

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 634**

(By Senator Foster)

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[Originating in the Committee on Finance;  
reported February 27, 2012.]

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

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

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

**ARTICLE 13. TAXATION AND FINANCE.**

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

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

14 purpose of reducing the unfunded liability of a policemen's  
15 or firemen's pension and relief fund.

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

27 (c) Any municipality which has selected the standard or  
28 optional method of financing its municipal policemen's or  
29 firemen's pension and relief fund, as authorized in section  
30 twenty, article twenty-two of this chapter, shall dedicate any  
31 proceeds from the assessment authorized in this section to  
32 either of the pension and relief funds or allocate the proceeds  
33 in a manner chosen by the municipality between the plan  
34 trusts. The payments into the plan trusts from assessment  
35 proceeds are to be treated as additional payments and shall

36 not be included as another income source toward meeting the  
37 minimum standard for annual municipality contributions as  
38 established in subsections (c)(1) or (e)(2), section twenty,  
39 article twenty-two of this chapter, as applicable.

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

43 (e) A municipality may enact an ordinance, pursuant to  
44 this section, permitting it to file a lien on real property  
45 located within the municipal corporate limits for unpaid and  
46 delinquent public safety assessment fees. The ordinance shall  
47 provide an administrative procedure for the municipality's  
48 assessment and collection of the fees. The administrative  
49 procedure shall require that, before any lien is filed, the  
50 municipality shall give notice to the property owner, by  
51 certified mail, return receipt requested, and that the munic-  
52 ipality shall file the lien unless the delinquency is paid by a  
53 date stated in the notice, which must be no less than ninety  
54 days from the date the notice is mailed. The administrative  
55 procedure shall include the right to appeal to the circuit  
56 court of the county in which the real property is located. The  
57 circuit court shall consider the appeal under its general

58 authority, including, but not limited to, subsection (f),  
59 section two, article two of chapter fifty-one of this code.

60 (f) Notwithstanding the provisions of section four, article  
61 eleven of this chapter, any ordinance enacted or substan-  
62 tially amended under the provisions of this section shall be  
63 published as a Class II legal advertisement in compliance  
64 with the provisions of article three, chapter fifty-nine of this  
65 code. The publication area for the publication is the munici-  
66 pality.

67 (g) In the event thirty percent of the qualified voters of  
68 the municipality, by petition duly signed by them in their  
69 own handwriting and filed with the recorder of the munici-  
70 pality within forty-five days after the expiration of the  
71 publication, protest against the ordinance as enacted or  
72 amended, the ordinance shall not become effective until it is  
73 ratified by a majority of the legal votes cast by the qualified  
74 voters of the municipality at a regular municipal election or  
75 special municipal election, as directed by the governing  
76 body. Voting may not take place until after notice of the  
77 submission is given by publication as provided in subsection  
78 (f) of this section.

79 (h) The powers and authority granted to municipalities  
80 and to the governing bodies of municipalities in this section  
81 are in addition and supplemental to the powers and author-  
82 ity named in any charters of the municipalities.

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

**§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  
2 Board shall contract with or employ a qualified actuary to  
3 annually prepare an actuarial valuation report on each  
4 pension and relief fund. The selection of contract vendors to  
5 provide actuarial services,<sup>θ</sup> including the reviewing actuary  
6 as provided in subsection (c) of this section, shall be by  
7 competitive bid process but is specifically exempt from  
8 purchasing provisions of article three, chapter five-a of this  
9 code. The expense of the actuarial report shall be paid from  
10 moneys in the Municipal Pensions Security Fund. Uses of the

11 actuarial valuations from the qualified actuary shall include,  
12 but not be limited to, determining a municipal policemen's  
13 or firemen's pension and relief fund's eligibility to receive  
14 state 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 except from  
47 public safety assessments and any state matching funds as  
48 provided in section thirteen-a, article thirteen of this  
49 chapter, will be sufficient to meet the normal cost of the fund  
50 and amortize any actuarial deficiency over a period of not  
51 more than forty years beginning from July 1, 1991: *Provided,*  
52 That in the fiscal year ending June 30, 1991, the municipality  
53 may elect to make its annual contribution to the fund using  
54 an alternative contribution in an amount not less than: (i)



55 One hundred seven percent of the amount contributed for the  
56 fiscal year ending June 30, 1990; or (ii) an amount equal to  
57 the average of the contribution payments made in the five  
58 highest fiscal years beginning with the fiscal year ending  
59 1984, whichever is greater: *Provided, however,* That contri-  
60 bution payments in subsequent fiscal years under this  
61 alternative contribution method may not be less than one  
62 hundred seven percent of the amount contributed in the prior  
63 fiscal year: *Provided further,* That in order to avoid penaliz-  
64 ing municipalities and to provide flexibility when making  
65 contributions, municipalities using the alternative contribu-  
66 tion method may exclude a one-time additional contribution  
67 made in any one year in excess of the minimum required by  
68 this section: *And provided further,* That the governing body  
69 of any municipality may elect to provide an employer  
70 continuing contribution of one percent more than the  
71 municipality's required minimum under the alternative  
72 contribution plan authorized in this subsection: *And pro-*  
73 *vided further,* That if any municipality decides to contribute  
74 an additional one percent, then that municipality may not  
75 reduce the additional contribution until the respective  
76 pension and relief fund no longer has any actuarial defi-

