WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2012

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4489

(By Delegates Pethtel, Duke, Guthrie, Canterbury, Stowers and Givens)

Passed March 9, 2012

To Take Effect Ninety Days From Passage
AN ACT to amend and reenact §8-22-18a, §8-22-19a and §8-22-25 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §8-22-18c, all relating to municipal policemen and firemen pensions; providing powers and duties of the West Virginia Municipal Oversight Board; requiring certain notice of lawsuit to the West Virginia Municipal Oversight Board; limiting certain court orders under certain circumstances; clarifying refunds to members; and clarifying circumstances in which a member may retire when the member’s service has been interrupted by duty with the Armed Forces of the United States.

Be it enacted by the Legislature of West Virginia:

That §8-22-18a, §8-22-19a and §8-22-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §8-22-18c, all to read as follows:
ARTICLE 22. RETIREMENT BENEFITS GENERALLY; 
POLICEMEN'S PENSION AND RELIEF 
FUND; FIREMEN'S PENSION AND 
RELIEF FUND; PENSION PLANS FOR 
EMPLOYEES OF WATERWORKS 
SYSTEM, SEWERAGE SYSTEM OR 
COMBINED WATERWORKS AND 
SEWERAGE SYSTEM.

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

(a) (1) The West Virginia Municipal Pensions Oversight 
Board, established in 2009, is hereby continued as a public 
body corporate 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, ensuring 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. Further, the oversight board 
may, in its discretion, investigate the actions or practices of 
municipal boards of trustees or of their administrators or
employees that, in the oversight board’s judgment, have the
potential to threaten the security or fiscal integrity of the
pension funds and the boards of trustees, administrators and
employees shall cooperate with the oversight board in any
investigation. Regardless of whether it has previously
conducted an investigation, the oversight board may initiate
or intervene in legal actions to challenge or prevent any
action or practice which, in the oversight board’s judgment
has the potential to threaten the security or fiscal integrity of
the pension funds. 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. The failure
of the oversight board to investigate or initiate legal actions
regarding the actions or practices of municipal boards of
trustees, their administrators or employees does not render
the oversight board liable for the actions or practices.
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. Except as
otherwise provided herein, 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
classified-exempt 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 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.

(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.

(b) The oversight board has the power to:

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

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

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

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

(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
(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. The oversight board is exempt from provisions of article three, chapter five-a of this code for the purpose of contracting for actuarial services, including the services of a reviewing actuary.

(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
127 shall fix their duties and compensation. The compensation of
128 the executive director shall be subject to approval of the
129 Governor. Except for any special appropriation as provided
130 in subsection (b) of this section, all personnel and other
131 expenses of the board shall be paid from revenue collected
132 and allocated for municipal policemen's or municipal
133 firemen's pension and relief funds pursuant to section
134 fourteen-d, article three, chapter thirty-three of this code and
135 distributed through the Municipal Pensions and Protection
136 Fund or the Municipal Pensions Security Fund created in
137 section eighteen-b of this article. Expenses during the initial
138 year of the board's operation shall be from proceeds of the
139 allocation for the municipal pensions and relief funds.
140 Expenditures in years thereafter shall be by appropriation
141 from the Municipal Pensions Security Fund. Money
142 allocated for municipal policemen's and firemen's pension
143 and relief funds to be distributed from the Municipal
144 Pensions and Protection Fund or the Municipal Pensions
145 Security Fund shall be first allocated to pay expenses of the
146 oversight board and the remainder in the fund distributed
147 among the various municipal pension and relief funds as
148 provided in section fourteen-d, article three, chapter thirty-
149 three of this code. The board is exempt from the provisions
150 of sections seven and eleven, article three, chapter twelve of
151 this code relating to compensation and expenses of members,
152 including travel expenses.

