WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED
Committee Substitute for
SENATE BILL NO. S-11

(By Senator Foster, et al)

PASSED March 11, 2006

In Effect 90 days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 511

(SENATORS FOSTER, MCCABE, HARRISON, SPROUSE
AND BARNES, original sponsors)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §8-22-19 and §8-22-20 of the Code of West Virginia, 1931, as amended, all relating to municipal policemen's and firemen's pension and relief funds; allowing increases for employee contributions; allowing the basis for calculating alternative contributions to be modified; and allowing increases for municipal contributions.

Be it enacted by the Legislature of West Virginia:

That §8-22-19 and §8-22-20 of the Code of West Virginia, 1931, as amended, 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.
§8-22-19. Levy to maintain fund.

(a) (1) The provisions of this subsection shall remain in effect through the thirtieth day of June, one thousand nine hundred eighty-three.

(2) In every municipality in which there is a policemen's pension and relief fund or a firemen's pension and relief fund, or both, the same shall be maintained as follows: The governing body of the municipality shall levy annually and in the manner provided by law for other municipal levies, and include within the maximum levy or levies permitted by law, and if necessary in excess of any charter provision, a tax at such rate as will, after crediting the amount of the contributions received during such year from the members of the respective paid police department or paid fire department, provide funds equal to the sum of: (1) The full amount of estimated expenditures of the boards of trustees of the respective funds; and (2) an additional amount equal to ten percent of the estimated expenditures, said ten percent amount to be taken, accumulated and invested, if possible, as surplus reserve: Provided, That in no event shall the levy for each of the respective boards of trustees be less than one cent nor more than eight cents on each one hundred dollars of all real and personal property as listed for taxation in the municipality: Provided, however, That in the event that the funds derived above are not sufficient to meet the annual expenditures and the surplus reserve funds for any fiscal year do not contain a sufficient balance to maintain full retirement benefits for that fiscal year, the municipality shall for only that fiscal year levy an amount not to exceed an additional two cents on each one hundred dollars of all real and personal property listed for taxation in such municipality: Provided further, That in the event that a municipality is required to levy an amount for any fiscal year in excess of eight cents on each one hundred dollars of all real and personal property as provided above, the municipality shall assess and collect for only that fiscal year from each member an additional
amount of one percent of the actual salary or compensation for each one cent that the municipality has levied in excess of the eight cents which shall become a required part of the pension and relief fund to which the member belongs.

(3) The levies authorized under the provisions of this section, or any part of them, may by the governing body be laid in addition to all other municipal levies, and to that extent, beyond the limit of levy imposed by the charter of the municipality; and the levies shall supersede and if necessary exclude levies for other purposes if priority or exclusion is necessary under limitations upon taxes or tax levies imposed by law.

(4) The public corporations are authorized to take by gift, grant, devise or bequest, any money or real or personal property, upon such terms as to the investment and expenditures thereof as may be fixed by the grantor or determined by the trustees.

(5) In addition to all other sums provided for pensions in this section, it shall be the duty of every municipality in which any policemen's pension and relief fund or firemen's pension and relief fund or funds have been or shall be established to assess and collect from each member of the paid police department or paid fire department or both each month, the sum of six percent of the actual salary or compensation of the member; and the amount so collected shall become a regular part of the policemen's pension and relief fund, if collected from a policeman, and of the firemen's pension and relief fund, if collected from a fireman.

(b) (1) After the thirtieth day of June, one thousand nine hundred eighty-three: In order for a municipal policemen's or firemen's pension and relief fund to receive the allocable portion of moneys from the municipal pensions and protection fund established in section fourteen-d, article three, chapter thirty-three of this code, the governing body
of the municipality shall levy annually and in the manner
provided by law for other municipal levies, and include
within the maximum levy or levies permitted by law, and
if necessary in excess of any charter provision, a tax at
such rate as will, after crediting: (A) The amount of the
contributions received during the year from the members
of the respective paid police department or paid fire
department; and (B) the allocable portion of the municipal
pensions and protection fund established in section
fourteen-d, article three, chapter thirty-three of this code
provide funds equal to the amount necessary to meet the
minimum standards for actuarial soundness as provided in
section twenty of this article, said amount to be irrevocably contributed, accumulated and invested as fund assets
described in sections twenty-one and twenty-two of this
article. The municipality contributions shall be deposited
as fund assets on at least a quarterly basis and any revenues received from any source by a municipality which are
specifically collected for the purpose of allocation for
deposit into the policemen's pension and relief fund or
firemen's pension and relief fund shall be so deposited
within thirty days of receipt by the municipality. Hereto-
fore surplus reserves accumulated before the first day of
July, one thousand nine hundred eighty-three, shall be
irrevocably contributed, aggregated and invested as fund
assets described in sections twenty-one and twenty-two of
this article. Any actuarial deficiency arising under this
section and section twenty of this article shall not be the
obligation of the State of West Virginia.

