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ENROLLED

Senate Bill No. 4007

(BY SENATORS TOMBLIN (MR. PRESIDENT)
AND CARUTH, BY REQUEST OF THE EXECUTIVE)

[Passed November 19, 2009; in effect from passage.]
benefits for municipal police officers and firefighters; authorizing Consolidated Public Retirement Board to administer a retirement system for newly hired municipal police officers and firefighters; expanding membership of the retirement board; permitting a municipality by a majority vote of its governing body to close its policemen’s or firemen’s pension and relief fund to new employees and to place newly hired municipal police officers and firefighters into a new retirement system entitled the West Virginia Municipal Police Officers and Firefighters Retirement System; permitting an optional method of financing unfunded liabilities of existing municipal policemen’s and firemen’s pension and relief funds; preserving benefits under existing municipal policemen’s and firemen’s pension and relief funds; amending duties of local pension boards of trustees; creating the West Virginia Municipal Pensions Oversight Board and establishing powers and duties; providing for rules and emergency rules; creating Municipal Pensions Security Fund; providing for transfer of certain duties from the State Treasurer to the oversight board; amending time in which municipal and employee contributions must be made to pension and relief funds; increasing contribution requirement for new pension and relief fund members; requiring electronic funds transfer for certain funds; providing for actuary; providing for investment of funds; providing for disability examination and light-duty employment; amending investment requirements and restrictions; creating the West Virginia Municipal Police Officers and Firefighters Retirement System and the West Virginia Municipal Police Officers and Firefighters Retirement Fund; defining terms; establishing eligibility, administration, contributions and benefits; limiting liability; establishing criminal penalties; providing for retroactive membership in certain circumstances; and reallocating tax revenue.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.

§5-10C-3. Definitions.

1 The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

4 (1) "Accumulated contributions" means the sum of all amounts credited to a member's individual account in the member's deposit fund and includes both contributions deducted from the compensation of a member and contributions of a member picked up and paid by the member's participating public employer, plus applicable interest thereon.
(2) "Board of trustees" means, as appropriate: The Consolidated Public Retirement Board created in article ten-d of this chapter; the Higher Education Policy Commission; the West Virginia Council for Community and Technical College Education; the institutional governing boards responsible for the higher education retirement plan and supplemental retirement plan; or the boards of trustees of the firemen's and policemen's pension and relief funds created in article twenty-two, chapter eight of this code.

(3) "Employee" means any person, whether appointed, elected or under contract, providing services for a public employer for which compensation is paid and who is a member of the applicable retirement system.

(4) "Member" means any person who has accumulated contributions standing to his or her credit in a retirement system.

(5) "Member contributions" means, as appropriate: The contributions required by section twenty-nine, article ten of this chapter from employees who are members of the West Virginia Public Employees Retirement System; the contributions required by section twenty-six, article two, chapter fifteen of this code from employees who are members of the West Virginia State Police Death, Disability and Retirement Fund; the contributions required by section seven, article fourteen-d, chapter seven of this code from employees who are members of the Deputy Sheriff Retirement System; the contributions required by section fourteen, article seven-a, chapter eighteen of this code from employees who are members of the State Teachers Retirement System; the contributions authorized or required by section fourteen-a, article seven-a of said chapter or by section four-a, article twenty-three of said chapter from employees who are members of the West Virginia higher education retirement
plan and supplemental retirement plan; the contributions required by section four, article nine, chapter fifty-one of this code from employees who are members of the Judges' Retirement System; the contributions required by section nineteen, article twenty-two, chapter eight of this code from employees who are members of municipal firemen's and policemen's pension and relief funds; the contributions required by section eight, article twenty-two-a, chapter eight of this code from employees who are members of the Municipal Police Officers and Firefighters Retirement System; the contributions required by section nine, article seven-b, chapter eighteen of this code from employees who are members of the Teachers' Defined Contribution Retirement System; the contributions required by section five, article two-a, chapter fifteen of this code from the employees who are members of the West Virginia State Police Retirement System; or the contributions required by section eight, article five-v, chapter sixteen of this code from employees who are members of the West Virginia Emergency Medical Services Retirement System.

(6) "Participating public employer" means the State of West Virginia, any board, commission, department, institution or spending unit and includes any agency with full-time employees, created by rule of the Supreme Court of Appeals, which for the purpose of this article shall be considered a department of state government and county boards of education with respect to teachers employed by them; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Public Employees Retirement System; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the Deputy Sheriff Retirement System; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Emergency Medical Services Retirement System.
Virginia Emergency Medical Services Retirement System; and any political subdivision in this state which is subject to the provisions of articles twenty-two and twenty-two-a, chapter eight of this code.

(7) "Political subdivision" means the State of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any agency or organization established by or approved by the Department of Health and Human Resources for the provision of community health or mental retardation services and which is supported in part by state, county or municipal funds.

(8) "Retirement system" means, as appropriate: The West Virginia Public Employees Retirement System created in article ten of this chapter; the West Virginia State Police Death, Disability and Retirement Fund created in sections twenty-six through thirty-nine-a, inclusive, article two, chapter fifteen of this code; the West Virginia Deputy Sheriff Retirement System created in article fourteen-d, chapter seven of this code; the state Teachers Retirement System created in article seven-a, chapter eighteen of this code; the West Virginia higher education retirement plan and supplemental retirement plan created in section fourteen-a, article seven-a of said chapter and section four-a, article twenty-three of said chapter; the Judges' Retirement System created in article nine, chapter fifty-one of this code; the firemen's or policemen's pension and relief funds created in section sixteen, article twenty-two, chapter eight of this code; the Municipal Police Officers and Firefighters Retirement
System created in section four, article twenty-two-a, chapter eight of this code; the Teachers' Defined Contribution Retirement System created in article seven-b, chapter eighteen of this code; the West Virginia State Police Retirement System created in article two-a, chapter fifteen of this code; or the West Virginia Emergency Medical Services Retirement System created in article five-v, chapter sixteen of this code.

(9) "Teacher" has the meaning ascribed to the term "teacher member" in section three, article seven-a, chapter eighteen of this code.

§5-10C-4. Pick-up of members' contributions by participating public employers.

(a) The State of West Virginia for its public employees and county boards of education for its teachers shall pick-up and pay the contributions which the employees are required by law to make to the retirement system in which they are a member for all compensation earned by its member employees after June 30, 1986. Any political subdivision that is a participating public employer in the West Virginia Public Employees Retirement System shall pick-up and pay the contributions which the employees are required by law to make to the retirement system in which they are members for all compensation earned by its member employees after January 1, 1995. Public employers participating in the Municipal Police Officers and Firefighters Retirement System shall pick-up and pay the contributions which the employees are required by law to make to the system in which they are members for all compensation earned by its member employees beginning January 1, 2010. Counties shall pick-up and pay the contributions which the employees are required by law to make to the Deputy Sheriff Retirement System in which they are members for all compensation earned by its member employees after June 30, 1998. Any election made by a political subdivision to pick-up and pay employee
24 contributions prior to January 1, 1995, remains in effect
25 and is not altered or amended by the amendments made to
26 this section during the regular legislative session, 1995.
27 Unless a different commencement date for pick-up is
28 specifically stated in this section, all participating public
29 employers under this article, with respect to retirement
30 systems subject to this article, shall pick-up and pay the
31 contributions which their employees are required by law
32 to make to the retirement system in which they are a
33 member from and after the commencement of the required
34 employee contributions.
35
36 (b) When the participating public employer picks up and
37 pays the contributions of its member employees, the
38 contributions, although designated by statute as employee
39 contributions, shall be treated as employer contributions
40 in determining the tax treatment thereof under article
41 twenty-one, chapter eleven of this code and the federal
42 Internal Revenue Code of 1986, as amended, and the
43 contributions shall not be included in the gross income of
44 the employee in determining his or her tax treatment
45 under those provisions until they are distributed or made
46 available to the employee or his or her beneficiary. The
47 participating public employer shall pay these employee
48 contributions from the same source of funds used in
49 paying compensation to the employee, by effecting an
50 equal cash reduction in the gross salary of the employee,
51 or by an off-set against future salary increases, or by a
52 combination of reduction in gross salary and off-set
53 against future salary increases. In no event shall any
54 employee of a participating public employer have the right
55 to opt out of pick-up or to elect to receive the picked-up
56 and contributed amounts directly instead of having them
57 paid by the participating public employer into the
58 retirement system pursuant to this article.
59
60 (c) When employee contributions are picked up and paid
61 by the participating public employer, they shall be treated
by the board of trustees in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions are picked up by the participating public employer.

(d) The amount of employee contributions picked up by the participating public employer shall be paid to the retirement system in the manner and form and in the frequency required by the board of trustees and shall be accompanied by supporting data that the board of trustees may prescribe. When paid to the retirement system, each of these amounts shall be credited to the deposit fund account of the member for whom the contribution was picked up and paid by the participating public employer.

§5-10C-5. Savings clause.

In enacting this article, it is the intent of the Legislature that the retirement plan created pursuant to this article and those created pursuant to article ten of this chapter; article fourteen-d, chapter seven of this code; article twenty-two-a, chapter eight of this code; article two, chapter fifteen of this code; article seven-a, chapter eighteen of this code; article nine, chapter fifty-one of this code; section four-a, article twenty-three, chapter eighteen of this code; section sixteen, article twenty-two, chapter eight of this code; article seven-b, chapter eighteen of this code; article two-a, chapter fifteen of this code; and article five-v, chapter sixteen of this code qualify under Section 401 of the Internal Revenue Code of 1986, as amended, and that the member contributions picked up by the participating public employer qualify under Subsection (h), Section 414 of the Internal Revenue Code of 1986, as amended. If the United States Internal Revenue Service does not approve of certain sections or phraseology of certain sections of this article as being in compliance with the statutes or regulations governing the Internal Revenue Service, the respective boards of trustees, in the adoption
22 of the deferred compensation plan, shall adopt the
23 terminology with respect to those sections that comply
24 with the statutes or regulations governing the Internal
25 Revenue Service.

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-1. Consolidated Public Retirement Board continued;
members; vacancies; investment of plan funds.

1 (a) The Consolidated Public Retirement Board is
2 continued to administer all public retirement plans in this
3 state. It shall administer the Public Employees Retirement
4 System established in article ten of this chapter; the
5 Teachers Retirement System established in article seven-a,
6 chapter eighteen of this code; the Teachers' Defined
7 Contribution Retirement System created by article seven-
8 b of said chapter; the West Virginia State Police Death,
9 Disability and Retirement Fund created by article two,
10 chapter fifteen of this code; the West Virginia State Police
11 Retirement System created by article two-a of said
12 chapter; the Deputy Sheriff Death, Disability and
13 Retirement Fund created by article fourteen-d, chapter
14 seven of this code; the Judges' Retirement System created
15 under article nine, chapter fifty-one of this code; the
16 Emergency Medical Services Retirement System
17 established in article five-v, chapter sixteen of this code;
18 and the Municipal Police Officers and Firefighters
19 Retirement System established in article twenty-two-a,
20 chapter eight of this code.

21 (b) The membership of the Consolidated Public
22 Retirement Board consists of:

23 (1) The Governor or his or her designee;
24 (2) The State Treasurer or his or her designee;
25 (3) The State Auditor or his or her designee;
(4) The Secretary of the Department of Administration or his or her designee;

(5) Four residents of the state, who are not members, retirants or beneficiaries of any of the public retirement systems, to be appointed by the Governor, with the advice and consent of the Senate; and

(6) A member, annuitant or retirant of the Public Employees Retirement System who is or was a state employee; a member, annuitant or retirant of the Public Employees Retirement System who is not or was not a state employee; a member, annuitant or retirant of the Teachers Retirement System; a member, annuitant or retirant of the West Virginia State Police Death, Disability and Retirement Fund; a member, annuitant or retirant of the Deputy Sheriff Death, Disability and Retirement Fund; a member, annuitant or retirant of the Teachers’ Defined Contribution Retirement System; a member, annuitant or retirant of the Emergency Medical Services Retirement System; and beginning as soon as practicable after January 1, 2010, one person who is a member, annuitant or retirant of a municipal policemen’s or firemen’s pension and relief fund or the West Virginia Municipal Police Officers and Firefighters Retirement System, all to be appointed by the Governor, with the advice and consent of the Senate. The Governor shall choose the member representing the municipal policemen’s or firemen’s pension and relief fund or the West Virginia Municipal Police Officers and Firefighters Retirement System from two names submitted by the state’s largest organization of professional police officers and two names submitted by the state’s largest organization of professional firefighters. Representation of the municipal police officers and firefighters shall alternate after each term on the board between persons having police officer and firefighter affiliation so that each professional group is represented on the board every other term.
All appointees to the board shall have recognized competence or significant experience in pension management or administration, actuarial analysis, institutional management or accounting. Those members appointed prior to January 1, 2010, shall be considered to have met these qualifications. One trustee shall be an attorney experienced in finance and pension matters and one trustee shall be a certified public accountant. Each member of the board must complete annual fiduciary training and timely complete any conflict of interest forms required to serve as a trustee.