153 (e) Members of the oversight board shall serve the board
154 without compensation for their services: Provided, That no
155 public employee member may suffer any loss of salary or
156 wages on account of his or her service on the board. Each
157 member of the board shall be reimbursed, on approval of the
158 board, for any necessary expenses actually incurred by the
159 member in carrying out his or her duties. All reimbursement
160 of expenses shall be paid out of the Municipal Pensions
161 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.

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

In any legal action in which a municipal policemen’s or firemen’s pension and relief fund, or the fund’s board of trustees, employee or administrator, is named as a party, the plaintiff or petitioner shall serve a copy of the complaint or petition upon the oversight board by certified mail, return receipt requested, within seven days of filing the legal action. Until proof of service is filed with the clerk of the court in which the action was filed, and for sixty days after the filing of the proof of service, no order may be entered by the court that directly or indirectly requires the expenditure or other disposition of pension funds or that determines the eligibility or entitlement of any member to any pension benefit payable from the pension and relief fund: Provided, That the court may enter such temporary or interim orders as may be needed to preserve and protect the assets of the fund. In any legal action involving a municipal policemen’s or firemen’s pension and relief fund the oversight board is entitled to intervene for the purpose of preserving the security or fiscal integrity of the pension fund.
§8-22-19a. Refunds of member contributions.

After January 1, 2010, any member of a paid police department or fire department who is removed or discharged or who before retirement on any retirement pension or disability pension severs his or her connection with said department, whether or not consecutive, shall, upon request, be refunded all pension and relief fund deductions made from the member’s salary or compensation, but without interest from the fund. The refund shall come from the accounts which originally received the member deductions. For municipalities using the conservation method of funding, the member contributions are to be refunded from both the Municipal Pension and Relief Fund and the city benefit account, in the exact percentages that were initially deposited to the respective accounts. Any member who receives a refund and subsequently wishes to reenter his or her department, shall not be allowed to reenter the department unless the police officer or fire fighter repays to the pension and relief fund all sums refunded to him or her in a lump sum at the date of reentry, or by monthly payroll deductions within thirty-six months from the date he or she reenters the department, with interest at the rate of eight percent per annum. In the event such refund is made prior to January 1, 1981, and such member subsequently reenters the department such police officer or firefighter shall be allowed membership in such pension and relief fund; however, no credit may be allowed such member for any former service, unless such member repays to the pension and relief fund all sums refunded to the member within one year from the date the member reenters the department with interest at the rate of eight percent per annum: Provided, That for such member who receives such refund prior to January 1, 1980, interest may not be charged for more than three years. Any probationary member of a paid police or fire department who is not given an absolute appointment at the end of the member’s probationary period shall, upon request, be

36 refunded all pension and relief fund deductions made from the
37 member’s salary or compensation, but without interest. Any
38 member contribution made in fiscal years beginning on July 1,
39 1981 and thereafter by any members of such fund, which is in
40 excess of the percentages, required in section nineteen of this
41 article of such member’s salary or compensation as defined in
42 section sixteen of this article shall be refunded with eight percent
43 interest to such member upon completion of the calculation of
44 the member’s retirement benefit.


(a) Any member of a paid police or fire department who
1 is entitled to a retirement pension hereunder, and who has
2 been in the honorable service of such department for twenty
3 years, may, upon written application to the board of trustees,
4 be retired from all service in such department without
5 medical examination or disability. On such retirement the
6 board of trustees shall authorize the payment of annual
7 retirement pension benefits commencing upon the member’s
8 retirement or upon the member’s attaining the age of fifty
9 years, whichever is later, payable in twelve monthly
10 installments for each year of the remainder of the member’s
11 life, in an amount equal to sixty percent of such member’s
12 average annual salary or compensation received during the
13 three twelve-consecutive-month periods of employment with
14 such department in which such member received the
15 member’s highest salary or compensation while a member of
16 the department, or an amount of $500 per month, whichever
17 is greater.

