

E N G R O S S E D
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 358

(By Senators Jenkins, Plymale, Chafin and McCabe)

[Originating in the Committee on Pensions;
reported March 4, 2013.]

A BILL to amend and reenact §8-22-18a, §8-22-19a and §8-22-25 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §8-22-18c; and to amend and reenact §8-22A-4 and §8-22A-9 of said code, all relating to municipal policemen and firemen pensions; providing additional investigatory and legal powers and duties of the West Virginia Municipal Pensions Oversight Board; liability for board acts or omissions concerning investigatory or legal actions; requiring certain notice of lawsuit to the West

Virginia Municipal Pensions Oversight Board; limiting certain court orders under certain circumstances; clarifying refunds to members; clarifying circumstances in which a member may retire when the member's service has been interrupted by duty with the armed forces of the United States; extending the cut-off date for the West Virginia Municipal Police Officers and Firefighters Retirement System plan to 2017; and continuing the municipality's disability retirement purchase requirement until 2017.

Be it enacted by the Legislature of West Virginia:

That §8-22-18a, §8-22-19a and §8-22-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §8-22-18c; and that §8-22A-4 and §8-22A-9 of said code be amended and reenacted, 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
created; powers and duties; management;
composition; terms; quorum; expenses; reports.**

1 (a) (1) ~~There is established, on the effective date of the~~
2 ~~enactment of this section during the fourth extraordinary~~
3 ~~session of the Legislature in 2009,~~ The West Virginia
4 Municipal Pensions Oversight Board, established in 2009, is
5 hereby continued as a public body corporate for the purpose
6 of monitoring and improving the performance of municipal
7 policemen's and firemen's pension and relief funds to assure
8 prudent administration, investment and management of the
9 funds. Management of the oversight board shall be vested
10 solely in the members of the oversight board. Duties of the
11 oversight board shall include, but not be limited to, assisting
12 municipal boards of trustees in performing their duties,

13 assuring the funds' compliance with applicable laws,
14 providing for actuarial studies, distributing tax revenues to
15 the funds, initiating or joining legal actions on behalf of
16 active or retired pension fund members or municipal boards
17 of trustees to protect interests of the members in the funds
18 and taking other actions as may be reasonably necessary to
19 provide for the security and fiscal integrity of the pension
20 funds. The oversight board's authority to initiate legal action
21 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
24 to protect interests in the funds. ~~The oversight board is~~
25 ~~created as a public body corporate.~~ Further, the oversight
26 board may, in its discretion, investigate the actions or
27 practices of municipal boards of trustees or of their
28 administrators or employees that, in the oversight board's
29 judgment, have the potential to threaten the security or fiscal
30 integrity of the pension funds, and the boards of trustees,
31 administrators and employees shall cooperate with the

32 oversight board in any investigation. Regardless of whether
33 it has previously conducted an investigation, the oversight
34 board may initiate or intervene in legal actions to challenge
35 or prevent any action or practice which, in the oversight
36 board's judgment, has the potential to threaten the security or
37 fiscal integrity of the pension funds. Establishment of the
38 oversight board does not relieve the municipal funds' boards
39 of trustees from their fiduciary and other duties to the funds,
40 nor does it create any liability for the funds on the part of the
41 state. The failure of the oversight board to investigate or
42 initiate legal actions regarding the actions or practices of
43 municipal boards of trustees, their administrators or
44 employees does not render the oversight board liable for the
45 actions or practices. Members and employees of the
46 oversight board are not liable personally, either jointly or
47 severally, for debts or obligations of the municipal pension
48 and relief funds. Except as otherwise provided herein,
49 members and employees of the oversight board have a
50 fiduciary duty toward the municipal pension and relief funds

51 and are liable for malfeasance or gross negligence.
52 Employees of the oversight board are ~~nonclassified~~
53 classified-exempt state employees.

54 (2) The oversight board shall consist of nine members.

55 The Executive Director of the state's Investment
56 Management Board and the Executive Director of the state's
57 Consolidated Public Retirement Board, or their designees,
58 shall serve as voting ex officio members. The other seven
59 members shall be citizens of the state who have been
60 qualified electors of the state for a period of at least one year
61 next preceding their appointment and shall be as follows: An
62 active or retired member of a Municipal Policemen's Pension
63 and Relief Fund chosen from a list of three persons submitted
64 to the Governor by the state's largest professional municipal
65 police officers organization, an active or retired member of
66 a Municipal Firemen's Pension and Relief Fund chosen from
67 a list of three persons submitted to the Governor by the
68 state's largest professional firefighters organization, an

69 attorney experienced in finance and investment matters
70 related to pensions management, two persons experienced in
71 pension funds management, one person who is a certified
72 public accountant experienced in auditing and one person
73 chosen from a list of three persons submitted to the Governor
74 by the state's largest association of municipalities.