(c) The appointed members of the board shall serve five-year terms. A member appointed pursuant to subdivision (6), subsection (b) of this section ceases to be a member of the board if he or she ceases to be a member of the represented system. If a vacancy occurs in the appointed membership, the Governor, within sixty days, shall fill the vacancy by appointment for the unexpired term. No more than six appointees may be of the same political party.

(d) The Consolidated Public Retirement Board has all the powers, duties, responsibilities and liabilities of the Public Employees Retirement System established pursuant to article ten of this chapter; the Teachers Retirement System established pursuant to article seven-a, chapter eighteen of this code; the Teachers' Defined Contribution Retirement System established pursuant to article seven-b of said chapter; the West Virginia State Police Death, Disability and Retirement Fund created pursuant to article two, chapter fifteen of this code; the West Virginia State Police Retirement System created by article two-a of said chapter; the Deputy Sheriff Death, Disability and Retirement Fund created pursuant to article fourteen-d, chapter seven of this code; the Judges' Retirement System created pursuant to article nine, chapter fifty-one of this code; the Emergency Medical Services Retirement System established in article five-v, chapter sixteen of this code;
and the Municipal Police Officers and Firefighters Retirement System created pursuant to article twenty-two, chapter eight of this code, and their appropriate governing boards.

(e) The Consolidated Public Retirement Board may propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code, necessary to effectuate its powers, duties and responsibilities: Provided, That the board may adopt any or all of the rules, previously promulgated, of a retirement system which it administers.

(f) (1) The Consolidated Public Retirement Board shall continue to transfer all funds received for the benefit of the retirement systems, including, but not limited to, all employer and employee contributions, to the West Virginia Investment Management Board: Provided, That the employer and employee contributions of the Teachers' Defined Contribution Retirement System, established in section three, article seven-b, chapter eighteen of this code, and voluntary deferred compensation funds invested by the West Virginia Consolidated Public Retirement Board pursuant to section five, article ten-b of this chapter may not be transferred to the West Virginia Investment Management Board.

(2) The board may recover from a participating employer that fails to pay any amount due a retirement system in a timely manner the contribution due and an additional amount not to exceed interest or other earnings lost as a result of the untimely payment, or a reasonable minimum fee, whichever is greater, as provided by legislative rule promulgated pursuant to the provisions of article three, chapter twenty-nine-a of this code. Any amounts recovered shall be administered in the same manner in which the amount due is required to be administered.
(g) Notwithstanding any provision of this code or any legislative rule to the contrary, all assets of the public retirement plans set forth in subsection (a) of this section shall be held in trust. The Consolidated Public Retirement Board is a trustee for all public retirement plans, except with regard to the investment of funds: Provided, That the Consolidated Public Retirement Board is a trustee with regard to the investments of the Teachers' Defined Contribution Retirement System and any other assets of the public retirement plans administered by the Consolidated Public Retirement Board as set forth in subsection (a) of this section for which no trustee has been expressly designated in this code.

(h) The board may employ the West Virginia Investment Management Board to provide investment management consulting services for the investment of funds in the Teachers' Defined Contribution Retirement System.

CHAPTER 8. MUNICIPAL CORPORATIONS.

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

PART III. POLICEMEN'S PENSION AND RELIEF FUND; FIREFIEMEN'S PENSION AND RELIEF FUND.

§8-22-16. Pension and relief funds for policemen and firemen; creation of boards of trustees; definitions; continuance of funds; average adjusted salary.

(a) Except as provided in subsection (e) of this section, passed into law during the fourth extraordinary session of the Legislature in 2009, in every Class I and Class II city having, or which may hereafter have, a paid police
department and a paid fire department, or either of such departments, the governing body shall, and in every Class III city and Class IV town or village having, or which may hereafter have, a paid police department and a paid fire department, or either of such departments, the governing body may, by ordinance provide for the establishment and maintenance of a policemen's pension and relief fund and for a firemen's pension and relief fund for the purposes hereinafter enumerated and, thereupon, there shall be created boards of trustees which shall administer and distribute the moneys authorized to be raised by this section and the following sections of this article. For the purposes of this section and sections seventeen through twenty-eight, inclusive, of this article, the term “paid police department” or “paid fire department” means only a municipal police department or municipal fire department, as the case may be, maintained and paid for out of public funds and whose employees are paid on a full-time basis out of public funds. The term shall not be taken to mean any department whose employees are paid nominal salaries or wages or are only paid for services actually rendered on an hourly basis.

(b) Any policemen's pension and relief fund and any firemen's pension and relief fund established in accordance with the provisions of former article six of this chapter or this article shall be or remain mandatory and shall be governed by the provisions of sections sixteen through twenty-eight, inclusive, of this article (with like effect, in the case of a Class III city or Class IV town or village, as if such Class III city or Class IV town or village were a Class I or Class II city) and shall not be affected by the transition from one class of municipal corporation to a lower class as specified in section three, article one of this chapter: Provided, That any Class III or Class IV town or village that hereafter becomes a Class I or Class II city shall not be required to establish a pension and relief fund
if the town or village is a participant in an existing pension plan regarding paid firemen and/or policemen.

(c) After June 30, 1981, for the purposes of sections sixteen through twenty-eight, inclusive, of this article, the word "member" means any paid police officer or firefighter who at time of appointment to a paid police or fire department met the medical requirements of chapter 2-2 of the National Fire Protection Association Standards Number 1001—Firefighters Professional Qualifications '74 as updated from year to year: Provided, That any police officer or firefighter who was a member of the fund prior to July 1, 1981, shall be considered a member after June 30, 1981.

(d) For purposes of sections sixteen through twenty-eight, inclusive, of this article, the words "salary or compensation" mean remuneration actually received by a member, plus the member's deferred compensation under sections 125, 401(k), 414(h)(2) and 457 of the United States Internal Revenue Code of 1986, as amended: Provided, That the remuneration received by the member during any twelve-consecutive-month period used in determining benefits which is in excess of an amount which is twenty percent greater than the "average adjusted salary" received by the member in the two consecutive twelve-consecutive-month periods immediately preceding the twelve-consecutive-month period used in determining benefits shall be disregarded: Provided, however, That the "average adjusted salary" means the arithmetic average of each year's adjusted salary, the adjustment made to reflect current salary rate and such average adjusted salary shall be determined as follows: Assuming "year-one" means the second twelve-consecutive-month period preceding such twelve-consecutive-month period used in determining benefits, "year-two" means the twelve-consecutive-month period immediately preceding the twelve-consecutive-month period used in determining benefits and "year-
"three" means the twelve-consecutive-month period used in determining benefits, year-one total remuneration shall be multiplied by the ratio of year-three base salary, exclusive of all overtime and other remuneration, to year-one base salary, exclusive of all overtime and other remuneration, such product shall equal "year-one adjusted salary"; year-two total remuneration shall be multiplied by the ratio of year-three base salary, exclusive of all overtime and other remuneration, to year-two base salary, exclusive of all overtime and other remuneration, such product shall equal "year-two adjusted salary"; and the arithmetic average of year-one adjusted salary and year-two adjusted salary shall equal the average adjusted salary.

(e)(1) Any municipality, as that term is defined in section two, article one of this chapter, or municipal subdivision as defined in section two, article twenty-two-a of this chapter may, by a majority vote of its governing body, close its existing policemen's or firemen's pension and relief fund to employees newly hired on or after January 1, 2010, if the municipality enrolls those newly hired police officers or firefighters in a retirement plan created in article twenty-two-a of this chapter and approved and administered by the West Virginia Consolidated Public Retirement Board. On and after July 1, 2010, no new policemen's or firemen's pension and relief fund may be established under this section. A Class I or Class II municipality forming a new paid police department or paid fire department after June 30, 2010, shall, notwithstanding the provisions of section two, article twenty-two-a of this chapter, enroll the department members in the Municipal Police Officers and Firefighters Retirement System established in article twenty-two-a of this chapter.

(2) Any municipality using the alternative method of financing that elects to close an existing pension and relief
fund to new hires pursuant to this subsection shall also adopt the optional method of financing the unfunded actuarial accrued liability of the existing policemen's or firemen's pension and relief fund as provided in subsection (e), section twenty of this article.

(3) Except as provided in section thirty-two, article twenty-two-a of this chapter, if the qualifying municipality elects to close enrollment in an existing municipal pension and relief fund to newly hired police officers and firefighters pursuant to this section, all current active members, retirees and other beneficiaries covered by the existing policemen's or firemen's pension and relief fund shall remain covered by that plan and shall be paid all benefits of that plan in accordance with Part III of this article.

§8-22-17. Powers and duties of boards of trustees; training.

1 (a) Boards of trustees shall be public corporations by the name and style of "The Board of Trustees of the Policemen's Pension and Relief Fund of (name of municipality)", or "The Board of Trustees of the Firemen's Pension and Relief Fund of (name of municipality)", as the case may be, by which names they may sue and be sued, plead and be impleaded, contract and be contracted with, take and hold real and personal property for the use of the policemen's pension and relief fund or the firemen's pension and relief fund and have and use a common seal. In the absence of a seal, the seal of the president of the corporation shall be equivalent to a common seal. A board of trustees may also in its corporate name do and perform any and all other acts and business pertaining to the trust created hereby or by any conveyance, devise or dedication made for the uses and purposes of the board.

(b) After June 30, 1981, any board of trustees and any members of a board shall, as fund fiduciaries, discharge their duties with respect to pension and relief funds solely
in the interest of the members and members' beneficiaries
for the exclusive purpose of providing benefits to members
and their beneficiaries and defraying reasonable expenses
of administering the fund.

(c) The board of trustees of each fund shall deliver a
copy of the fund’s current rules, regulations and
procedures to the State Treasurer or oversight board
established by section eighteen-a of this article on or
before March 1, 2010, and thereafter within thirty days of
any approved change in the rules, regulations or
procedures.

(d) Each member of a board of trustees shall attend
training in matters relating to trustee duties as may be
required by the oversight board pursuant to section
eighteen-a of this article.

§8-22-18a. West Virginia Municipal Pensions Oversight Board
created; powers and duties; management;
composition; terms; quorum; expenses; reports.

(a)(1) There is established, on the effective date of the
enactment of this section during the fourth extraordinary
session of the Legislature in 2009, the West Virginia
Municipal Pensions Oversight Board for the purpose of
monitoring and improving the performance of municipal
policemen's and firemen's pension and relief funds to
assure prudent administration, investment and
management of the funds. Management of the oversight
board shall be vested solely in the members of the
oversight board. Duties of the oversight board shall
include, but not be limited to, assisting municipal boards
of trustees in performing their duties, assuring the funds’
compliance with applicable laws, providing for actuarial
studies, distributing tax revenues to the funds, initiating
or joining legal actions on behalf of active or retired
pension fund members or municipal boards of trustees to
protect interests of the members in the funds, and taking
other actions as may be reasonably necessary to provide for the security and fiscal integrity of the pension funds. The oversight board's authority to initiate legal action does not preempt the authority of municipalities; municipal policemen's and firemen's boards of trustees; or pension fund active members, beneficiaries or others to initiate legal action to protect interests in the funds. The oversight board is created as a public body corporate. Establishment of the oversight board does not relieve the municipal funds' boards of trustees from their fiduciary and other duties to the funds, nor does it create any liability for the funds on the part of the state. Members and employees of the oversight board are not liable personally, either jointly or severally, for debts or obligations of the municipal pension and relief funds. Members and employees of the oversight board have a fiduciary duty toward the municipal pension and relief funds and are liable for malfeasance or gross negligence. Employees of the oversight board are nonclassified state employees.

(2) The oversight board shall consist of nine members. The executive director of the state's Investment Management Board and the executive director of the state's Consolidated Public Retirement Board, or their designees, shall serve as voting ex-officio members. The other seven members shall be citizens of the state who have been qualified electors of the state for a period of at least one year next preceding their appointment and shall be as follows: An active or retired member of a municipal policemen's pension and relief fund chosen from a list of three persons submitted to the Governor by the state's largest professional municipal police officers organization, an active or retired member of a municipal firemen's pension and relief fund chosen from a list of three persons submitted to the Governor by the state's largest professional firefighters organization, an attorney
54 experienced in finance and investment matters related to pensions management, two persons experienced in pension funds management, one person who is a certified public accountant experienced in auditing and one person chosen from a list of three persons submitted to the Governor by the state’s largest association of municipalities.

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

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

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

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

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

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

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

67 (6) Do all things necessary and appropriate to implement and operate the board in performance of its duties. Expenses shall be paid from the moneys in the Municipal
Pensions Security Fund created in section eighteen-b of this article or, prior to the transition provided in section eighteen-b of this article, the Municipal Pensions and Protection Fund: Provided, That the board may request special appropriation for special projects.

