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WEST VIRGINIA LEGISLATURE

SECRETARY OF STATE

EIGHTIETH LEGISLATURE

REGULAR SESSION, 2012



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 634

(SENATOR FOSTER, ORIGINAL SPONSOR)

[PASSED MARCH 10, 2012; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB634 (veto)

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Senate Bill No. 634

(SENATOR FOSTER, *original sponsor*)

[Passed March 10, 2012; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-13-13a; and to amend and reenact §8-22-20 of said code, all relating to authorizing certain municipalities with policemen's pension and relief funds or firemen's pension and relief funds to impose by ordinance a limited public safety assessment fee to be used to reduce actuarially accrued liabilities of municipal policemen's or firemen's pension and relief funds; and minimum standards for annual municipal contributions to the pension and relief funds.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §8-13-13a; and that §8-22-20 of said code be amended and reenacted, all to read as follows:

ARTICLE 13. TAXATION AND FINANCE.

§8-13-13a. Special public safety assessments for reduction of unfunded liabilities of municipal policemen's and firemen's pension and relief funds.

1 (a) Notwithstanding any charter provisions to the
2 contrary, any municipality which participates in a police-
3 men's pension and relief fund or a firemen's pension and
4 relief fund, pursuant to article twenty-two of this chapter,
5 and has adopted the standard, optional or conservation
6 method of financing those pension plans as provided in
7 section twenty, article twenty-two of this chapter, may
8 provide by ordinance for a public safety assessment fee, the
9 revenues from which shall be dedicated to reducing any
10 unfunded actuarial liability of a policemen's or firemen's
11 pension and relief fund. The assessment shall be based on the
12 square footage of structures, shall not exceed an annual
13 assessment of two cents per square foot, and shall be for the
14 purpose of reducing the unfunded liability of a policemen's
15 or firemen's pension and relief fund.

16 (b) Any municipality which has selected the conservation
17 method of financing its municipal policemen's or firemen's
18 pension and relief fund, as authorized in subsection (f),
19 section twenty, article twenty-two of this chapter, shall
20 dedicate any proceeds from the assessment authorized in this
21 section, to the trust of either the policemen's or firemen's
22 pension fund, or allocate the proceeds in a manner chosen by
23 the municipality between the plan trusts, to remain in the
24 trust or trusts and accumulate investment return as provided
25 in subsection (f), section twenty, article twenty-two of this
26 chapter.

27 (c) Any municipality which has selected the standard or
28 optional method of financing its municipal policemen's or
29 firemen's pension and relief fund, as authorized in section
30 twenty, article twenty-two of this chapter, shall dedicate any
31 proceeds from the assessment authorized in this section to
32 either of the pension and relief funds or allocate the proceeds
33 in a manner chosen by the municipality between the plan
34 trusts. The payments into the plan trusts from assessment
35 proceeds are to be treated as additional payments and shall
36 not be included as another income source toward meeting the
37 minimum standard for annual municipality contributions as
38 established in subsections (c)(1) or (e)(2), section twenty,
39 article twenty-two of this chapter, as applicable.

40 (d) A municipality does not have a lien on any property
41 as security for payments due under subsection (a) of this
42 section except as provided in subsection (e) of this section.

43 (e) A municipality may enact an ordinance, pursuant to
44 this section, permitting it to file a lien on real property
45 located within the municipal corporate limits for unpaid and
46 delinquent public safety assessment fees. The ordinance shall
47 provide an administrative procedure for the municipality's
48 assessment and collection of the fees. The administrative
49 procedure shall require that, before any lien is filed, the
50 municipality shall give notice to the property owner, by
51 certified mail, return receipt requested, and that the munic-
52 ipality shall file the lien unless the delinquency is paid by a
53 date stated in the notice, which must be no less than ninety
54 days from the date the notice is mailed. The administrative
55 procedure shall include the right to appeal to the circuit
56 court of the county in which the real property is located. The
57 circuit court shall consider the appeal under its general
58 authority, including, but not limited to, subsection (f),
59 section two, article two of chapter fifty-one of this code.

60 (f) Notwithstanding the provisions of section four, article
61 eleven of this chapter, any ordinance enacted or substan-
62 tially amended under the provisions of this section shall be
63 published as a Class II legal advertisement in compliance
64 with the provisions of article three, chapter fifty-nine of this
65 code. The publication area for the publication is the munici-
66 pality.

67 (g) In the event fifteen percent of the qualified voters of
68 the municipality, by petition duly signed by them in their
69 own handwriting and filed with the recorder of the munici-
70 pality within forty-five days after the expiration of the
71 publication, protest against the ordinance as enacted or
72 amended, the ordinance shall not become effective until it is
73 ratified by a majority of the legal votes cast by the qualified
74 voters of the municipality at a regular municipal election or
75 special municipal election, as directed by the governing
76 body. Voting may not take place until after notice of the

77 submission is given by publication as provided in subsection
78 (f) of this section.

