thirty-six months from the date
21 he or she reenters the department, with interest at the rate of
22 eight percent per annum. In the event such refund is made prior to
23 January 1, 1981, and such member subsequently reenters the
24 department such police officer or firefighter shall be allowed

1 membership in such pension and relief fund; however, no credit may
2 be allowed such member for any former service, unless such member
3 repays to the pension and relief fund all sums refunded to ~~him~~ the
4 member within one year from the date ~~he~~ the member reenters the
5 department with interest at the rate of eight percent per annum:
6 *Provided, That ~~any member who, on or before June 3, 1955, reentered~~*
7 *~~the paid police or fire department shall be allowed credit for any~~*
8 *~~former service in the same department reentered if he, within one~~*
9 *~~year from said June 3, 1955, repaid all sums withdrawn or refunded~~*
10 *~~to him with interest at the rate of six percent per annum, but for~~*
11 *such member who receives such refund prior to January 1, 1980,*
12 *interest may not be charged for more than three years. Any*
13 *probationary member of a paid police or fire department who is not*
14 *given an absolute appointment at the end of ~~his~~ the member's*
15 *probationary period shall, upon request, be refunded all pension*
16 *and relief fund deductions made from ~~his~~ the member's salary or*
17 *compensation, but without interest. Any member contribution made*
18 *in fiscal years beginning on July 1, 1981 and thereafter by any*
19 *members of such fund, which is in excess of the percentages,*
20 *required in section nineteen of this article of such member's*
21 *salary or compensation as defined in section sixteen of this*
22 *article shall be refunded with eight percent interest to such*
23 *member upon completion of the calculation of ~~his~~ the member's*
24 *retirement benefit.*

NOTE: The purpose of this bill is to enhance the ability of the Municipal Pensions Oversight Board to ensure compliance and protect the fiscal integrity of the state's municipal policemen's and firemen's pension and relief funds. The bill clarifies the oversight board's authority to investigate practices of local policemen's and firemen's pension funds and to intervene in any legal actions involving the funds. It also clarifies procedure for refunding contributions to a member who leaves before retirement.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§18-22-18c is new; therefore, it has been completely underscored.