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

(d) A majority of the full authorized membership of the oversight board constitutes a quorum. The board shall meet at least quarterly each year, but more often as duties require, at times and places that it determines. The oversight board shall elect a chairperson and a vice chairperson from their membership who shall serve for terms of two years and shall select annually a secretary/treasurer who may be either a member or employee of the board. The oversight board shall employ an executive director and other staff as needed and shall fix their duties and compensation. The compensation of the executive director shall be subject to approval of the Governor. Except for any special appropriation as provided in subsection (b) of this section, all personnel and other expenses of the board shall be paid from revenue
collected and allocated for municipal policemen's or municipal firemen's pension and relief funds pursuant to section fourteen-d, article three, chapter thirty-three of this code and distributed through the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund created in section eighteen-b of this article. Expenses during the initial year of the board's operation shall be from proceeds of the allocation for the municipal pensions and relief funds. Expenditures in years thereafter shall be by appropriation from the Municipal Pensions Security Fund. Money allocated for municipal policemen's and firemen's pension and relief funds to be distributed from the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund shall be first allocated to pay expenses of the oversight board and the remainder in the fund distributed among the various municipal pension and relief funds as provided in section fourteen-d, article three, chapter thirty-three of this code. The board is exempt from the provisions of sections seven and eleven, article three, chapter twelve of this code relating to compensation and expenses of members, including travel expenses.

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

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

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

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

(i) The oversight board shall cooperate with the West
Virginia Investment Management Board and the Board of
Treasury Investments to educate members of the local
pension boards of trustees on the services offered by the
two state investment boards. No later than October 31,
2013, the board shall report to the Joint Committee on
Government and Finance and the Joint Committee on
Pensions and Retirement a detailed comparison of returns
on long-term investments of moneys held by or allocated
to municipal pension and relief funds managed by the
West Virginia Investment Management Board and those
managed by others than the Investment Management
Board. The oversight board shall also report at that time
on short-term investment returns by local pension boards
using the West Virginia Board of Treasury Investments
compared to short-term investment returns by those local
boards of trustees not using the Board of Treasury
Investments.
(j) The oversight board shall establish minimum requirements for training to be completed by each member of the board of trustees of a municipal policemen's or firemen's pension and relief fund. The requirements should include, but not be limited to, training in ethics, fiduciary duty and investment responsibilities.

(k) The Joint Committee on Pensions and Retirement shall study deferred retirement option programs (DROPs) and shall provide opportunities for professional police officer and firefighter organizations to present information on DROPs to the committee, to consider and evaluate elements of the programs to assess how the programs may best serve the public interest. The committee shall report any findings, conclusions or recommendations, along with drafts of any proposed legislation, to the Joint Committee on Government and Finance by November 30, 2010.

§8-22-18b. Creation of Municipal Pensions Security Fund; transfer of certain powers, duties and functions of Treasurer's office to Municipal Pensions Oversight Board.

(a) The Legislature finds that an important part of oversight of municipal policemen's and firemen's pension and relief funds is monitoring the performance required of the various funds to qualify to receive distribution of insurance premium tax revenues provided by section fourteen-d, article three, chapter thirty-three of this code. The duties and functions of the State Treasurer's office with respect to monitoring and distribution are transferred from the State Treasurer's office to the West Virginia Municipal Pensions Oversight Board effective January 1, 2010: Provided, That until the oversight board is fully organized and operating, some duties and functions being performed by the State Treasurer's office prior to January 1, 2010, may be continued by that office
temporarily as necessary to effect an orderly transition of responsibilities and provide for prompt distribution of the insurance premium tax proceeds for expenses of the oversight board and to the municipal policemen's and firemen's pension and relief funds.

(b) There is hereby created in the State Treasury a nonexpiring special revenue fund designated the West Virginia Municipal Pensions Security Fund which shall be administered by the West Virginia Municipal Pensions Oversight Board solely for the purposes as provided in this article and article three, chapter thirty-three of this code. All earnings shall accrue to and be retained by the fund.

(c) Until the oversight board advises the Insurance Commissioner and the State Treasurer in writing that the oversight board is prepared to receive into and distribute from the West Virginia Municipal Pensions Security Fund premium tax revenues as provided in section fourteen-d, article three, chapter thirty-three of this code and section seven, article twelve-c of said chapter, the commissioner shall continue to transfer the funds into the Municipal Pensions and Protection Fund and the State Treasurer shall continue to disburse funds to the qualifying municipal pension and relief funds, and shall disburse funds as necessary for the establishment and early operation of the oversight board. The Insurance Commissioner, the State Treasurer and oversight board shall share information freely as required for efficient transfer of powers and duties related to the premium tax revenues generated pursuant to chapter thirty-three of this code to be allocated to the municipal policemen's and firemen's pension and relief funds. When the oversight board assumes full responsibility to receive funds into and disburse funds from the Municipal Pensions Security Fund, the State Treasurer shall transfer to it all funds remaining in the Municipal Pensions and Protection Fund and close the Municipal Pensions and Protection Fund.
§8-22-19. Levy to maintain fund.

(a)(1) 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 and funds from the Municipal Pensions Security Fund created in section eighteen-b of this article, 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 and funds from the Municipal Pensions Security Fund created in section eighteen-b of this article, provide funds equal to the amount necessary to meet the minimum standards for actuarial soundness as provided in section twenty of this article. The amount shall be irrevocably contributed, accumulated and invested as fund assets as described in sections twenty-one and twenty-two of this article. One twelfth of each municipality's annual contributions shall be deposited with the municipality's pension trust funds as fund assets on at least a monthly 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 five days of receipt by the municipality. Heretofore surplus reserves accumulated before the effective date of this section shall be irrevocably contributed, aggregated and invested as fund assets described in sections twenty-
(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 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, where other purposes have not already attained priority, and within the limitations on taxes or tax levies imposed by the constitution and laws.

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

(c) 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 for members of the funds who are police officers or firefighters newly hired on or after January 1, 2010, the municipality shall assess and collect nine and one-half percent of the actual salary or compensation. Only those funds for which the board of trustees has collected and paid the contributions as herein
provided and meeting minimum standards for actuarial soundness shall be eligible to receive moneys from the additional fire and casualty insurance premium tax as provided in section fourteen-d, article three, chapter thirty-three of this code: Provided, however, 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 not more than an additional two and one-half percent of the actual salary or compensation of each member, but not to exceed nine and one-half percent total contribution: Provided further, 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: And 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 within five days of being collected.

(d)(1) For the fiscal year beginning on July 1, 2010, and subject to provisions of subsection (c), section eighteen-b of this article and section fourteen-d, article three, chapter thirty-three of this code and for each fiscal year thereafter, the Municipal Pensions Oversight Board shall receive and retain the moneys allocated to the Municipal Pensions Security Fund until such time as the treasurer of the municipality applies for the allocable portion and certifies in writing to the Municipal Pensions Oversight Board that:

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

(2) When the aforementioned application and certification are made, the allocable portion of moneys from the Municipal Pensions and Protection Fund, or the Municipal Pensions Security Fund, once established, shall be paid to the corresponding policemen's or firemen's pension and relief fund. Payment to a municipal pension and relief fund shall be made by electronic funds transfer.

(e) The State Auditor and the oversight board have the power, and the duty as each considers 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 or from the Municipal Pensions Security Fund pursuant to provisions of subsection (c), section eighteen-b of this article. If the allocable portion of the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund is not paid to the pension and relief fund within eighteen 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.

§8-22-20. Actuary; actuarial valuation report; minimum standards for annual municipality contributions to the fund; definitions; actuarial review and audit.
(a) The oversight board shall contract with or employ a qualified actuary to annually prepare an actuarial valuation report on each pension and relief fund. 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's 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'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) Except as provided in subsection (e) 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
74 election and thereafter fails to contribute the voluntary
75 increase as provided in this section and in subdivision (4),
76 subsection (b), section nineteen of this article, then the
77 board of trustees is not eligible to receive funds allocated
78 under section fourteen-d, article three, chapter thirty-
79 three of this code: And provided further, That prior to
80 using this alternative contribution method the actuary of
81 the fund shall certify in writing that the fund is projected
82 to be solvent under the alternative contribution method
83 for the next consecutive fifteen-year period. For purposes
84 of determining this minimum financial objective: (i) The
85 value of the fund's assets shall be determined on the basis
86 of any reasonable actuarial method of valuation which
87 takes into account fair market value; and (ii) all costs,
88 deficiencies, rate of interest and other factors under the
89 fund shall be determined on the basis of actuarial
90 assumptions and methods which, in aggregate, are
91 reasonable (taking into account the experience of the fund
92 and reasonable expectations) and which, in combination,
93 offer the qualified actuary's best estimate of anticipated
94 experience under the fund: And provided further, That any
95 municipality which elected the alternative funding method
96 under this section and which has an unfunded actuarial
97 liability of not more than twenty-five percent of fund
98 assets, may, beginning September 1, 2003, elect to revert
99 to the standard funding method, which is to contribute to
100 the fund annually an amount which is not less than an
101 amount which, together with the contributions from the
102 members and the allocable portion of the Municipal
103 Pensions and Protection Fund for municipal pension and
104 relief funds established under section fourteen-d, article
105 three, chapter thirty-three of this code and other income
106 sources as authorized by law, will be sufficient to meet the
107 normal cost of the fund and amortize any actuarial
108 deficiency over a period of not more than forty years,
109 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.

(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. The optional method provides an option to the existing standard or alternative methods of financing the funds.

(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 a 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.

§8-22-20a. Hiring of actuary; preparation of actuarial valuations.
(a)(1) The Legislature finds that it is in the best interests of the state and its municipalities to have accurate data regarding the various municipal police and firemen's pension and relief funds.

(2) The Legislature finds that the State Treasurer should contract with an actuary as a consultant for the municipal police and firemen's pension and relief funds and among other duties the actuary shall determine if there is consistent reporting from the various funds. The Legislature further finds that the State Treasurer or oversight board should share the results of the actuary's annual valuation with the appropriate municipality.

(b) Except as hereinafter provided, beginning July 1, 2002, the State Treasurer shall select by competitive bid and contract with a single qualified actuary. The actuary shall serve as a consultant to the Treasurer with regard to the operation of the municipal policemen's and firemen's pension and relief funds and shall report annually to the Treasurer with regard to all funds existing in this state by virtue of this article. Costs associated with the actuary's work shall be paid out of the Municipal Pensions and Protection Fund established pursuant to section fourteen-d, article three, chapter thirty-three of this code. The State Treasurer shall provide the single qualified actuary until the oversight board assumes the duty of providing for the actuary. Thereafter, it shall be the duty of the Municipal Pensions Oversight Board to contract for or to employ the single qualified actuary which, at a minimum, shall serve as a consultant to the oversight board and report annually to the oversight board with regard to all municipal policemen's and firemen's pension and relief funds existing in this state by virtue of this article, and which shall be paid from moneys deposited in the Municipal Pensions Security Fund. Copies of the annual report prepared by the actuary shall be sent to the Joint Committee on Government and Finance, the chair of the
(c) With respect to each municipal policemen's or firemen's pension and relief fund, the actuary shall complete an annual valuation in accordance with actuarial standards of practice promulgated by the actuarial standards board of the American Academy of Actuaries. The report of the valuation shall include: (1) A summary of the benefit provisions evaluated; (2) a summary of the census data and financial information used in the valuation; (3) a description of the actuarial assumptions, actuarial costs method and asset valuation method used in the valuation, including a statement of the assumed rate of payroll growth and assumed rate of growth or decline in the number of the fund members' contributions to the pension fund; (4) a summary of findings that includes a statement of the actuarial accrued pension liabilities and unfunded actuarial accrued pension liabilities; (5) a schedule showing the effect of any changes in the benefit provisions, actuarial assumptions or cost methods since the last annual actuarial valuation; (6) a statement of whether contributions to the pension fund are in accordance with the provisions of this chapter and whether they are expected to be sufficient; and (7) any other matters determined by the Treasurer or, on or after January 1, 2010, the oversight board, to be necessary or appropriate.

(d)(1) The hiring of an actuary under the provisions of this section shall not be construed to make the municipal policemen's and firemen's pension and relief funds the responsibility or obligation of the State of West Virginia.

(2) Any actuarial deficiency identified by the actuary under this section or this article is not an obligation of the State of West Virginia.
§8-22-22. Investment of funds by boards of trustees; exercise of discretion in making investments; report of investment plan.

1 (a) The board of trustees may invest a portion or all of the fund assets in any of the pools, funds and securities managed by the West Virginia Investment Management Board or West Virginia Board of Treasury Investments or as otherwise provided in this section. The board of trustees shall keep as an available sum for the purpose of making regular retirement, disability retirement, death benefit, payments and administrative expenses in an estimated amount not to exceed payments for a period of ninety days in short-term investments. The board of trustees, in acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of the fund, shall do so in accordance with the provisions of the Uniform Prudent Investor Act codified as article six-c, chapter forty-four of this code. Within the limitations of the Uniform Prudent Investor Act, the board of trustees is authorized in its sole discretion to invest and reinvest any funds received by it and not invested with the West Virginia Investment Management Board or West Virginia Board of Treasury Investments.

21 (b) The board of trustees of each fund may delegate investment authority to equity mutual funds managers and/or professional investment advisors registered with the Securities and Exchange Commission, in accordance with the Investment Advisors Act of 1940, and registered with the appropriate state regulatory agencies, if applicable, and who manage assets in excess of $75 million.