79 (h) The powers and authority granted to municipalities
80 and to the governing bodies of municipalities in this section
81 are in addition and supplemental to the powers and author-
82 ity named in any charters of the municipalities.

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S
PENSION AND RELIEF FUND; FIREMEN'S PEN-
SION AND RELIEF FUND; PENSION PLANS
FOR EMPLOYEES OF WATERWORKS SYSTEM,
SEWERAGE SYSTEM OR COMBINED WATER-
WORKS AND SEWERAGE SYSTEM.**

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

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

15 (b) The actuarial valuation report provided pursuant to
16 subsection (a) of this section shall consist of, but is not
17 limited to, the following disclosures: (1) The financial
18 objective of the fund and how the objective is to be attained;
19 (2) the progress being made toward realization of the
20 financial objective; (3) recent changes in the nature of the
21 fund, benefits provided or actuarial assumptions or methods;
22 (4) the frequency of actuarial valuation reports and the date

23 of the most recent actuarial valuation report; (5) the method
24 used to value fund assets; (6) the extent to which the quali-
25 fied actuary relies on the data provided and whether the data
26 was certified by the fund's Auditor or examined by the
27 qualified actuary for reasonableness; (7) a description and
28 explanation of the actuarial assumptions and methods; (8) an
29 evaluation of each plan using the alternative funding
30 method, to assess advantages of changing to other funding
31 methods as provided in this article; and (9) any other
32 information required in section twenty-a of this article or
33 that the qualified actuary feels is necessary or would be
34 useful in fully and fairly disclosing the actuarial condition of
35 the fund.

36 (c) (1) Except as provided in subsections (e) and (f) of this
37 section, beginning June 30, 1991, and thereafter, the finan-
38 cial objective of each municipality shall not be less than to
39 contribute to the fund annually an amount which, together
40 with the contributions from the members and the allocable
41 portion of the Municipal Pensions and Protection Fund for
42 municipal pension and relief funds established under section
43 fourteen-d, article three, chapter thirty-three of this code or
44 a municipality's allocation from the Municipal Pensions
45 Security Fund created in section eighteen-b of this article
46 and other income sources as authorized by law except from
47 public safety assessments as provided in section thirteen-a,
48 article thirteen of this chapter, will be sufficient to meet the
49 normal cost of the fund and amortize any actuarial defi-
50 ciency over a period of not more than forty years beginning
51 from July 1, 1991: *Provided*, That in the fiscal year ending
52 June 30, 1991, the municipality may elect to make its annual
53 contribution to the fund using an alternative contribution in
54 an amount not less than: (i) One hundred seven percent of the
55 amount contributed for the fiscal year ending June 30, 1990;
56 or (ii) an amount equal to the average of the contribution
57 payments made in the five highest fiscal years beginning
58 with the fiscal year ending 1984, whichever is greater:
59 *Provided, however*, That contribution payments in subse-
60 quent fiscal years under this alternative contribution method
61 may not be less than one hundred seven percent of the

62 amount contributed in the prior fiscal year: *Provided further,*
63 That in order to avoid penalizing municipalities and to
64 provide flexibility when making contributions, municipali-
65 ties using the alternative contribution method may exclude
66 a one-time additional contribution made in any one year in
67 excess of the minimum required by this section: *And pro-*
68 *vided further,* That the governing body of any municipality
69 may elect to provide an employer continuing contribution of
70 one percent more than the municipality's required minimum
71 under the alternative contribution plan authorized in this
72 subsection: *And provided further,* That if any municipality
73 decides to contribute an additional one percent, then that
74 municipality may not reduce the additional contribution
75 until the respective pension and relief fund no longer has any
76 actuarial deficiency: *And provided further,* That any decision
77 and any contribution payment by the municipality is not the
78 liability of the State of West Virginia: *And provided further,*
79 That if any municipality or any pension fund board of
80 trustees makes a voluntary election and thereafter fails to
81 contribute the voluntary increase as provided in this section
82 and in subsection (c), section nineteen of this article, then the
83 board of trustees is not eligible to receive funds allocated
84 under section fourteen-d, article three, chapter thirty-three
85 of this code: *And provided further,* That prior to using this
86 alternative contribution method the actuary of the fund shall
87 certify in writing that the fund is projected to be solvent
88 under the alternative contribution method for the next
89 consecutive fifteen-year period. For purposes of determining
90 this minimum financial objective: (i) The value of the fund's
91 assets shall be determined on the basis of any reasonable
92 actuarial method of valuation which takes into account fair
93 market value; and (ii) all costs, deficiencies, rate of interest
94 and other factors under the fund shall be determined on the
95 basis of actuarial assumptions and methods which, in
96 aggregate, are reasonable (taking into account the experi-
97 ence of the fund and reasonable expectations) and which, in
98 combination, offer the qualified actuary's best estimate of
99 anticipated experience under the fund: *And provided further,*
100 That any municipality which elected the alternative funding
101 method under this section and which has an unfunded

