WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2011

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 544

(Senators Foster, Wells, McCabe, Wills, Edgell, Snyder, Palumbo, Yost, Klempa and Kessler (Acting President), original sponsors)

[Passed March 11, 2011; in effect from passage.]
AN ACT to amend and reenact §8-22-16 and §8-22-20 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8-22A-28 of said code, all relating to municipal policemen's and firemen's pension and relief funds and Municipal Police Officers and Fire Fighters Retirement System; providing additional method for municipalities to finance policemen's and firemen's pension and relief funds; authorizing Municipal Pensions Oversight Board to contract for actuarial services without certain statutory restrictions; requiring certain information in certain actuarial reports; and extending time to submit plan to extend Social Security benefits to certain individuals.

Be it enacted by the Legislature of West Virginia:

That §8-22-16 and §8-22-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8-22A-28 of said code be amended and reenacted, all to read as follows:
CHAPTER 8. MUNICIPAL CORPORATIONS.

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

§8-22-16. 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 arithme-
tic 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 either 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), or the conservation method as provided in subsection (f), 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.

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

(a) The West Virginia Municipal Pensions Oversight Board shall contract with or employ a qualified actuary to annually prepare an actuarial valuation report on each pension and relief fund. The selection of contract vendors to provide actuarial services, including the reviewing actuary as provided in subsection (c) of this section, shall be by competitive bid process but is specifically exempt from purchasing provisions of article three, chapter five-a of this code. The expense of the actuarial report shall be paid from moneys in the Municipal Pensions Security Fund. Uses of the actuarial valuations from the qualified actuary shall include, but not be limited to, determining a municipal policemen's or firemen's pension and relief fund'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 quali-
fied 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; (8) an
evaluation of each plan using the alternative funding
method, to assess advantages of changing to other funding
methods as provided in this article; and (9) any other
information required in section twenty-a of this article or
that the qualified actuary feels is necessary or would be
useful in fully and fairly disclosing the actuarial condition of
the fund.

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

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

(3) Notwithstanding any other provision of this section or
article to the contrary, each municipality shall contribute
annually to the fund an amount which may not be less than
the normal cost, as determined by the actuarial report.

(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 review-
ing actuary to perform an actuarial audit of the work
performed by the qualified actuary no less than once every
seven years.
(d) For purposes of this section, the term "qualified actuary" means only an actuary who is a member of the Society of Actuaries or the American Academy of Actuaries. The qualified actuary shall be designated a fiduciary and shall discharge his or her duties with respect to a fund solely in the interest of the members and members' beneficiaries of that fund. In order for the standards of this section to be met, the qualified actuary shall certify that the actuarial valuation report is complete and accurate and that in his or her opinion the technique and assumptions used are reasonable and meet the requirements of this section.

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

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

(3) A municipality choosing the optional method of financing 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 chap-

ter.

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

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

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

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

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

§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 chapter, any municipality or municipal subdivision employing municipal police officers or firefighters may by a majority of the members of its governing body eligible to vote, elect to become a participating public employer and thereby include its police officers and firefighters in the membership of the plan. The clerk or secretary of each municipality or municipal subdivision electing to become 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.

(b) On or before October 1, 2015, the participating employers shall jointly submit a plan to the State Auditor, pursuant to section five, article seven, chapter five of this code, to extend Social Security benefits to members of the retirement system.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Vice Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

Acting President of the Senate

Speaker of the House of Delegates

The within ........ approval ........ the ........

Day of ...................................................., 2011.

Governor
PRESENTED TO THE GOVERNMENT

April 23, 2011

[Signature]

Time