(b) Any member of any such department who is entitled
19 to a retirement pension under the provisions of subsection (a)
20 of this section and who has been in the honorable service of
21 such department for more than twenty years at the time of the
22 member’s retirement shall receive, in addition to the sixty
23 percent authorized in said subsection (a):
(1) Two additional percent, to be added to the sixty percent for each of the first five additional years of service completed at the time of retirement in excess of twenty years of service up to a maximum of seventy percent; and

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

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

c) Any member of any such department whose service has been interrupted by duty with the Armed Forces of the United States as provided in section twenty-seven of this article prior to July 1, 1981, shall be eligible for retirement pension benefits immediately upon retirement, regardless of the member's age, if the member shall otherwise be eligible for such retirement pension benefits. In no event are provisions of this subsection to be interpreted to permit retirement before age 50 unless the interruption of the member's service by duty with the Armed Forces of the United States actually occurred before July 1, 1981. The amendment made to this subsection during the 2012 Regular Session of the Legislature is not for the purpose of changing the existing law regarding benefits provided to veterans for military service prior to July 1, 1981, but to further clarify that the provisions of this section and any previous enactments of this section do not make a member eligible for retirement before age 50 for a member's service with the Armed Forces of the United States on or after July 1, 1981.

Any member or previously retired member of any such department who has served in active duty with the Armed Forces of the United States as described in section twenty-
seven of this article, whether prior to or subsequent to
becoming a member of a paid police or fire department
covered by the provisions of this article, shall receive, in
addition to the sixty percent authorized in subsection (a) of
this section and the additional percent credit authorized in
subsection (b) of this section, one additional percent for each
year so served in active military duty, up to a maximum of
four additional percent. In no event, however, may the total
benefit granted to any member exceed seventy-five percent
of the member's annual average salary calculated in
accordance with subsection (a) of this section.

(d) Any member of a paid police for fire department shall
be retired at the age of sixty-five years in the manner
provided in this subsection. When a member of the paid
police or fire department reaches the age of sixty-five years,
the said board of trustees shall notify the mayor of this fact,
within thirty days of such member's sixty-fifth birthday. The
mayor shall cause such sixty-five-year-old member of the
paid police or fire department to retire within a period of not
more than thirty additional days. Upon retirement under the
provisions of this subsection, such member shall receive
retirement pension benefits payable in twelve monthly
installments for each year of the remainder of the member's
life in an amount equal to sixty percent of such member's
average annual salary or compensation received during the
three twelve-consecutive-month periods of employment with
such department in which such member received the
member's highest salary or compensation while a member of
the department, or an amount of $500 per month, whichever
is greater. If such member has been employed in said
department for more than twenty years, the provisions of
subsection (b) of this section shall apply.

(e) It shall be the duty of each member of a paid police or
fire department at the time a fund is hereafter established to
furnish the necessary proof of the member's date of birth to
the said board of trustees, as specified in section twenty-three
of this article, within a reasonable length of time, said length
of time to be determined by the said board of trustees. Then
the board of trustees and the mayor shall proceed to act in the
manner provided in subsection (d) of this section and shall
cause all members of the paid police or fire department who
are over the age of sixty-five years to retire in not less than
sixty days from the date the fund is established. Upon
retirement under the provisions of this subsection (e), such
member, whether the member has been employed in said
department for twenty years or not, shall receive retirement
pension benefits payable in twelve monthly installments for
each year of the remainder of the member’s life in an amount
equal to sixty percent of such member’s average annual salary
or compensation received during the three twelve-
consecutive-month periods of employment with such
department in which such member received the member’s
highest salary or compensation while a member of the
department, or an amount of $500 per month, whichever is
greater. If such member has been employed in said
department for more than twenty years, the provisions of
subsection (b) of this section shall apply.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

[Signatures]

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within bill is disapproved this the 1st day of March, 2012.

Governor
PRESENTED TO THE GOVERNOR

MAR 15 2012

Time 9:50 am