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

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

82 (1) Enter into contracts, to sue and be sued, to implead
83 and be impleaded;

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

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

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

91 (5) Notwithstanding any other provision of law, retain or
92 employ, fix compensation, prescribe duties and pay expenses
93 of legal, accounting, financial, investment, management and
94 other staff, advisors or consultants as it considers necessary,
95 including the hiring of legal counsel and actuary; and

96 (6) Do all things necessary and appropriate to implement
97 and operate the board in performance of its duties. Expenses
98 shall be paid from the moneys in the Municipal Pensions
99 Security Fund created in section eighteen-b of this article or,
100 prior to the transition provided in section eighteen-b of this
101 article, the Municipal Pensions and Protection Fund:
102 *Provided*, That the board may request special appropriation
103 for special projects. The oversight board is exempt from

104 provisions of article three, chapter five-a of this code for the
105 purpose of contracting for actuarial services, including the
106 services of a reviewing actuary.

107 (c) Except for ex officio members, the terms of oversight
108 board members shall be staggered initially from January 1,
109 2010. The Governor shall appoint initially one member for
110 a term of one year, one member for a term of two years, two
111 members for terms of three years, one member for a term of
112 four years and two members for terms of five years.
113 Subsequent appointments shall be for terms of five years. A
114 member serving two full consecutive terms may not be
115 reappointed for one year after completion of his or her
116 second full term. Each member shall serve until that
117 member's successor is appointed and qualified. Any member
118 may be removed by the Governor in case of incompetency,
119 neglect of duty, gross immorality or malfeasance in office.
120 Any vacancy on the oversight board shall be filled by
121 appointment by the Governor for the balance of the
122 unexpired term.

123 (d) A majority of the full authorized membership of the
124 oversight board constitutes a quorum. The board shall meet
125 at least quarterly each year, but more often as duties require,
126 at times and places that it determines. The oversight board
127 shall elect a chairperson and a vice chairperson from their
128 membership who shall serve for terms of two years and shall
129 select annually a secretary/treasurer who may be either a
130 member or employee of the board. The oversight board shall
131 employ an executive director and other staff as needed and
132 shall fix their duties and compensation. The compensation of
133 the executive director shall be subject to approval of the
134 Governor. Except for any special appropriation as provided
135 in subsection (b) of this section, all personnel and other
136 expenses of the board shall be paid from revenue collected
137 and allocated for municipal policemen's or municipal
138 firemen's pension and relief funds pursuant to section
139 fourteen-d, article three, chapter thirty-three of this code and
140 distributed through the Municipal Pensions and Protection
141 Fund or the Municipal Pensions Security Fund created in

142 section eighteen-b of this article. Expenses during the initial
 143 year of the board's operation shall be from proceeds of the
 144 allocation for the municipal pensions and relief funds.
 145 Expenditures in years thereafter shall be by appropriation
 146 from the Municipal Pensions Security Fund. Money
 147 allocated for municipal policemen's and firemen's pension
 148 and relief funds to be distributed from the Municipal
 149 Pensions and Protection Fund or the Municipal Pensions
 150 Security Fund shall be first allocated to pay expenses of the
 151 oversight board and the remainder in the fund distributed
 152 among the various municipal pension and relief funds as
 153 provided in section fourteen-d, article three, chapter
 154 thirty-three of this code. The board is exempt from the
 155 provisions of sections seven and eleven, article three, chapter
 156 twelve of this code relating to compensation and expenses of
 157 members, including travel expenses.

158 (e) Members of the oversight board shall serve the board
 159 without compensation for their services: *Provided*, That no
 160 public employee member may suffer any loss of salary or

161 wages on account of his or her service on the board. Each
162 member of the board shall be reimbursed, on approval of the
163 board, for any necessary expenses actually incurred by the
164 member in carrying out his or her duties. All reimbursement
165 of expenses shall be paid out of the Municipal Pensions
166 Security Fund.