77 ciency: *And provided further*, That any decision and any  
78 contribution payment by the municipality is not the liability  
79 of the State of West Virginia: *And provided further*, That if  
80 any municipality or any pension fund board of trustees  
81 makes a voluntary election and thereafter fails to contribute  
82 the ~~voluntarily~~ voluntary increase as provided in this section  
83 and in subsection (c), section nineteen of this article, then the  
84 board of trustees is not eligible to receive funds allocated  
85 under section fourteen-d, article three, chapter thirty-three  
86 of this code: *And provided further*, That prior to using this  
87 alternative contribution method the actuary of the fund shall  
88 certify in writing that the fund is projected to be solvent  
89 under the alternative contribution method for the next  
90 consecutive fifteen-year period. For purposes of determining  
91 this minimum financial objective: (i) The value of the fund's  
92 assets shall be determined on the basis of any reasonable  
93 actuarial method of valuation which takes into account fair  
94 market value; and (ii) all costs, deficiencies, rate of interest  
95 and other factors under the fund shall be determined on the  
96 basis of actuarial assumptions and methods which, in  
97 aggregate, are reasonable (taking into account the experi-  
98 ence of the fund and reasonable expectations) and which, in

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

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

119 (3) Notwithstanding any other provision of this section  
120 or article to the contrary, each municipality shall contribute

121 annually to the fund an amount which may not be less than  
122 the normal cost, as determined by the actuarial report.

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

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

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

142 opinion the technique and assumptions used are reasonable  
143 and meet the requirements of this section.

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

149 (2) For those municipalities choosing the optional  
150 method of finance, the minimum standard for annual  
151 municipality contributions to each policemen's or firemen's  
152 pension and relief fund shall be an amount which, together  
153 with the contributions from the members and allocable  
154 portion of the Municipal Pensions and Protection Fund or  
155 Municipal Pensions Security Fund created in section  
156 eighteen-b of this article, and other income sources as  
157 authorized by law except from public safety assessments and  
158 any state matching funds as provided in section thirteen-a,  
159 article thirteen of this chapter, will be sufficient to meet the  
160 normal cost of the fund and amortize any actuarial defi-  
161 ciency over a period of not more than forty years beginning  
162 January 1, 2010: *Provided*, That those municipalities using

163 the standard method of financing in 2009 shall continue to  
164 amortize their actuarial deficiencies over a period of not  
165 more than forty years beginning July 1, 1991. The required  
166 contribution shall be determined each plan year as described  
167 above by the actuary retained by the oversight board, based  
168 on an actuarial valuation reflecting actual demographic and  
169 investment experience and consistent with the Actuarial  
170 Standards of Practice published by the Actuarial Standards  
171 Board.

172 (3) A municipality choosing the optional method of  
173 financing a policemen's or firemen's pension and relief fund  
174 as provided in this subsection shall close the fund to police  
175 officers or fire fighters newly hired on or after January 1,  
176 2010, and provide for those employees to be members of the  
177 Municipal Police Officers and Firefighters Retirement  
178 System as established in article twenty-two-a of this chap-  
179 ter.

180 (f) (1) Beginning April 1, 2011, any municipality using  
181 the alternative method of financing may choose a conserva-  
182 tion method of financing its municipal policemen's and  
183 firemen's pension and relief funds as outlined in this subsec-

184 tion, in lieu of the alternative method as provided in subdivi-  
185 sion (1), subsection (c), or the optional method as provided in  
186 subsection (e) of this section.

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

206 time of adoption of the conservation financing method. The  
207 variable percentage shall be calculated using a prospective  
208 four-year rolling average.

209 (3) Upon adoption of the conservation method of finance,  
210 the municipality shall close its pension and relief funds to  
211 new members and shall place police officers and firefighters  
212 newly hired after adoption of the conservation method into  
213 the Municipal Police Officers and Firefighters Retirement  
214 System created in article twenty-two-a of this chapter.

215 (4) Upon adoption of the conservation method of financ-  
216 ing, the minimum standard for annual municipality contri-  
217 butions to each policemen's or firemen's pension and relief  
218 fund shall be an amount which, together with member  
219 contributions and premium tax proceeds not required to be  
220 retained in the trust pursuant to this subsection, and other  
221 income sources as authorized by law, is sufficient to meet the  
222 annual benefit and administrative expense payments from  
223 the funds on a pay-as-you-go basis: *Provided:* That at the  
224 time the actuarial report required by this section indicates  
225 no actuarial deficiency in the municipal policemen's or  
226 firemen's pension and relief fund, the minimum annual  
227 required contribution of the municipality may not be less



228 than an amount which together with all member contribu-  
229 tions and other income authorized by law, is sufficient to pay  
230 normal cost.