WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 354

BY SENATORS GAUNCH, CLINE AND MARONEY

[Introduced February 20, 2017; Referred

to the Committee on Pensions; and then to the

Committee on Finance]

A BILL to amend and reenact §8-22-20 of the Code of West Virginia, 1931, as amended, relating to allowing certain municipalities with fully funded pension plans to not pay normal cost as determined by the actuarial report.

Be it enacted by the Legislature of West Virginia:

That §8-22-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted 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.

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

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

(b) The actuarial valuation report provided pursuant to subsection (a) of this section shall consist of, but is not limited to, the following disclosures: (1) The financial objective of the fund and how the objective is to be attained; (2) the progress being made toward realization of the financial objective; (3) recent changes in the nature of the fund, benefits provided or actuarial assumptions or methods; (4) the frequency of actuarial valuation reports and the date of the most recent actuarial valuation report; (5) the method used to value fund assets; (6) the extent to which the qualified actuary relies on the data provided and whether the data was certified by the fund Auditor or examined by the qualified actuary for reasonableness; (7) a description and explanation of the actuarial assumptions and methods; (8) an evaluation of each plan using the alternative funding method, to assess advantages of changing to other funding methods as provided in this article; and (9) any other information required in section twenty-a of this article or that the qualified actuary feels is necessary or would be useful in fully and fairly disclosing the actuarial condition of the fund.

(c)(1) Except as provided in subsections (e) and (f) of this section, beginning June 30, 1991, and thereafter, the financial objective of each municipality shall not be less than to contribute to the fund annually an amount which, together with the contributions from the members and the allocable portion of the Municipal Pensions and Protection Fund for municipal pension and relief funds established under section fourteen-d, article three, chapter thirty-three of this code or a municipality's allocation from the Municipal Pensions Security Fund created in section eighteen-b of this article and other income sources as authorized by law will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than forty years beginning from July 1, 1991: *Provided,* That in the fiscal year ending June 30, 1991, the municipality may elect to make its annual contribution to the fund using an alternative contribution in an amount not less than: (i) One hundred seven percent of the amount contributed for the fiscal year ending June 30, 1990; or (ii) an amount equal to the average of the contribution payments made in the five highest fiscal years beginning with the fiscal year ending 1984, whichever is greater: *Provided, however,* That contribution payments in subsequent fiscal years under this alternative contribution method may not be less than one hundred seven percent of the amount contributed in the prior fiscal year: *Provided further,* That in order to avoid penalizing municipalities and to provide flexibility when making contributions, municipalities using the alternative contribution method may exclude a one-time additional contribution made in any one year in excess of the minimum required by this section: *And provided further,* That the governing body of any municipality may elect to provide an employer continuing contribution of one percent more than the municipality's required minimum under the alternative contribution plan authorized in this subsection: *And provided further,* That if any municipality decides to contribute an additional one percent, then that municipality may not reduce the additional contribution until the respective pension and relief fund no longer has any actuarial deficiency: *And provided further,* That any decision and any contribution payment by the municipality is not the liability of the State of West Virginia: *And provided further,* That if any municipality or any pension fund board of trustees makes a voluntary election and thereafter fails to contribute the voluntarily increase as provided in this section and in subsection (c), section nineteen of this article, then the board of trustees is not eligible to receive funds allocated under section fourteen-d, article three, chapter thirty-three of this code: *And provided further,* That prior to using this alternative contribution method the actuary of the fund shall certify in writing that the fund is projected to be solvent under the alternative contribution method for the next consecutive fifteen-year period. For purposes of determining this minimum financial objective: (i) The value of the fund assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value; and (ii) all costs, deficiencies, rate of interest and other factors under the fund shall be determined on the basis of actuarial assumptions and methods which, in aggregate, are reasonable (taking into account the experience of the fund and reasonable expectations) and which, in combination, offer the qualified actuary's best estimate of anticipated experience under the fund: *And provided further,* That any municipality which elected the alternative funding method under this section and which has an unfunded actuarial liability of not more than twenty-five percent of fund assets, may, beginning September 1, 2003, elect to revert to the standard funding method, which is to contribute to the fund annually an amount which is not less than an amount which, together with the contributions from the members and the allocable portion of the Municipal

Pensions and Protection Fund for municipal pension and relief funds established under section fourteen-d, article three, chapter thirty-three of this code and other income sources as authorized by law, will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than forty years, beginning from July 1, 1991.

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

(3) Notwithstanding any other provision of this section or article to the contrary, each municipality shall contribute annually to the fund an amount which may not be less than the normal cost, as determined by the actuarial report: *Provided*, That any municipality with a pension plan funded at one hundred and twenty-five percent or higher may choose to not contribute to the plan the normal cost as determined by the actuarial report, if the Municipal Pensions Oversight Board's current actuary provides an actuarial recommendation that the normal cost does not need to be paid by the employer for the fiscal year. The employee contributions to the pension plan, as required in section nineteen of this article, shall continue regardless of the funding level of the plan.

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

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

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

(e)(1) Beginning January 1, 2010, municipalities may choose the optional method of financing municipal policemen's or firemen's pension and relief funds as outlined in this subsection in lieu of the standard or alternative methods as provided in subdivision (1), subsection (c) of this section. (2) For those municipalities choosing the optional method of finance, the minimum standard for annual municipality contributions to each policemen's or firemen's pension and relief fund shall be an amount which, together with the contributions from the members and allocable portion of the Municipal Pensions and Protection Fund or Municipal Pensions Security Fund created in section eighteen-b of this article, and other income sources as authorized by law, will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than forty years beginning January 1, 2010: *Provided,* That those municipalities using the standard method of financing in 2009 shall continue to amortize their actuarial deficiencies over a period of not more than forty years beginning July 1, 1991. The required contribution shall be determined each plan year as described above by the actuary retained by the oversight board, based on an actuarial valuation reflecting actual demographic and investment experience and consistent with the Actuarial Standards of Practice published by the Actuarial Standards Board.

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

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

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

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

(4) Upon adoption of the conservation method of financing, the minimum standard for annual municipality contributions to each policemen's or firemen's pension and relief fund shall be an amount which, together with member contributions and premium tax proceeds not required to be retained in the trust pursuant to this subsection, and other income sources as authorized by law, is sufficient to meet the annual benefit and administrative expense payments from the funds on a pay-as-you-go basis: *Provided:* That at the time the actuarial report required by this section indicates no actuarial deficiency in the municipal policemen's or firemen's pension and relief fund,

the minimum annual required contribution of the municipality may not be less than an amount which together with all member contributions and other income authorized by law, is sufficient to pay normal cost.

NOTE: The purpose of this bill is to permit municipalities with policemen's and firemen's pension plans fully funded at or above 125% to not pay normal cost into the pension plans.

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