29 (c) The board of trustees of each fund shall deliver to the State Treasurer or oversight board on or before March 1, 2010, a copy of the pension and relief fund's investment policy. A board of trustees shall submit to the oversight
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§8-22-22a. Restrictions on investments; disclosure of fees and costs.

(a) Moneys invested as permitted by section twenty-two of this article and not invested with the West Virginia Investment Management Board or the Board of Treasury Investments are subject to the following restrictions and conditions contained in this section:

(1) The board shall hold in nonreal estate equity investments no more than seventy-five percent of the assets managed by the board and no more than seventy-five percent of the assets of any individual participant plan.

(2) The board shall hold in real estate equity investments no more than twenty-five percent of the assets managed by the board and no more than twenty-five percent of the assets of any individual participant plan: Provided, That the investment be made only on the recommendation by a professional, third-party fiduciary investment adviser registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940, as amended, on the approval of the board or a committee designated by the board, and on the execution of the transaction by a third-party investment manager: Provided, however, That the board's ownership interest in any fund is less than forty percent of the fund's assets at the time of purchase: Provided further, That the combined investment of institutional investors, other public sector entities and educational institutions and their endowments and foundations in the fund is in an amount equal to or greater than fifty percent of the board's total investment in the fund at the time of acquisition. For the purposes of this subsection, "fund" means a real estate investment trust traded on a major exchange of the United States of America.
America or a partnership, limited partnership, limited liability company or other entity holding or investing in related or unrelated real estate investments, at least three of which are unrelated and the largest of which is not greater than forty percent of the entity's holdings at the time of purchase.

(3) The board shall hold in international securities no more than thirty percent of the assets managed by the board and no more than thirty percent of the assets of any individual participant plan.

(4) The board may not at the time of purchase hold more than five percent of the assets managed by the board in the nonreal estate equity securities of any single company or association: Provided, That if a company or association has a market weighting of greater than five percent in the Standard & Poor's 500 index of companies, the board may hold securities of that nonreal estate equity equal to its market weighting.

(5) No security may be purchased by the board unless the type of security is on a list approved by the board. The board may modify the securities list at any time, and shall review the list annually.

(6) Notwithstanding the investment limitations set forth in this section, it is recognized that the assets managed by the board may temporarily exceed the investment limitations in this section due to market appreciation, depreciation and rebalancing limitations. Accordingly, the limitations on investments set forth in this section shall not be considered to have been violated if the board rebalances the assets it manages to comply with the limitations set forth in this section at least once every twelve months based on the latest available market information and any other reliable market data that the board considers advisable to take into consideration, except for those assets authorized by subdivision (2) of this
subsection for which compliance with the percentage limitations shall be measured at such time as the investment is made.

(7) The board shall annually review, establish and modify, if necessary, the board's investment objectives and investment policy so as to provide for the financial security of the trust funds giving consideration to the following:

(A) Preservation of capital;
(B) Diversification;
(C) Risk tolerance;
(D) Rate of return;
(E) Stability;
(F) Turnover;
(G) Liquidity; and
(H) Reasonable cost of fees.

(8) The board is expressly prohibited from investing in any class, style or strategy of alternative investments including a private equity fund such as a venture capital, private real estate or buy-out fund; commodities fund; distressed debt fund; mezzanine debt fund; hedge fund; or fund consisting of any combination of private equity, distressed or mezzanine debt, hedge funds, private real estate, commodities and other types and categories of investment permitted under this article;

(b) The board of trustees of each fund shall obtain an independent performance evaluation of the funds at least annually and the evaluation shall consist of comparisons with other funds having similar investment objectives for performance results with appropriate market indices; and
(c) Each entity conducting business for each pension fund shall fully disclose all fees and costs of investing conducted on a quarterly basis to the trustees of the fund and to the oversight board. Entities conducting business in mutual funds for and on behalf of each pension fund shall timely file revised prospectus and normal quarterly and annual Securities and Exchange Commission reporting documents with the board of trustees of each pension fund.

§8-22-23a. Eligibility for total and temporary disability pensions and total and permanent disability pensions; reporting; light duty.

(a) All members applying for total and temporary or total and permanent disability benefits after June 30, 1981, shall be examined by at least two physicians under the direction of the staff at Marshall University, West Virginia University, Morgantown, or West Virginia University, Charleston: Provided, That if a member's medical condition cannot be agreed on by the two physicians, a third physician shall examine the member: Provided, however, That beginning January 1, 2010, and continuing thereafter, a member applying for total and temporary or total and permanent disability benefits shall be examined by two physicians, one of which shall be chosen and paid by the member, and one of which shall be chosen and paid by the oversight board. If the two physicians disagree, the oversight board shall select and pay for a third examining physician. Disability benefits shall be awarded if in the opinion of two of the examining physicians the member is by reason of the disability unable to perform adequately the job duties required. Each medical examination shall include the review of the member's medical history, but an examining physician may not have access to the disability examination report or disability recommendation of another physician. The physicians shall send copies of their reports to both the
board of trustees of the member's pension and relief fund and the oversight board. The expense of the member's transportation to medical examinations shall be paid by the board of trustees. Medical expense shall not exceed the reasonable and customary charges for similar services.

Beginning January 1, 2010, and thereafter, if a member is charged with an offense that has the potential to lead to the member's termination, the member's municipal pensions and relief fund board of trustees may not consider the member's eligibility for disability benefits until after investigation of the charge is completed and any disciplinary decision is implemented. No later than January 1, 2011, and annually thereafter, each board of trustees shall report to the oversight board the total number of disability applications received during the prior fiscal year, the status of each application as of the end of the fiscal year, total applications granted and denied and the percentage of disability-benefit recipients to the total number of active members of the fund.

(b) Effective for members becoming eligible for total and temporary disability benefits after June 30, 1981, initially or previously under this subsection allowance for initial or additional total and temporary disability payments, the amount thereof to be determined as specified in section twenty-four of this article shall be paid to the member during the disability for a period not exceeding twenty-six weeks if after a medical examination in accordance with subsection (a) of this section two examining physicians report in writing to the board of trustees that: (1) The member has become so totally, physically or mentally disabled, from any reason, as to render the member totally, physically or mentally, incapacitated for employment as a police officer or firefighter; and (2) it has not been determined if the disability is permanent or it has been determined that the disability may be alleviated or eliminated if the member follows a reasonable medical
treatment plan or reasonable medical advice: Provided, That, in any event, a member is not eligible for total and temporary disability payments following the fourth consecutive 26-week period of total and temporary disability unless subsequent disability results from a cause unrelated to the cause of the four previous periods of total and temporary disability. During the two-year period of total and temporary disability, the department is required to restore the member to his or her former position in the department at any time the member is determined to no longer be disabled: Provided, however, That the department may refill, on a temporary basis, the position vacated by the member after the first twenty-six weeks of his or her temporary disability.

(c) Effective for members becoming eligible for total and permanent disability benefits initially under this subsection or becoming eligible for total and temporary disability benefits under subsection (b) of this section after June 30, 1981, allowance for total and permanent disability payments, the amount thereof to be determined as specified in section twenty-four of this article, shall be paid to the member after a medical examination in accordance with subsection (a) of this section, two examining physicians report in writing to the board of trustees that the member has become so totally, physically or mentally, and permanently disabled, as a proximate result of service rendered in the performance of his or her duties in the department, as to render the member totally, physically or mentally, and permanently incapacitated for employment as a police officer or firefighter or, if the member has been a member of either of the departments for a period of not less than five consecutive years preceding the disability, the member has become so totally, physically or mentally, and permanently disabled, from any reason other than service rendered in the performance of his or her duties in the department, as to
render the member totally, physically or mentally, and permanently incapacitated for employment as a police officer or firefighter. The phrase "totally, physically or mentally, and permanently disabled" shall not be construed to include a medical condition which may be corrected if the member follows a reasonable medical treatment plan or reasonable medical advice.

(d) Effective for members becoming eligible for total and temporary disability benefits after June 30, 1981, under the provisions of subsection (b) of this section, any payments for total and temporary disability for a period during the disability not exceeding twenty-six weeks shall cease at the end of the 26-week period under the following conditions:

(1) The member fails to be examined as provided in subsection (a) of this section; or (2) the member is examined or reexamined as provided in said subsection and two examining physicians report to the board of trustees that the member's medical condition does not meet the requirements of subsection (b) or (c) of this section. Effective for members becoming eligible for total and temporary disability benefits after June 30, 1981, under subsection (b) of this section, subsequent to the member's receipt of total and temporary disability payments for a period of two years, the payments shall cease at the end of the two-year period under the following conditions: (A) The member fails to be examined as provided in subsection (a) of this section; or (B) the member is examined or reexamined as provided in said subsection and two examining physicians report to the board of trustees that the member's medical condition does not meet the requirements of subsection (c) of this section.

(e) Notwithstanding other provisions of this section to the contrary, a member of a municipal policemen's or
firemen's pension and relief fund who is found to be

disabled from performing the full range of tasks relevant
to police officer or firefighter employment but capable of
performing a restricted or light-duty police officer or
firefighter job made available at the discretion of the
employing municipality may choose to continue working
and retain an active membership in his or her pension and
relief fund.

§8-22-27. General provisions concerning disability pensions,
retirement pensions and death benefits.

(a) In determining the years of service of a member in a
paid police or fire department for the purpose of
ascertaining certain disability pension benefits, all
retirement pension benefits and certain death benefits, the
following provisions shall be applicable:

(1) Absence from the service because of sickness or
injury for a period of two years or less shall not be
construed as time out of service; and

(2) Any member of any paid police or fire department
covered by the provisions of sections sixteen through
twenty-eight of this article who has been or will be on
qualified military service in the armed forces of the United
States, has an honorable discharge from the armed forces,
presents himself or herself for resumption of duty to his or
her appointing municipal official within six months from
his or her date of discharge and is accepted by two medical
examiners, at least one of which is appointed by the
oversight board as being mentally and physically capable
of performing the required duties as a member of the paid
police or fire department, shall be given credit for
continuous service in the paid police or fire department.
The six-month period in which a member has to resume
employment and receive credit for continuous service is
extended to a period not to exceed two years if the
member has been hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, qualified military service. No member of a paid police or fire department shall be required to pay the monthly assessment during a period of qualified military service. However, a member who desires to make up member assessments, in whole or in part, has five years from the date of return to work, but shall not be required to pay any interest or other charges for the assessments being made up. The employer must pay the employer contributions for the periods made up by the member within ninety days of each payment, or within ninety days of the normal due date. A member who resumes duty with a paid police or fire department after qualified military service is entitled to accrued benefits only to the extent that the member made up the member assessments.

(b) As to any former member of a paid police or fire department receiving disability pension benefits or retirement pension benefits from a policemen's or firemen's pension and relief fund, on July 1, 1985, the following provisions shall govern and control the amount of the pension benefits:

(1) A former member who on June 30, 1962, was receiving disability pension benefits or retirement pension benefits from a policemen's or firemen's pension and relief fund, shall continue to receive pension benefits, but on and after July 1, 1985, the pension benefits shall be no less than the amount of $500 per month; and

(2) A former member who became entitled to disability pension benefits or retirement pension benefits on or after July 1, 1962, shall continue to receive pension benefits, but on and after July 1, 1985, shall receive the disability pension benefits, or retirement pension benefits provided in section twenty-four or twenty-five of this article, as the case may be.
(c) As to any surviving spouse, dependent child or children, or dependent father or mother, or dependent brothers or sisters, of any former member of a paid police or fire department, receiving any death benefits from a policemen's pension and relief fund or firemen's pension and relief fund, on July 1, 1985, the following provisions shall govern and control the amount of such death benefits:

(1) A surviving spouse, dependent child or children or dependent father or mother, or dependent brothers or sisters, of any former member, who on June 30, 1962, was receiving any death benefits from a policemen's pension and relief fund or firemen's pension and relief fund, shall continue to receive death benefits, but on and after July 1, 1985, the death benefits shall be no less than the following amounts: To a surviving spouse, until death or remarriage, the sum of $300 per month; to each dependent child the sum of $30 per month, until the child attains the age of eighteen years or marries, whichever first occurs; to each dependent orphaned child, the sum of $45 per month, until the child attains the age of eighteen years or marries, whichever first occurs; to each dependent father and mother the sum of $30 per month for each; to each dependent brother or sister, the sum of $50 per month, until the individual attains the age of eighteen years or marries, whichever first occurs, but in no event shall the aggregate amount paid to the brothers and sisters exceed $100 per month. If at any time, because of the number of dependents, all dependents cannot be paid in full as herein provided, then each dependent shall receive a pro rata share of the payments. In no case shall the payments to the surviving spouse and children be cut below sixty-five percent of the total amount paid to all dependents; and

(2) A surviving spouse, dependent child or children, or dependent father or mother, or dependent brothers or sisters, of any former member who became eligible for
death benefits on or after July 1, 1962, shall continue to receive death benefits, but on and after July 1, 1985, shall receive the death benefits provided in section twenty-six of this article.

(d) A former member who is receiving disability pension benefits on July 1, 1985, shall continue to receive disability pension benefits provided in section twenty-four of this article.

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

§8-22A-1. Title.