167 (f) The board may contract with other state boards or
168 state agencies to share offices, personnel and other
169 administrative functions as authorized under this article:
170 *Provided*, That no provision of this subsection may be
171 construed to authorize the board to contract with other state
172 boards or state agencies to otherwise perform the duties or
173 exercise the responsibilities imposed on the board by this
174 code.

175 (g) The board shall propose rules for legislative approval
176 in accordance with the provisions of article three, chapter
177 twenty-nine-a of this code as necessary to implement the
178 provisions of this article, and may initially promulgate
179 emergency rules pursuant to the provisions of section fifteen,
180 article three, chapter twenty-nine-a of this code.

181 (h) The oversight board shall report annually to the
182 Legislature's Joint Committee on Government and Finance
183 and the Joint Committee on Pensions and Retirement
184 concerning the status of municipal policemen's and firemen's
185 pension and relief funds and shall present recommendations
186 for strengthening and protecting the funds and the benefit
187 interests of the funds' members.

188 (i) The oversight board shall cooperate with the West
189 Virginia Investment Management Board and the Board of
190 Treasury Investments to educate members of the local
191 pension boards of trustees on the services offered by the two
192 state investment boards. No later than October 31, 2013, the
193 board shall report to the Joint Committee on Government and
194 Finance and the Joint Committee on Pensions and Retirement
195 a detailed comparison of returns on long-term investments of
196 moneys held by or allocated to municipal pension and relief
197 funds managed by the West Virginia Investment
198 Management Board and those managed by others than the
199 Investment Management Board. The oversight board shall

200 also report at that time on short-term investment returns by
201 local pension boards using the West Virginia Board of
202 Treasury Investments compared to short-term investment
203 returns by those local boards of trustees not using the Board
204 of Treasury Investments.

205 (j) The oversight board shall establish minimum
206 requirements for training to be completed by each member of
207 the board of trustees of a Municipal Policemen's or
208 Firemen's Pension and Relief Fund. The requirements
209 should include, but not be limited to, training in ethics,
210 fiduciary duty and investment responsibilities.

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

1 In any legal action in which a municipal policemen's or
2 firemen's pension and relief fund, or the fund's board of
3 trustees, employee or administrator, is named as a party, the
4 plaintiff or petitioner shall serve a copy of the complaint or
5 petition upon the oversight board by certified mail, return
6 receipt requested, within seven days of filing the legal action.

7 Until proof of service is filed with the clerk of the court in
 8 which the action was filed, and for sixty days after the filing
 9 of the proof of service, no order may be entered by the court
 10 that directly or indirectly requires the expenditure or other
 11 disposition of pension funds or that determines the eligibility
 12 or entitlement of any member to any pension benefit payable
 13 from the pension and relief fund: *Provided*, That the court
 14 may enter such temporary or interim orders as may be needed
 15 to preserve and protect the assets of the fund. In any legal
 16 action involving a municipal policemen's or firemen's
 17 pension and relief fund the oversight board is entitled to
 18 intervene for the purpose of preserving the security or fiscal
 19 integrity of the pension fund.

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

1 After January 1, 2010, any member of a paid police
 2 department or fire department who is removed or discharged
 3 or who before retirement on any retirement pension or
 4 disability pension severs his or her connection with said
 5 department, whether or not consecutive, shall, upon request,

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

25 such police officer or firefighter shall be allowed membership
 26 in such pension and relief fund; however, no credit may be
 27 allowed such member for any former service, unless such
 28 member repays to the pension and relief fund all sums
 29 refunded to ~~him~~ the member within one year from the date ~~he~~
 30 the member reenters the department with interest at the rate
 31 of eight percent per annum: *Provided, That* ~~any member~~
 32 ~~who, on or before June 3, 1955, reentered the paid police or~~
 33 ~~fire department shall be allowed credit for any former service~~
 34 ~~in the same department reentered if he, within one year from~~
 35 ~~said June 3, 1955, repaid all sums withdrawn or refunded to~~
 36 ~~him with interest at the rate of six percent per annum, but for~~
 37 such member who receives such refund prior to January 1,
 38 1980, interest may not be charged for more than three years.
 39 Any probationary member of a paid police or fire department
 40 who is not given an absolute appointment at the end of ~~his~~
 41 the member's probationary period shall, upon request, be
 42 refunded all pension and relief fund deductions made from
 43 ~~his~~ the member's salary or compensation, but without

44 interest. Any member contribution made in fiscal years
45 beginning on July 1, 1981, and thereafter by any members of
46 such fund, which is in excess of the percentages, required in
47 section nineteen of this article of such member's salary or
48 compensation as defined in section sixteen of this article,
49 shall be refunded with eight percent interest to such member
50 upon completion of the calculation of ~~his~~ the member's
51 retirement benefit.