102 actuarial liability of not more than twenty-five percent of
103 fund assets, may, beginning September 1, 2003, elect to
104 revert to the standard funding method, which is to contribute
105 to the fund annually an amount which is not less than an
106 amount which, together with the contributions from the
107 members and the allocable portion of the Municipal Pensions
108 and Protection Fund for municipal pension and relief funds
109 established under section fourteen-d, article three, chapter
110 thirty-three of this code and other income sources as autho-
111 rized by law, will be sufficient to meet the normal cost of the
112 fund and amortize any actuarial deficiency over a period of
113 not more than forty years, beginning from July 1, 1991.

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

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

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

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

132 (d) For purposes of this section, the term "qualified
133 actuary" means only an actuary who is a member of the
134 Society of Actuaries or the American Academy of Actuaries.
135 The qualified actuary shall be designated a fiduciary and
136 shall discharge his or her duties with respect to a fund solely
137 in the interest of the members and members' beneficiaries of

138 that fund. In order for the standards of this section to be met,
139 the qualified actuary shall certify that the actuarial valua-
140 tion report is complete and accurate and that in his or her
141 opinion the technique and assumptions used are reasonable
142 and meet the requirements of this section.

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

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

170 (3) A municipality choosing the optional method of
171 financing a policemen's or firemen's pension and relief fund
172 as provided in this subsection shall close the fund to police
173 officers or fire fighters newly hired on or after January 1,
174 2010, and provide for those employees to be members of the
175 Municipal Police Officers and Firefighters Retirement

176 System as established in article twenty-two-a of this chap-
177 ter.

178 (f) (1) Beginning April 1, 2011, any municipality using
179 the alternative method of financing may choose a conserva-
180 tion method of financing its municipal policemen's and
181 firemen's pension and relief funds as outlined in this subsec-
182 tion, in lieu of the alternative method as provided in subdivi-
183 sion (1), subsection (c), or the optional method as provided in
184 subsection (e) of this section.

185 (2) For those municipalities choosing the conservation
186 method of finance, until a plan is funded at one hundred
187 percent, a part of each plan member's employee contribution
188 to the fund equal to one and one-half percent of the em-
189 ployee's compensation, shall be deposited into and remain in
190 the trust and accumulate investment return. In addition,
191 until a plan is funded at one hundred percent, an actuarially
192 determined portion of the premium tax allocation to each
193 fund provided in accordance with section fourteen-d, article
194 three, and section seven, article twelve-c of chapter thirty-
195 three of this code and any funds received pursuant to section
196 thirteen-a, article thirteen of this chapter, shall also be
197 deposited into and remain in the trust and accumulate
198 investment return. This variable percentage of premium tax
199 allocation to be retained in each fund shall be determined
200 annually by the qualified actuary provided pursuant to
201 subsection (a) of this section to be an amount required, along
202 with other assets of the fund as necessary to reach a funded
203 level of one hundred percent in thirty-five years from the
204 time of adoption of the conservation financing method. The
205 variable percentage shall be calculated using a prospective
206 four-year rolling average.

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

213 (4) Upon adoption of the conservation method of financ-
214 ing, the minimum standard for annual municipality contri-
215 butions to each policemen's or firemen's pension and relief
216 fund shall be an amount which, together with member
217 contributions and premium tax proceeds not required to be
218 retained in the trust pursuant to this subsection, and other
219 income sources as authorized by law, is sufficient to meet the
220 annual benefit and administrative expense payments from
221 the funds on a pay-as-you-go basis: *Provided*, That at the
222 time the actuarial report required by this section indicates
223 no actuarial deficiency in the municipal policemen's or
224 firemen's pension and relief fund, the minimum annual
225 required contribution of the municipality may not be less
226 than an amount which together with all member contribu-
227 tions and other income authorized by law, is sufficient to pay
228 normal cost.

FILED

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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

OFFICE WEST VIRGINIA
SECRETARY OF STATE

.....
Chairman Senate Committee

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

.....
Speaker of the House of Delegates

The within *is disapproved* this the *3rd*

Day of *April*, 2012.

.....
Governor

PRESENTED TO THE GOVERNOR

MAR 29 2002

Time 4:20 pm