This article is known and may be cited as the West Virginia Municipal Police Officers and Firefighters Retirement System Act.


As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member two and six-tenths percent per year of the member's final average salary for the first twenty years of credited service. Additionally, two percent per year for twenty-one through twenty-five years and one percent per year for twenty-six through thirty years will be credited with a maximum benefit of sixty-seven percent. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of section ten of this article.

(b) "Accumulated contributions" means the sum of all retirement contributions deducted from the compensation of a member, or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.
(c) "Active military duty" means full-time duty in the active military service of the United States Army, Navy, Air Force, Coast Guard or Marine Corps. The term does not include regularly required training or other duty performed by a member of a reserve component or National Guard unless the member can substantiate that he or she was called into the full-time active military service of the United States and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(d) "Actuarial equivalent" means a benefit of equal value computed on the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article: Provided, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost-of-living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code.
(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the month for which an annuity is payable after submission of a retirement application or the required beginning date, if earlier. For purposes of this subsection, if retirement income payments commence after the normal retirement age, "retirement" means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member's normal retirement age and after completing proper written application for "retirement" on an application supplied by the board.

(h) "Board" means the Consolidated Public Retirement Board.

(i) "Covered employment" means either: (1) Employment as a full-time municipal police officer or firefighter and the active performance of the duties required of that employment; or (2) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) concurrent employment by a municipal police officer or firefighter in a job or jobs in addition to his or her employment as a municipal police officer or firefighter in this plan where the secondary employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: Provided, That the police officer or firefighter contributes to the fund created in this article the amount specified as the member's contribution in section eight of this article.

(j) "Credited service" means the sum of a member's years of service, active military duty and disability service.

(k) "Dependent child" means either:

(1) An unmarried person under age eighteen who is:
(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member’s household at the time of the member's death; or

(2) Any unmarried child under age twenty-three:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in paragraph (A), (B) or (C), subdivision (1) of this subsection.

(l) “Dependent parent” means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(m) “Disability service” means service credit received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.


(o)(1) “Municipal police officer” means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal policemen’s pension and relief fund, and who is not a member of, and not eligible for membership in, a
municipal policemen's pension and relief fund as provided in section sixteen, article twenty-two of this chapter. Paid police department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

(2) "Municipal firefighter" means an individual employed as a member of a paid fire department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal firemen's pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal firemen's pension and relief fund as provided in section sixteen, article twenty-two of this chapter. Paid fire department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

(p) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last ten years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under this article, then "final average salary" means the average of the monthly compensation which the member was receiving in the plan year prior to the initial disability. "Final average salary" does not include any lump sum payment for unused, accrued leave of any kind or character.

(q) "Full-time employment" means permanent employment of an employee by a participating municipality in a position which normally requires twelve months per year service and requires at least one thousand forty hours per year service in that position.
"Fund" means the West Virginia Municipal Police Officers and Firefighters Retirement Fund created by this article.

"Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed;

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under section seventeen or eighteen of this article;

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing municipality, irrespective of mitigation of damages. The same hours of service shall not be credited both under subdivision (1) or (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

"Member" means, except as provided in section thirty-two of this article, a person first hired as a municipal police officer or municipal firefighter, as defined in this section, by a participating municipal
employer on or after January 1, 2010. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(u) "Monthly salary" means the W-2 reportable compensation received by a member during the month.

(v) "Municipality" has the meaning ascribed to it in this code.

(w) "Municipal subdivision" means any separate corporation or instrumentality established by one or more municipalities, as permitted by law; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more municipalities.

(x) "Normal form" means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(y) "Normal retirement age" means the first to occur of the following:

(1) Attainment of age fifty years and the completion of twenty or more years of regular contributory service;

(2) While still in covered employment, attainment of at least age fifty years and when the sum of current age plus regular contributory service equals or exceeds seventy years;

(3) While still in covered employment, attainment of at least age sixty years and completion of ten years of regular contributory service; or
(4) Attainment of age sixty-two years and completion of five or more years of regular contributory service.

(z) "Plan" means the West Virginia Municipal Police Officers and Firefighters Retirement System established by this article.

(aa) "Plan year" means the twelve-month period commencing on January 1 of any designated year and ending the following December 31.

(bb) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(cc) "Regular contributory service" means a member's credited service excluding active military duty, disability service and accrued annual and sick leave service.

(dd) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(ee) "Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age seventy and one-half; or (2) the calendar year in which he or she retires or otherwise separates from covered employment.

(ff) "Retirement income payments" means the monthly retirement income payments payable under the plan.

(gg) "Spouse" means the person to whom the member is legally married on the annuity starting date.
"Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

"Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months.

For purposes of this subsection:

1. A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as a police officer or firefighter but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration.

2. "Physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member's annual tax return for purposes of monitoring the earnings limitation.

"Year of service" means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based on the hours of service performed as covered employment and credited to
the member during the plan year based on the following schedule:

<table>
<thead>
<tr>
<th>Hours of Service</th>
<th>Year of Service Credited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 500</td>
<td>0</td>
</tr>
<tr>
<td>500 to 999</td>
<td>1/3</td>
</tr>
<tr>
<td>1,000 to 1,499</td>
<td>2/3</td>
</tr>
<tr>
<td>1,500 or more</td>
<td>1</td>
</tr>
</tbody>
</table>

During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under section seventeen or eighteen of this article.


1 Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States, unless a different meaning is clearly required. Any reference in this article to the Internal Revenue Code means the Internal Revenue Code of 1986, as amended.


1 There is hereby created the West Virginia Municipal Police Officers and Firefighters Retirement System. The purpose of this system is to provide for the orderly retirement of certain police officers and firefighters who become superannuated because of age or permanent disability and to provide certain survivor death benefits.
Substantially all of the members of the retirement system shall be qualified public safety employees as defined in section two of this article. The retirement system shall come into effect January 1, 2010: Provided, That if the number of members in the system are fewer than one hundred on January 1, 2014, then all of the provisions of this article are void and of no force and effect, and memberships in the system will be merged into the Emergency Medical Services Retirement System created in article five-v, chapter sixteen of this code. If merger is required, the board shall take all necessary steps to see that the voluntary transfers of persons and assets authorized by this article do not affect the qualified status with the Internal Revenue Service of either retirement plan. All business of the system shall be transacted in the name of the West Virginia Municipal Police Officers and Firefighters Retirement System. The board shall specify and adopt all actuarial assumptions for the plan at its first meeting of every calendar year or as soon thereafter as may be practicable, which assumptions shall become part of the plan.

§8-22A-5. Article to be liberally construed; board to administer plan; federal qualification requirements.

(a) The provisions of this article shall be liberally construed so as to provide a general retirement system for municipal police officers and firefighters eligible to retire under the provisions of this plan.

(b) The board shall administer the plan in accordance with its terms and may construe the terms and determine all questions arising in connection with the administration, interpretation and application of the plan. The board may sue and be sued, contract and be contracted with and conduct all the business of the system in the name of the plan. The board may employ those persons it considers necessary or desirable to administer
the plan. The board shall administer the plan for the exclusive benefit of the members and their beneficiaries subject to the specific provisions of the plan.

(c) The plan is intended to meet the federal qualification requirements of Section 401(a) and related sections of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the plan to fulfill this intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article referencing or relating to these federal qualification requirements is effective as of the date required by federal law. The board may propose rules for promulgation and amend or repeal conflicting rules in accordance with the authority granted to the board pursuant to section one, article ten-d, chapter five of this code to assure compliance with the requirements of this section.

§8-22A-6. Members.

(a) A police officer or firefighter first employed in covered employment after the effective date of this article by a municipality or municipal subdivision which has established and maintained a policemen’s pension and relief fund or a firemen’s pension and relief fund pursuant to section sixteen, article twenty-two of this chapter and which is a participating employer, shall be a member of this retirement plan.

(b) Except as provided in section thirty-two of this article, a police officer or firefighter who is a member of the Municipal Police Officers and Firefighters Retirement System may not have credit for covered employment in any other retirement system applied as service credit in the Municipal Police Officers and Firefighters Retirement System.

(c) Notwithstanding any other provisions of this article, any individual who is a leased employee is not eligible to
participate in the plan. For purposes of this plan, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

§8-22A-7. Creation of fund; investments; actuarial valuations.

(a) There is hereby created the West Virginia Municipal Police Officers and Firefighters Retirement Fund for the benefit of the members of the retirement system created pursuant to this article and the dependents of any deceased or retired member of the system.

(b) All moneys paid into and accumulated in the fund, except amounts designated by the board for payment of benefits as provided in this article, shall be held in trust and invested in the Consolidated Pensions Fund administered by the West Virginia Investment Management Board as provided by law.

(c) The board shall employ a competent actuary or actuarial firm to prepare an actuarial valuation of the assets and liabilities of the fund. The actuarial valuation period shall coincide with the fiscal year of the state.

§8-22A-8. Members' contributions; employer contributions; correction of errors.

(a)(1) There shall be deducted from the monthly salary of each member and paid into the fund an amount equal to eight and one-half percent (or ten and one-half percent, if applicable) of his or her monthly salary. An additional amount shall be paid to the fund by the municipality or municipal subdivision in which the member is employed in covered employment in an amount determined by the board: Provided, That in no year may the total of the
employer contributions provided in this section, to be paid by the municipality or municipal subdivision, exceed ten and one-half percent of the total payroll for the members in the employ of the municipality or municipal subdivision. Any active member who has concurrent employment in an additional job or jobs and the additional employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code shall contribute to the fund the sum of eight and one-half percent (or ten and one-half percent, if applicable) of his or her monthly salary earned as a municipal police officer or firefighter as well as the sum of eight and one-half percent (or ten and one-half percent, if applicable) of his or her monthly salary earned from any additional employment which additional employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code. An additional amount as determined by the board, not to exceed ten and one-half percent of the monthly salary of each member, shall be paid to the fund by the concurrent employer by which the member is employed.

(2) The board may, on the recommendation of the board's actuary, increase the employees' contribution rate from eight and one-half percent to ten and one-half percent should the plan not be seventy percent funded by July 1, 2014. The board shall decrease the contribution rate to eight and one-half percent on July 1 following the acceptance by the board of an actuarial valuation determining that the plan is seventy-five percent funded. If the plan funding level at a later actuarial valuation date falls below seventy percent, the employee rate of contribution shall be increased to ten and one-half percent.
of salary until the seventy-five percent level of funding is achieved. The board shall change the employee contribution rate on July 1 following the board's acceptance of the actuarial valuation. At no time may the rate of employee contribution exceed the rate of employer contribution.

(b) All required deposits shall be remitted to the board no later than fifteen days following the end of the calendar month for which the deposits are required. If the board on the recommendation of the board actuary finds that the benefits provided by this article can be actuarially funded with a lesser contribution, then the board shall reduce the required member and employer contributions proportionally. Any municipality or municipal subdivision which fails to make any payment due the Municipal Police Officers and Firefighters Retirement Fund by the fifteenth day following the end of each calendar month in which contributions are due may be required to pay the actuarial rate of interest lost on the total amount owed for each day the payment is delinquent. Accrual of the loss of earnings owed by the delinquent municipality or municipal subdivision commences after the fifteenth day following the end of the calendar month in which contributions are due and continues until receipt of the delinquent amount. Interest compounds daily and the minimum surcharge is $50.

(c) If any change or employer error in the records of any participating public employer or the retirement system results in any member or retiree receiving from the system more or less than he or she would have been entitled to receive had the records been correct, the board shall correct the error and as far as is practicable shall adjust the payment of the benefit in a manner that the actuarial equivalent of the benefit to which the member or retiree was correctly entitled shall be paid. Any
employer error resulting in an underpayment to the retirement system may be corrected by the member or retirant remitting the required employee contribution and the participating public employer remitting the required employer contribution. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 (retirement board reinstatement interest) and any accumulating interest owed on the employee and employer contributions resulting from the employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred.

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

(a) To ensure the fiscal integrity of the retirement system during the start-up phase, no member is entitled to retirement, disability or death benefits under this retirement system until January 1, 2013. Participating municipalities shall purchase insurance for their new plan members to provide coverage in an amount equal to disability coverage otherwise provided in sections seventeen and eighteen of this article and death benefits otherwise provided in sections twenty, twenty-two and twenty-three of this article for claims arising before January 1, 2013.

(b) A member may retire and commence to receive retirement income payments on the first day of the calendar month following written application for his or her voluntary petition for retirement coincident with or next following the later of the date the member ceases employment, or the date the member attains early or normal retirement age, in an amount as provided under
Provided, That retirement income payments under this plan are subject to the provisions of this article.

On receipt of the petition, the board shall promptly provide the member with an explanation of his or her optional forms of retirement benefits and on receipt of properly executed forms from the member, the board shall process a member's request for and commence payments as soon as administratively feasible.