§8-22-25. Retirement pensions.

1 (a) Any member of a paid police or fire department who
2 is entitled to a retirement pension hereunder, and who has
3 been in the honorable service of such department for twenty
4 years, may, upon written application to the board of trustees,
5 be retired from all service in such department without
6 medical examination or disability. On such retirement the
7 board of trustees shall authorize the payment of annual
8 retirement pension benefits commencing upon ~~his~~ the
9 member's retirement or upon ~~his~~ the member's attaining the
10 age of fifty years, whichever is later, payable in twelve

11 monthly installments for each year of the remainder of ~~his~~ the
12 member's life, in an amount equal to sixty percent of such
13 member's average annual salary or compensation received
14 during the three twelve-consecutive-month periods of
15 employment with such department in which such member
16 received ~~his~~ the member's highest salary or compensation
17 while a member of the department, or an amount of \$500 per
18 month, whichever is greater.

19 (b) Any member of any such department who is entitled
20 to a retirement pension under the provisions of subsection (a)
21 of this section and who has been in the honorable service of
22 such department for more than twenty years at the time of ~~his~~
23 the member's retirement shall receive, in addition to the sixty
24 percent authorized in said subsection (a):

25 (1) Two additional percent, to be added to the sixty
26 percent for each of the first five additional years of service
27 completed at the time of retirement in excess of twenty years
28 of service up to a maximum of seventy percent; and

29 (2) One additional percent, to be added to such maximum
30 of seventy percent, for each of the first five additional years
31 of service completed at the time of retirement in excess of
32 twenty-five years of service up to a maximum of seventy-five
33 percent.

34 The total additional credit provided for in this subsection
35 may not exceed fifteen additional percent.

36 (c) Any member of any such department whose service
37 has been interrupted by duty with the armed forces of the
38 United States as provided in section twenty-seven of this
39 article prior to July 1, 1981, shall be eligible for retirement
40 pension benefits immediately upon retirement, regardless of
41 his the member's age, if ~~he~~ the member shall otherwise be
42 eligible for such retirement pension benefits. In no event are
43 provisions of this subsection to be interpreted to permit
44 retirement before age fifty unless the interruption of the
45 member's service by duty with the armed forces of the
46 United States actually occurred before July 1, 1981. The
47 amendment made to this subsection during the 2013 regular

48 session of the Legislature is not for the purpose of changing
 49 the existing law regarding benefits provided to veterans for
 50 military service prior to July 1, 1981, but to further clarify
 51 that the provisions of this section and any previous
 52 enactments of this section do not make a member eligible for
 53 retirement before age fifty for a member's service with the
 54 armed forces of the United States after July 1, 1981.

55 Any member or previously retired member of any such
 56 department who has served in active duty with the armed
 57 forces of the United States as described in section
 58 twenty-seven of this article, whether prior to or subsequent
 59 to becoming a member of a paid police or fire department
 60 covered by the provisions of this article, shall receive, in
 61 addition to the sixty percent authorized in subsection (a) of
 62 this section and the additional percent credit authorized in
 63 subsection (b) of this section, one additional percent for each
 64 year so served in active military duty, up to a maximum of
 65 four additional percent. In no event, however, may the total
 66 benefit granted to any member exceed seventy-five percent

67 of the member's annual average salary calculated in
68 accordance with subsection (a) of this section.

69 (d) Any member of a paid police ~~for~~ or fire department
70 shall be retired at the age of sixty-five years in the manner
71 provided in this subsection. When a member of the paid
72 police or fire department reaches the age of sixty-five years,
73 the said board of trustees shall notify the mayor of this fact,
74 within thirty days of such member's sixty-fifth birthday. The
75 mayor shall cause such sixty-five-year-old member of the
76 paid police or fire department to retire within a period of not
77 more than thirty additional days. Upon retirement under the
78 provisions of this subsection, such member shall receive
79 retirement pension benefits payable in twelve monthly
80 installments for each year of the remainder of ~~his~~ the
81 member's life in an amount equal to sixty percent of such
82 member's average annual salary or compensation received
83 during the three twelve-consecutive-month periods of
84 employment with such department in which such member
85 received ~~his~~ the member's highest salary or compensation

86 while a member of the department, or an amount of \$500 per
87 month, whichever is greater. If such member has been
88 employed in said department for more than twenty years, the
89 provisions of subsection (b) of this section shall apply.