(2) The levies authorized under the provisions of this
section, or any part of them, may by the governing body be
laid in addition to all other municipal levies, and to that
degree, beyond the limit of levy imposed by the charter of
the municipality; and the levies shall supersede and if
necessary exclude levies for other purposes, where other
purposes have not already attained priority, and within
the limitations upon taxes or tax levies imposed by the
constitution and laws.
(3) The public corporations are authorized to take by gift, grant, devise or bequest, any money or real or personal property, upon such terms as to the investment and expenditures thereof as may be fixed by the grantor or determined by the trustees.

(4) Notwithstanding provisions in section six of this article, in addition to all other sums provided for pensions in this section, it is the duty of every municipality in which any fund or funds have been or shall be established to assess and collect from each member of the paid police department or paid fire department or both each month, the sum of seven percent of the actual salary or compensation of such member; and the amount so collected shall become a regular part of the policemen's pension and relief fund, if collected from a policeman, and of the firemen's pension and relief fund, if collected from a fireman: Provided, That the board of trustees for each pension and relief fund may assess and collect from each member of the paid police department or paid fire department or both each month no more than an additional two and one half percent of the actual salary or compensation of each member: Provided, however, That if any board of trustees decides to assess and collect any additional amount pursuant to this subdivision above the member contribution required by this section, then that board of trustees may not reduce the additional amount until the respective pension and relief fund no longer has any actuarial deficiency: Provided further, That if any board of trustees decides to assess and collect any additional amount, any board of trustees decision and any additional amount is not the liability of the State of West Virginia. Member contributions shall be deposited in the pension and relief fund on at least a monthly basis.

(5) For the fiscal year beginning on the first day of July, one thousand nine hundred eighty-three and for each fiscal year thereafter, the State Treasurer shall retain the allocable portion of the Municipal Pensions and Protection

148 Fund, established in section fourteen-d, article three, chapter thirty-three of this code, until such time as the treasurer of the municipality applies for the allocable portion and certifies in writing to the State Auditor that:

152 (A) The municipality has irrevocably contributed the amount required under this section and section twenty of this article to the pension and relief fund for the fiscal year; and

156 (B) The board of trustees of the pension and relief fund has made a report to the governing body of the municipality on the condition of its fund with respect to the fiscal year.

160 (6) When the aforementioned application and certification are made the allocable portion of moneys from the Municipal Pensions and Protection Fund shall be paid to the corresponding policemen's or firemen's pension and relief fund.

165 (7) The State Auditor has the power and duty as the Auditor deems necessary to perform or review audits on the pension and relief funds or to employ an independent consulting actuary or accountant to determine the compliance of the aforementioned certification with the requirements of this section and section twenty of this article. The expense of the audit or determination shall be paid from the portion of the municipal pensions and protection fund allocable to municipal policemen's and firemen's pension and relief funds. If the allocable portion of the Municipal Pensions and Protection Fund is not paid to the pension and relief fund within thirty-six months, the portion is forfeited by the pension and relief fund and is allocable to other eligible municipal policemen's and firemen's pension and relief funds in accordance with section fourteen-d, article three, chapter thirty-three of this code.

The board of trustees for each pension and relief fund shall have regularly scheduled actuarial valuation reports prepared by a qualified actuary. All of the following standards must be met:

(a) An actuarial valuation report shall be prepared at least once every three years commencing with the later of:

(1) The first day of July, one thousand nine hundred eighty-three; or (2) three years following the most recently prepared actuarial valuation report: Provided, That this most recently prepared actuarial valuation report meets all of the standards of this section.

(b) The actuarial valuation report 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's Auditor or examined by the qualified actuary for reasonableness; (7) a description and explanation of the actuarial assumptions and methods; and (8) any other information the qualified actuary feels is necessary or would be useful in fully and fairly disclosing the actuarial condition of the fund.

(c)(1) After the thirtieth day of June, one thousand nine hundred ninety-one, 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 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 the first day of July, one thousand nine hundred ninety-one: Provided, That in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-one, 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 the thirtieth day of June, one thousand nine hundred ninety; 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 one thousand nine hundred eighty-four, 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 subdivision (4), subsection (b), 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’s 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 the first day of September, two thousand three, 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 the first day of July, one thousand nine hundred ninety-one.

(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.

(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 member's 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 of this article.

(e) The cost of the preparation of the actuarial valuation report shall be paid by the fund.

(f) Notwithstanding any other provision of this section, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-one, the municipality may calculate its annual contribution based upon the provisions of the supplemental benefit provided in this article enacted during the one thousand nine hundred ninety-one regular session of the Legislature.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within............. is approved this the.............. Day of.............. 2006.

Governor