§8-22A-10. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section to the extent applicable to governmental plans (hereafter sometimes referred to as the "415 limitation(s)" or "415 dollar limitation(s)"), so that the annual benefit payable under this system to a member shall not exceed those limitations. Any annual benefit payable under this system shall be reduced or limited if necessary to an amount which does not exceed those limitations. The extent to which any annuity or other annual benefit payable under this retirement system shall be reduced as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced, shall be proportional on a percentage basis to the reductions made in such other plans required to be so taken into consideration under Section 415, unless a disproportionate reduction is determined by the board to maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities or other annual benefit required by this section. The 415 limitations are incorporated herein by
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27 reference, except to the extent the following provisions
28 may modify the default provisions thereunder:

29 (a) A member's annual benefit payable in any limitation
30 year from this retirement system shall in no event be
31 greater than the limit applicable at the annuity starting
32 date, as increased in subsequent years pursuant to Section
33 415(d) of the Internal Revenue Code and the regulations
34 thereunder.

35 (b) For purposes of this section, the "annual benefit"
36 means a benefit that is payable annually in the form of a
37 straight life annuity. Except as provided below, where a
38 benefit is payable in a form other than a straight life
39 annuity, the benefit shall be adjusted to an actuarially
40 equivalent straight life annuity that begins at the same
41 time as such other form of benefit, using factors prescribed
42 in the 415 limitation regulations, before applying the 415
43 limitations. No actuarial adjustment to the benefit shall
44 be made for: (1) Survivor benefits payable to a surviving
45 spouse under a qualified joint and survivor annuity to the
46 extent such benefits would not be payable if the member's
47 benefit were paid in another form; (2) benefits that are not
directly related to retirement benefits (such as a qualified
49 disability benefit, preretirement incidental death benefits,
50 and post-retirement medical benefits); or (3) the inclusion
51 in the form of benefit of an automatic benefit increase
52 feature, provided the form of benefit is not subject to
53 Section 417(e)(3) of the Internal Revenue Code and would
54 otherwise satisfy the limitations of this article, and the
55 plan provides that the amount payable under the form of
56 benefit in any limitation year shall not exceed the limits of
57 this article applicable at the annuity starting date, as
58 increased in subsequent years pursuant to Section 415(d)
59 of the Internal Revenue Code. For this purpose an
60 automatic benefit increase feature is included in a form of
61 benefit if the form of benefit provides for automatic,
62 periodic increases to the benefits paid in that form.
(c) Adjustment for benefit forms not subject to Section 417(e)(3).

The straight life annuity that is actuarially equivalent to the member’s form of benefit shall be determined under this subsection if the form of the member’s benefit is either: (1) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse); or (2) an annuity that decreases during the life of the member merely because of: (i) The death of the survivor annuitant (but only if the reduction is not below fifty percent of the benefit payable before the death of the survivor annuitant); or (ii) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Section 401(a)(11) of the Internal Revenue Code). The actuarially equivalent straight life annuity is equal to the greater of: (I) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member’s form of benefit; and (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member’s form of benefit, computed using a five percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date.

(d) Adjustment for benefit forms subject to Section 417(e)(3).

The straight life annuity that is actuarially equivalent to the member’s form of benefit shall be determined under this subsection if the form of the member’s benefit is other than a benefit form described in subsection (c) of this section. In this case, the actuarially equivalent straight life annuity shall be determined as
follows: The actuarially equivalent straight life annuity is equal to the greatest of: (1) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the interest rate specified in this retirement system and the mortality table (or other tabular factor) specified in this retirement system for adjusting benefits in the same form; (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five and one-half percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date; and (3) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate defined in Treasury Regulation §1.417(e)-1(d)(3) and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

(e) Benefits payable prior to age sixty-two. — (1) Except as provided in subdivisions (2) and (3) of this subsection, if the member's retirement benefits become payable before age sixty-two, the 415 dollar limitation prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that the limitation (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) which is equivalent to an annual benefit in the
amount of the applicable dollar limitation of Section
415(b)(1)(A) of the Internal Revenue Code (as adjusted
pursuant to Section 415(d) of the Internal Revenue Code)
begining at age sixty-two.

(2) The limitation reduction provided in subdivision (1)
of this subsection shall not apply if the member
commencing retirement benefits before age sixty-two is a
qualified participant. A qualified participant for this
purpose is a participant in a defined benefit plan
maintained by a state, or any political subdivision of a
state, with respect to whom the service taken into account
in determining the amount of the benefit under the defined
benefit plan includes at least fifteen years of service: (i) As
a full-time employee of any police or fire department
organized and operated by the state or political
subdivision maintaining the defined benefit plan to
provide police protection, fire-fighting services or
emergency medical services for any area within the
jurisdiction of such state or political subdivision; or (ii) as
a member of the armed forces of the United States.

(3) The limitation reduction provided in subdivision (1)
of this subsection shall not be applicable to preretirement
disability benefits or preretirement death benefits.

(4) For purposes of adjusting the 415 dollar limitation
for benefit commencement before age sixty-two or after
age sixty-five, no adjustment is made to reflect the
probability of a member's death: (i) After the annuity
starting date and before age sixty-two; or (ii) after age
sixty-five and before the annuity starting date.

(f) Adjustment when member has less than ten years of
participation. — In the case of a member who has less than
ten years of participation in the retirement system (within
the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)),
the 415 dollar limitation (as adjusted pursuant to Section
415(d) of the Internal Revenue Code and subsection (e) of
this section) shall be reduced by multiplying the otherwise
applicable limitation by a fraction, the numerator of
which is the number of years of participation in the plan
(or 1, if greater), and the denominator of which is ten.
This adjustment shall not be applicable to preretirement
disability benefits or preretirement death benefits.


1 The requirements of this section apply to any
distribution of a member's or beneficiary's interest and
take precedence over any inconsistent provisions of this
plan. This section applies to plan years beginning after
December 31, 1986. Notwithstanding anything in the plan
to the contrary, the payment of benefits under this article
shall be determined and made in accordance with Section
401(a)(9) of the Internal Revenue Code and its regulations.
For this purpose, the following provisions apply:

(a) The payment of benefits under the plan to any
member shall be distributed to him or her not later than
the required beginning date, or be distributed to him or
her commencing not later than the required beginning
date, in accordance with regulations prescribed under
Section 401(a)(9) of the Internal Revenue Code, over the
life of the member or over the lives of the member and his
or her beneficiary or over a period not extending beyond
the life expectancy of the member and his or her
beneficiary. Benefit payments under this section shall not
be delayed pending, or contingent on, receipt of an
application for retirement from the member.

(b) If a member dies after distribution to him or her has
commenced pursuant to this section but before his or her
entire interest in the plan has been distributed, then the
remaining portion of that interest shall be distributed at
least as rapidly as under the method of distribution being
used at the date of his or her death.
(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the plan shall be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, except as follows:

(1) If a member's interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of the beneficiary, commencing on or before December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) December 31 of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) December 31 of the calendar year following the calendar year in which the member died; or

(ii) December 31 of the calendar year following the calendar year in which the spouse died.

§8-22A-12. Direct rollovers.

Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this plan, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (A) Any
distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (B) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; and (C) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or to a qualified trust described in Section 401(a) or to an annuity contract described in Section 403(a) or 403(b) of the Internal Revenue Code that agrees to separately account for amounts transferred (including interest or earnings thereon), including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not includable.

(2) "Eligible retirement plan" means an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this plan, an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, an annuity contract described in Section 403(b) of the Internal Revenue Code, or a qualified plan described in Section
49 401(a) of the Internal Revenue Code that accepts the
distributee's eligible rollover distribution: Provided, That
in the case of an eligible rollover distribution to a
designated beneficiary (other than a surviving spouse) as
such term is defined in Section 402(c)(11) of the Internal
Revenue Code, an eligible retirement plan is limited to an
individual retirement account or individual retirement
annuity which meets the conditions of Section 402(c)(11)
of the Internal Revenue Code.

58 (3) "Distributee" means an employee or former
employee. In addition, the employee's or former
employee's surviving spouse and the employee's or former
employee's spouse or former spouse who is the alternate
payee under a qualified domestic relations order, as
defined in Section 414(p) of the Internal Revenue Code
with respect to governmental plans, are distributees with
regard to the interest of the spouse or former spouse. The
term "distributee" also includes a designated beneficiary
(other than a surviving spouse) as the term is defined in
Section 402(c)(11) of the Internal Revenue Code.

69 (4) "Direct rollover" means a payment by the plan to the
eligible retirement plan.

§8-22A-13. Rollovers and transfers to repay withdrawn
contributions.

1 (a) Notwithstanding any provision of this article to the
counter that would otherwise prohibit or limit rollovers
and plan transfers to this system, the plan shall accept the
following rollovers and plan transfers on behalf of a
member solely for the purpose of the repayment of
withdrawn or refunded contributions, in whole and in
part, with respect to a previous forfeiture of service credit
as otherwise provided in this article: (1) One or more
rollovers within the meaning of Section 408(d)(3) of the
Internal Revenue Code from an individual retirement
account described in Section 408(a) of the Internal
Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code;
(2) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (3) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (4) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: Provided, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with such policies, practices and procedures established by the board from time to time. For purposes of this section, “repayment of withdrawn or refunded contributions” means the payment into the retirement system of the funds required pursuant to this article for the reinstatement of service credit previously forfeited on account of any refund or withdrawal of contributions permitted in this article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

(b) Nothing in this section may be construed as permitting rollovers or transfers into this system or any other system administered by the retirement board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the repayment of withdrawn or refunded contributions except as otherwise permitted in this article.

1 This section describes when adjustment of a member's accrued benefit to reflect the difference in age, in years and months, between the member's annuity starting date and the date the member attains normal retirement age shall be made. This age adjustment, when required, shall be made based on the normal form of benefit and shall be the actuarial equivalent of the accrued benefit at the member's normal retirement age. The member shall receive the age adjusted retirement income in the normal form or in an actuarial equivalent amount in an optional form as provided under this article, subject to reduction if necessary to comply with the maximum benefit limitations of Section 415 of the Internal Revenue Code and section ten of this article. The first day of the calendar month following the month of birth shall be used in lieu of any birth date that does not fall on the first day of a calendar month.

18 (a) Normal retirement. – A member whose annuity starting date is the date the member attains normal retirement age is entitled to his or her accrued benefit without adjustment for age at commencement.

19 (b) Late retirement. – A member whose annuity starting date is later than the date the member attains normal retirement age shall receive retirement income payments in the normal form without adjustment for age at commencement, which is the benefit to which he or she is entitled according to his or her accrued benefit based on his or her final average salary and credited service at the time of his or her actual retirement and following the completion of an application for retirement as required by the board.

32 (c) Retirement benefits shall be paid monthly in an amount equal to one twelfth of the retirement income payments elected and at those times established by the
board. Notwithstanding any other provision of the plan, a member who is married on the annuity starting date will receive his or her retirement income payments in the form of a sixty-six and two-thirds percent joint and survivor annuity with his or her spouse unless prior to the annuity starting date the spouse waives the form of benefit.


1 Prior to the effective date of retirement, but not after that date, a member may elect to receive retirement income payments in the normal form, or the actuarial equivalent of the normal form from the following options:

(a) Option A – Contingent joint and survivor annuity. – A life annuity payable during the joint lifetime of the member and his or her beneficiary who must be a natural person with an insurable interest in the member’s life. On the death of the member, the benefit shall continue as a life annuity to the beneficiary in an amount equal to fifty percent, sixty-six and two-thirds percent, seventy-five percent or one hundred percent of the amount paid while both were living, as elected by the member. If the beneficiary dies first, the monthly amount of benefits may not be reduced, but shall be paid at the amount that was in effect before the death of the beneficiary. If the retiring member is married, the spouse shall sign a waiver of benefit rights if the beneficiary is to be other than the spouse.

(b) Option B – Ten years certain and life annuity. – A life annuity payable during the member’s lifetime but in any event for a minimum of ten years. If the member dies before the expiration of ten years, the remaining payments shall be made to a designated beneficiary, if any, or otherwise to the member’s estate.

§8-22A-16. Refunds to certain members on discharge or resignation; deferred retirement; forfeitures.
(a) Any member who terminates covered employment and is not eligible to receive disability benefits under this article is, by written request filed with the board, entitled to receive from the fund the member's accumulated contributions. Except as provided in subsection (b) of this section, on withdrawal, the member shall forfeit his or her accrued benefit and cease to be a member.

(b)(1) Any member who ceases employment in covered employment and active participation in this plan and who thereafter becomes reemployed in covered employment may not receive any credited service for any prior accumulated contributions withdrawn from the plan unless following his or her return to covered employment and active participation in this plan, the member redeposits in the fund the amount of the accumulated contributions withdrawn from previous covered employment, together with interest on the accumulated contributions at the rate determined by the board from the date of withdrawal to the date of redeposit. On repayment he or she shall receive the same credit on account of his or her former covered employment as if no refund had been made.

(2) The repayment authorized by this subsection shall be made in a lump sum within sixty months of the police officer's or firefighter's reemployment in covered employment.

(c) Every member who completes sixty months of regular contributory service may, on cessation of covered employment, either withdraw his or her accumulated contributions in accordance with this section or choose not to withdraw his or her accumulated contribution and receive retirement income payments, if eligible, on attaining normal retirement age.

(d) Notwithstanding any other provision of this article, forfeitures under the plan may not be applied to increase
§8-22A-17. Awards and benefits for disability—Duty related; exception during early period.