90 (e) It shall be the duty of each member of a paid police or
91 fire department at the time a fund is hereafter established to
92 furnish the necessary proof of ~~his~~ the member's date of birth
93 to the said board of trustees, as specified in section
94 twenty-three of this article, within a reasonable length of
95 time, said length of time to be determined by the said board
96 of trustees. Then the board of trustees and the mayor shall
97 proceed to act in the manner provided in subsection (d) of
98 this section and shall cause all members of the paid police or
99 fire department who are over the age of sixty-five years to
100 retire in not less than sixty days from the date the fund is
101 established. Upon retirement under the provisions of this
102 subsection (e), such member, whether ~~he~~ the member has
103 been employed in said department for twenty years or not,
104 shall receive retirement pension benefits payable in twelve

105 monthly installments for each year of the remainder of ~~his~~ the
106 member's life in an amount equal to sixty percent of such
107 member's average annual salary or compensation received
108 during the three twelve-consecutive-month periods of
109 employment with such department in which such member
110 received ~~his~~ the member's highest salary or compensation
111 while a member of the department, or an amount of \$500 per
112 month, whichever is greater. If such member has been
113 employed in said department for more than twenty years, the
114 provisions of subsection (b) of this section shall apply.

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

**§8-22A-4. Creation and administration of West Virginia
Municipal Police Officers and Firefighters
Retirement System; specification of actuarial
assumptions.**

1 There is hereby created the West Virginia Municipal
2 Police Officers and Firefighters Retirement System. The

3 purpose of this system is to provide for the orderly retirement
 4 of certain police officers and firefighters who become
 5 superannuated because of age or permanent disability and to
 6 provide certain survivor death benefits. Substantially all of
 7 the members of the retirement system shall be qualified
 8 public safety employees as defined in section two of this
 9 article. The retirement system shall come into effect January
 10 1, 2010: *Provided*, That if the number of members in the
 11 system are fewer than one hundred on January 1, ~~2014~~ 2017,
 12 then all of the provisions of this article are void and of no
 13 force and effect, and memberships in the system will be
 14 merged into the Emergency Medical Services Retirement
 15 System created in article five-v, chapter sixteen of this code.
 16 If merger is required, the board shall take all necessary steps
 17 to see that the voluntary transfers of persons and assets
 18 authorized by this article do not affect the qualified status
 19 with the Internal Revenue Service of either retirement plan.
 20 All business of the system shall be transacted in the name of
 21 the West Virginia Municipal Police Officers and Firefighters

22 Retirement System. The board shall specify and adopt all
23 actuarial assumptions for the plan at its first meeting of every
24 calendar year or as soon thereafter as may be practicable,
25 which assumptions shall become part of the plan.

**§8-22A-9. Retirement; commencement of benefits; insurance
requirements during early period.**

1 (a) To ensure the fiscal integrity of the retirement system
2 during the start-up phase, no member is entitled to retirement,
3 disability or death benefits under this retirement system until
4 January 1, ~~2013~~ 2017. Participating municipalities shall
5 purchase insurance for their new plan members to provide
6 coverage in an amount equal to disability coverage otherwise
7 provided in sections seventeen and eighteen of this article
8 and death benefits otherwise provided in sections twenty,
9 twenty-two and twenty-three of this article for claims arising
10 before January 1, 2013: Provided, That pursuant to the
11 amendments made to this subsection during the 2013 regular
12 session of the Legislature, participating municipalities shall
13 reinstate or purchase the insurance coverage for all plan

14 members no later than July 1, 2013, and continue coverage
15 through January 1, 2017.

16 (b) A member may retire and commence to receive
17 retirement income payments on the first day of the calendar
18 month following written application for his or her voluntary
19 petition for retirement coincident with or next following the
20 later of the date the member ceases employment, or the date
21 the member attains early or normal retirement age, in an
22 amount as provided under this article: *Provided, That*
23 retirement income payments under this plan are subject to the
24 provisions of this article. On receipt of the petition, the board
25 shall promptly provide the member with an explanation of his
26 or her optional forms of retirement benefits and on receipt of
27 properly executed forms from the member, the board shall
28 process a member's request for and commence payments as
29 soon as administratively feasible.