(a) Except as provided in subsection (a), section nine of this article, any member who after the effective date of this article and during covered employment: (1) Has been or becomes totally disabled by injury, illness or disease; and (2) the disability is a result of an occupational risk or hazard inherent in or peculiar to the services required of members; or (3) the disability was incurred while performing police officer or firefighter functions during either scheduled work hours or at any other time; and (4) in the opinion of two physicians after medical examination, at least one of whom shall be named by the board, the member is by reason of the disability not only unable to perform his or her previous work as a police officer or firefighter but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work, is entitled to receive and shall be paid from the fund in monthly installments during the lifetime of the member or, if sooner, until the member attains normal retirement age or until the disability sooner terminates, the compensation under this section. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration.

(b) If the member is totally disabled, the member shall receive ninety percent of his or her average full monthly compensation for the twelve-month period preceding the member's disability or the shorter period if the member has not worked twelve months.
(c) If the member remains totally disabled until attaining sixty-five years of age, the member shall then receive the retirement benefit provided in sections fourteen and fifteen of this article.

§8-22A-18. Awards and benefits for disability – Due to other causes; exception during early period.

(a) Except as provided in subsection (a), section nine of this article, any member who after the effective date of this article and during covered employment: {l} Has been or becomes totally disabled from any cause other than those set forth in section seventeen of this article and not due to vicious habits, intemperance or willful misconduct on his or her part; and (2) in the opinion of two physicians after medical examination, at least one of whom shall be named by the board, he or she is by reason of the disability not only unable to perform his or her previous work as a police officer or firefighter but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work, is entitled to receive and shall be paid from the fund in monthly installments during the lifetime of the member or, if sooner, until the member attains normal retirement age or until the disability sooner terminates, the compensation set forth in, either subsection (b) or (c) of this section.

(b) If the member is totally disabled, he or she shall receive sixty-six and two-thirds percent of his or her average monthly compensation for the twelve-month period preceding the disability, or the shorter period, if the member has not worked twelve months.

(c) If the member remains totally disabled until attaining sixty years of age, then the member shall receive
the retirement benefit provided in sections fourteen and fifteen of this article.

§8-22A-19. Same — Physical examinations; recertification; termination of disability.

The board may require any member who has applied for or is receiving disability benefits under this article to submit to a physical examination, mental examination or both, by a physician or physicians selected or approved by the board and may cause all costs incident to the examination and approved by the board to be paid from the fund. The costs may include hospital, laboratory, X-ray, medical and physicians' fees. A report of the findings of any physician shall be submitted in writing to the board for its consideration. If, from the report, independent information, or from the report and any hearing on the report, the board finds that the member is no longer totally disabled and is engaged in or is able to engage in substantial gainful employment, then the disability benefits shall cease.

The board shall require recertification annually for the first three years of disability and thereafter at the discretion of the board. For purposes of recertification the board may require a disability retirant to undergo a medical examination to be made by or under the direction of a physician designated by the board, or to submit a statement signed by the disability retirant's physician certifying continued disability, and may require the retirant to submit copies of annual income tax returns. If a retirant refuses to submit to medical examinations or to provide statements or returns requested for recertification, the board may discontinue disability until the retirant complies.

§8-22A-20. Awards and benefits to surviving spouse — When member dies in performance of duty, etc.; exception during early period.
(a) Except as provided in subsection (a), section nine of this article, the surviving spouse of any member who, after the effective date of this article while in covered employment, has died or dies by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members, while the member was or is engaged in the performance of his or her duties as a police officer or firefighter, or the surviving spouse of a member who dies from any cause while receiving benefits pursuant to section seventeen of this article, is entitled to receive and shall be paid from the fund benefits as determined in this section. To the surviving spouse annually, in equal monthly installments during his or her lifetime, an amount equal to the greater of: (1) Two thirds of the annual compensation received in the preceding twelve-month period by the deceased member; or (2) if the member dies after his or her normal retirement age, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a one hundred percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(b) Benefits for a surviving spouse received under this section, section twenty-two and section twenty-three of this article are in lieu of receipt of any other benefits under this article for the spouse or any other person or under the provisions of any other state retirement system based on the member's covered employment.


(a) If a member who has been a member for at least ten years, while in covered employment after the effective date of this article, has died or dies from any cause other than those specified in section twenty of this article and not due to vicious habits, intemperance or willful
misconduct on his or her part, the fund shall pay annually
in equal monthly installments to the surviving spouse
during his or her lifetime, a sum equal to the greater of: (1)
One half of the annual compensation received in the
preceding twelve-month employment period by the
deceased member; or (2) if the member dies after his or her
normal retirement age, the monthly amount which the
spouse would have received had the member retired the
day before his or her death, elected a one hundred percent
joint and survivor annuity with the spouse as the joint
annuitant, and then died. If the member is receiving
disability benefits under this article at the time of his or
her death, the amount of the average monthly
compensation which the member was receiving in the plan
year prior to the initial disability shall be substituted for
the annual compensation in subdivision (1) of this
subsection.

(b) Benefits for a surviving spouse received under this
section, or other sections of this article are in lieu of
receipt of any other benefits under this article for the
spouse or any other person or under the provisions of any
other state retirement system based on the member's
covered employment.

§8-22A-22. Additional death benefits and scholarships —
Dependent children.

(a) Except as provided in subsection (a), section nine of
this article, in addition to the spouse death benefits in this
article, the surviving spouse is entitled to receive and there
shall be paid to the spouse $100 monthly for each
dependent child.

(b) If the surviving spouse dies or if there is no surviving
spouse, the fund shall pay monthly to each dependent
child a sum equal to one hundred percent of the spouse's
entitlement under this article divided by the number of
dependent children. If there is neither a surviving spouse
nor a dependent child, the fund shall pay in equal monthly installments to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive: Provided, however, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, the accumulated contributions shall be paid to a named beneficiary or beneficiaries: Provided further, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

(c) Any person qualifying as a dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $6,000 per year, shall be paid from the fund to any university or college in this state or to any trade or vocational school or other entity in this state approved by the board to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the board on an approved form and under rules provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code which define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and
other requirements as necessary and not inconsistent with this section.


1 Except as provided in subsection (a), section nine of this article, any member who dies as a result of any service-related illness or injury after the effective date is entitled to a lump sum burial benefit of $5,000. If the member is married, the burial benefit shall be paid to the member's spouse. If the member is not married, the burial benefit shall be paid to the member's estate for the purposes of paying burial expenses, settling the member's final affairs, or both.


1 A surviving spouse is not entitled to receive simultaneous death benefits under this article as a result of the death of two or more members to whom the spouse was married. Any spouse who becomes eligible for a subsequent death benefit under this article while receiving a death benefit under this article shall receive the higher benefit, but not both.

§8-22A-25. Right to benefits not subject to execution, etc.; assignments prohibited; deductions for group insurance; setoffs for fraud; exception for certain domestic relations orders; assets exempt from taxes.

1 The right of a person to any benefit provided in this article shall not be subject to execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other process whatsoever, nor shall any assignment thereof be enforceable in any court except that the benefits or contributions under this system shall be subject to "qualified domestic relations orders" as that term is defined in Section 414(p) of the Internal Revenue
9 Code as applicable to governmental plans: Provided, That
10 should a member be covered by a group insurance or
11 prepayment plan participated in by a participating public
12 employer, and should he or she be permitted to, and elect
13 to, continue such coverage as a retirant, he or she may
14 authorize the board of trustees to have deducted from his
15 or her annuity the payments required of him or her to
16 continue coverage under such group insurance or
17 prepayment plan: Provided, however, That a participating
18 public employer shall have the right of setoff for any claim
19 arising from embezzlement by, or fraud of, a member,
20 retirant or beneficiary. The assets of the retirement
21 system are exempt from state, county and municipal taxes.

§8-22A-26. Fraud; penalties; and repayment.

1 Any person who knowingly makes any false statement or
2 who falsifies or permits to be falsified any record of the
3 retirement system in any attempt to defraud that system
4 is guilty of a misdemeanor and, on conviction thereof,
5 shall be punished by a fine not to exceed $1,000, by
6 confinement in jail not to exceed one year, or by both fine
7 and confinement. Any increased benefit received by any
8 person as a result of the falsification or fraud shall be
9 returned to the fund on demand by the board.

§8-22A-27. Credit toward retirement for member’s military
1 service; qualified military service.

1 (a) Each member shall receive months of credited service
2 for months served in active military duty not to exceed
3 twenty-four months: Provided, That any employee may
4 purchase as much as an additional twelve months of
5 service for time served in active military duty that
6 otherwise has not been credited, by paying the actuarial
7 reserve lump sum purchase amount within three years
8 after becoming vested.
(b) "Actuarial reserve lump sum purchase amount" means the purchase annuity rate multiplied by the purchase accrued benefit. The purchase annuity rate is the actuarial lump sum annuity factor calculated on a monthly basis based on the following actuarial assumptions: Interest rate of seven and one-half percent; mortality of the 1983 group annuity mortality table, male rates, applied on a unisex basis to all members; if purchase age is under age fifty, a deferred annuity factor with payments commencing at age fifty; and if purchase age is fifty or over, an immediate annuity factor with payments starting at the purchase age. The purchase accrued benefit is two and three-fourths percent times the purchase military service times the purchase average monthly salary. The purchase military service is the amount of military service being purchased by the employee as a fraction of a year up to a one year maximum. The purchase average monthly salary is the final average monthly salary of the employee at the beginning of the month which is three months prior to the purchase month as if the employee terminated employment on that date. The purchase month is the month in which the employee deposits the actuarial reserve lump sum purchase amount into the plan trust fund in full payment of the service being purchased. The purchase age is the attained age of the employee in years and completed months as of the first day of the purchase month.

(c) Members who are eligible to receive credited service for periods of active military duty must substantiate to the retirement board:

(1) That the member has served one or more periods of active duty as substantiated by a federal form DD-214;

(2) That the member has been honorably discharged from active military duty as substantiated by a federal form DD-214; and
(3) That the member is receiving no benefits from any other governmental retirement system, except those benefits provided by federal law, for his or her active military duty.

(d) Any service credit allowed under this section may be credited one time only for each municipal police officer or municipal firefighter, regardless of any changes in job title or responsibilities:

(e) Notwithstanding any provision of this section to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

(f) Any contribution under this section to purchase service for time served in active military duty must satisfy the special limitation rules described in Section 415(n) of the Internal Revenue Code to the extent it is considered permissive service credit, and shall be automatically reduced, limited, or required to be paid over multiple years (consistent with the time limits under this section for making such contributions) if necessary to ensure such compliance. To the extent the purchased service is qualified military service within the meaning of Section 414(u) of the Internal Revenue Code, the limitations of Section 415 of the Internal Revenue Code shall be applied to the purchase as described in Section 414(u)(1)(B) of the Internal Revenue Code.
79 (g) The retirement board may propose legislative rules
80 for promulgation in accordance with the provisions of
81 article three, chapter twenty-nine-a of this code to
82 administer the provisions of this section.

83 (h) Notwithstanding the preceding provisions of this
84 section, contributions, benefits and service credit with
85 respect to qualified military service shall be provided in
86 accordance with Section 414(u) of the Internal Revenue
87 Code. For purposes of this section, "qualified military
88 service" has the same meaning as in Section 414(u) of the
89 Internal Revenue Code.

§8-22A-28. How a municipality or municipal subdivision
  becomes a participating public employer; duty
  to request referendum on Social Security
  coverage.

1 (a) Subject to section sixteen, article twenty-two of this
2 chapter, any municipality or municipal subdivision
3 employing municipal police officers or firefighters may by
4 a majority of the members of its governing body eligible to
5 vote, elect to become a participating public employer and
6 thereby include its police officers and firefighters in the
7 membership of the plan. The clerk or secretary of each
8 municipality or municipal subdivision electing to become
9 a participating public employer shall certify the
determination of the municipality or municipal
subdivision by corporate resolution to the Consolidated
Public Retirement Board within ten days from and after
the vote of the governing body. Separate resolutions are
required for municipal police officers and municipal
firefighters. Once a municipality or municipal subdivision
elects to participate in the plan, the action is final and it
may not, at a later date, elect to terminate its participation
in the plan.

19 (b) After April 1, 2010, and before July 1, 2010, the
20 participating employers shall jointly submit a plan to the
Section 21. State Auditor, pursuant to section five, article seven, chapter five of this code, to extend Social Security benefits to members of the retirement system.

§8-22A-29. Effective date; special starting date for benefits; provisions governing health care benefits for retirees age fifty to fifty-five.

(a) The effective date of this article is January 1, 2010. No payout of any benefits may be made by the retirement system to any person prior to January 1, 2013, except as provided in subsection (a), section nine of this article.

(b) The Director of the Public Employees Insurance Agency shall include in the insurance plan document filed in the office of the Secretary of State as 151. CSR 1 provisions governing health insurance benefits for retirees under the plan who are enrolled by their employers in insurance provided by the Public Employees Insurance Agency.

§8-22A-30. Limitation of employer liability.

No municipality or municipal subdivision which has timely met all of its obligations under this article is liable for any payments or contributions to the retirement plan which are owed to the plan by another participating employer.


If the retirement system is terminated or contributions are completely discontinued, the rights of all members to benefits accrued or contributions made to the date of the termination or discontinuance, to the extent then funded, are not forfeited.


Notwithstanding all other provisions relating to this article and article twenty-two of this chapter, any police
3 officer or firefighter hired by a participating public
4 employer on or after June 1, 2009, and before January 1,
5 2010, who received notice at the time of employment that
6 he or she may be placed in a new retirement system
7 created by legislation and who has been enrolled in but
8 received no benefits from a municipal policemen's or
9 firemen's pension and relief fund shall, if permitted by
10 applicable federal law, be enrolled in the Municipal Police
11 Officers and Firefighters Retirement System upon accep-
12 tance by the Consolidated Public Retirement Board of the
13 resolution of the municipality required by section twenty-
14 eight of this article. Employee and employer contributions
15 made by or on behalf of the employee to the municipal
16 pension and relief fund pursuant to article twenty-two of
17 this chapter shall be transferred within sixty days to the
18 retirement system created in this article and the employee
19 subject to the transfer shall receive service credit for time
20 worked while a member of the municipal pension and
21 relief fund.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14d. Additional fire and casualty insurance premium
tax; allocation of proceeds; effective date.

1 (a) (1) For the purpose of providing additional revenue
2 for municipal policemen's and firemen's pension and relief
3 funds and the Teachers Retirement System Reserve Fund
4 and for volunteer and part-volunteer fire companies and
5 departments, there is hereby levied and imposed an
6 additional premium tax equal to one percent of taxable
7 premiums for fire insurance and casualty insurance
8 policies. For purposes of this section, casualty insurance
9 does not include insurance on the life of a debtor pursuant
10 to or in connection with a specific loan or other credit
11 transaction or insurance on a debtor to provide indemnity
12 for payments becoming due on a specific loan or other
credit transaction while the debtor is disabled as defined in the policy.

(2) All moneys collected from this additional tax shall be received by the commissioner and paid by him or her into a special account in the State Treasury, designated the Municipal Pensions and Protection Fund: Provided, That on or after January 1, 2010, the commissioner shall pay ten percent of the amount collected to the Teachers Retirement System Reserve Fund created in section eighteen, article seven-a, chapter eighteen of this code, twenty-five percent of the amount collected to the Fire Protection Fund created in section thirty-three of this article for allocation by the Treasurer to volunteer and part-volunteer fire companies and departments and sixty-five percent of the amount collected to the Municipal Pensions and Protection Fund: Provided, however, That upon notification by the Municipal Pensions Oversight Board pursuant to the provisions of section eighteen-b, article twenty-two, chapter eight of this code, on or after January 1, 2010, or as soon thereafter as the Municipal Pensions Oversight Board is prepared to receive the funds, sixty-five percent of the amount collected by the commissioner shall be deposited in the Municipal Pensions Security Fund created in section eighteen-b, article twenty-two, chapter eight of this code. The net proceeds of this tax after appropriation thereof by the Legislature is distributed in accordance with the provisions of this section, except for distribution from proceeds pursuant to subsection (d), section eighteen-a, article twenty-two, chapter eight of this code.

(b) (1) Before the first day of August of each year, the treasurer of each municipality in which a municipal policemen's or firemen's pension and relief fund is established shall report to the State Treasurer the average monthly number of members who worked at least one hundred hours per month and the average monthly
number of retired members of municipal policemen's or firemen's pension and relief fund or the Municipal Police Officers and Firefighters Retirement System during the preceding fiscal year: Provided, That beginning in the year 2010 and continuing thereafter, the report shall be made to the oversight board created in section eighteen-a, article twenty-two, chapter eight of this code. These reports received by the oversight board shall be provided annually to the State Treasurer by September 1.

(2) Before the first day of September of each calendar year, the State Treasurer, or the Municipal Pensions Oversight Board, once in operation, shall allocate and authorize for distribution the revenues in the Municipal Pensions and Protection Fund which were collected during the preceding calendar year for the purposes set forth in this section. Before the first day of September of each calendar year and after the Municipal Pensions Oversight Board has notified the Treasurer and commissioner pursuant to section eighteen-b, article twenty-two, chapter eight of this code, the Municipal Pensions Oversight Board shall allocate and authorize for distribution the revenues in the Municipal Pensions Security Fund which were collected during the preceding calendar year for the purposes set forth in this section. In any year the actuarial report required by section twenty, article twenty-two, chapter eight of this code indicates no actuarial deficiency in the municipal policemen's or firemen's pension and relief fund, no revenues may be allocated from the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund to that fund. The revenues from the Municipal Pensions and Protection Fund shall then be allocated to all other pension and relief funds which have an actuarial deficiency.

(3) The moneys, and the interest earned thereon, in the Municipal Pensions and Protection Fund allocated to
volunteer and part-volunteer fire companies and departments shall be allocated and distributed quarterly to the volunteer fire companies and departments. Before each distribution date, the State Fire Marshal shall report to the State Treasurer the names and addresses of all volunteer and part-volunteer fire companies and departments within the state which meet the eligibility requirements established in section eight-a, article fifteen, chapter eight of this code.

(c)(1) Each municipal pension and relief fund shall have allocated and authorized for distribution a pro rata share of the revenues allocated to municipal policemen's and firemen's pension and relief funds based on the corresponding municipality's average monthly number of police officers and firefighters who worked at least one hundred hours per month during the preceding fiscal year. On and after July 1, 1997, from the growth in any moneys collected pursuant to the tax imposed by this section and interest thereon there shall be allocated and authorized for distribution to each municipal pension and relief fund, a pro rata share of the revenues allocated to municipal policemen's and firemen's pension and relief funds based on the corresponding municipality's average number of police officers and firefighters who worked at least one hundred hours per month and average monthly number of retired police officers and firefighters. For the purposes of this subsection, the growth in moneys collected from the tax collected pursuant to this section is determined by subtracting the amount of the tax collected during the fiscal year ending June 30, 1996, from the tax collected during the fiscal year for which the allocation is being made and interest thereon. All moneys received by municipal pension and relief funds under this section may be expended only for those purposes described in sections sixteen through twenty-eight, inclusive, article twenty-two, chapter eight of this code.
(2) Each volunteer fire company or department shall receive an equal share of the revenues allocated for volunteer and part-volunteer fire companies and departments.

(3) In addition to the share allocated and distributed in accordance with subdivision (1) of this subsection, each municipal fire department composed of full-time paid members and volunteers and part-volunteer fire companies and departments shall receive a share equal to the share distributed to volunteer fire companies under subdivision (2) of this subsection reduced by an amount equal to the share multiplied by the ratio of the number of full-time paid fire department members who are also members of a municipal firemen's pension and relief fund or the Municipal Police Officers and Firefighters Retirement System to the total number of members of the fire department.

(d) The allocation and distribution of revenues provided for in this section are subject to the provisions of section twenty, article twenty-two, and sections eight-a and eight-b, article fifteen, chapter eight of this code.

ARTICLE 12C. SURPLUS LINE.

§33-12C-7. Surplus lines tax.

(a) In addition to the full amount of gross premiums charged by the insurer for the insurance, every person licensed pursuant to section eight of this article shall collect and pay to the commissioner a sum equal to four percent of the gross premiums and gross fees charged, less any return premiums, for surplus lines insurance provided by the licensee pursuant to the license. Where the insurance covers properties, risks or exposures located or to be performed both in and out of this state, the sum payable shall be computed on that portion of the gross premiums allocated to this state pursuant to subsection (g) of this
section less the amount of gross premiums allocated to this
state and returned to the insured due to cancellation of
policy. The tax on any portion of the premium unearned
at termination of insurance having been credited by the
state to the licensee shall be returned to the policyholder
directly by the surplus lines licensee or through the
producing broker, if any.

(b) The individual insurance producer may not:

(1) Pay directly or indirectly the tax or any portion
thereof, either as an inducement to the policyholder to
purchase the insurance or for any other reason; or

(2) Rebate all or part of the tax or the surplus lines
licensee's commission, either as an inducement to the
policyholder to purchase the insurance or for any reason.

(c) The surplus lines licensee may charge the prospective
policyholder a fee for the cost of underwriting, issuing,
processing, inspecting, service or auditing the policy for
placement with the surplus lines insurer if:

(1) The service is required by the surplus lines insurer;

(2) The service is actually provided by the individual
insurance producer or the cost of the service is actually
incurred by the surplus lines licensee; and

(3) The provision or cost of the service is reasonable,
documented and verifiable.

(d) The surplus lines licensee shall make a clear and
conspicuous written disclosure to the policyholder of:

(1) The total amount of premium for the policy;

(2) Any fee charged;

(3) The total amount of any fee charged; and

(4) The total amount of tax on the premium and fee.
(e) The clear and conspicuous written disclosure required by subdivision (4) of this subsection is subject to the record maintenance requirements of section eight of this article.

(f) This tax is imposed for the purpose of providing additional revenue for municipal policemen’s and firemen’s pension and relief funds and additional revenue for volunteer and part-volunteer fire companies and departments. This tax is required to be paid and remitted, on a calendar year basis and in quarterly estimated installments due and payable on or before the twenty-fifth day of the month succeeding the close of the quarter in which they accrued, except for the fourth quarter, in respect of which taxes shall be due and payable and final computation of actual total liability for the prior calendar year shall be made, less credit for the three quarterly estimated payments prior made, and filed with the annual return to be made on or before March 1 of the succeeding year. Provisions of this chapter relating to the levy, imposition and collection of the regular premium tax are applicable to the levy, imposition and collection of this tax to the extent that the provisions are not in conflict with this section.

All taxes remitted to the commissioner pursuant to this subsection shall be paid by him or her into a special account in the State Treasury, designated Municipal Pensions and Protection Fund, or pursuant to section eighteen-b, article twenty-two, chapter eight of this code, the Municipal Pensions Security Fund, and after appropriation by the Legislature, shall be distributed in accordance with the provisions of subsection (c), section fourteen-d, article three of this chapter. The surplus lines licensee shall return to the policyholder the tax on any unearned portion of the premium returned to the policyholder because of cancellation of policy.
If a surplus lines policy procured through a surplus lines licensee covers properties, risks or exposures only partially located or to be performed in this state, the tax due shall be computed on the portions of the premiums which are attributable to the properties, risks or exposures located or to be performed in this state. In determining the amount of premiums taxable in this state, all premiums written, procured or received in this state shall be considered written on properties, risks or exposures located or to be performed in this state, except premiums which are properly allocated or apportioned and reported as taxable premiums of a reciprocal state. In no event shall the tax payable to this state be less than the tax due pursuant to subsection (h) of this section; provided, however, in the event that the amount of tax due under this provision is less than $50 in any jurisdiction, it shall be payable in the jurisdiction in which the affidavit required in section eleven is filed. The commissioner may, at least annually furnish to the commissioner of a reciprocal state, as defined in subsection (q), section three of this article, a copy of all filings reporting an allocation of taxes as required by this subsection.

In determining the amount of gross premiums taxable in this state for a placement of surplus lines insurance covering properties, risks or exposures only partially located or to be performed in this state, the tax due shall be computed on the portions of the premiums which are attributable to properties, risks or exposures located or to be performed in this state and which relates to the kinds of insurance being placed as determined by reference to the model allocation schedule and reporting form.

If a policy covers more than one classification:

(A) For any portion of the coverage identified by a classification on the allocation schedule, the tax shall be
computed by using the allocation schedule for the corresponding portion of the premium;

(B) For any portion of the coverage not identified by a classification on the allocation schedule, the tax shall be computed by using an alternative equitable method of allocation for the property or risk;

(C) For any portion of the coverage where the premium is indivisible, the tax shall be computed by using the method of allocation which pertains to the classification describing the predominant coverage.

(2) If the information provided by the surplus lines licensee is insufficient to substantiate the method of allocation used by the surplus lines licensee, or if the commissioner determines that the licensee's method is incorrect, the commissioner shall determine the equitable and appropriate amount of tax due to this state as follows:

(A) By use of the allocation schedule where the risk is appropriately identified in the schedule;

(B) Where the allocation schedule does not identify a classification appropriate to the coverage, the commissioner may give significant weight to documented evidence of the underwriting bases and other criteria used by the insurer. The commissioner may also consider other available information to the extent sufficient and relevant, including the percentage of the insured's physical assets in this state, the percentage of the insured's sales in this state, the percentage of income or resources derived from this state, and the amount of premium tax paid to another jurisdiction for the policy.

(i) Collection of tax.

If the tax owed by a surplus lines licensee under this section has been collected and is not paid within the time
prescribed, the same shall be recoverable in a suit brought by the commissioner against the surplus lines licensee. The commissioner may charge interest for any unpaid tax, fee, financial assessment or penalty, or portion thereof: Provided, That interest may not be charged on interest. Interest shall be calculated using the annual rates which are established by the Tax Commissioner pursuant to section seventeen-a, article ten, chapter eleven of this code and shall accrue daily.
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 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 31st Day of December, 2009.

Governor