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

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

(c) Any municipality which has selected the standard or optional method of financing its municipal policemen's or firemen's pension and relief fund, as authorized in section twenty, article twenty-two of this chapter, shall dedicate any proceeds from the assessment authorized in this section to either of the pension and relief funds or allocate the proceeds in a manner chosen by the municipality between the plan trusts. The payments into the plan trusts from assessment proceeds are to be treated as additional payments and shall not be included as another income source toward meeting the minimum standard for annual municipality contributions as established in subsections (c)(1) or (e)(2), section twenty, article twenty-two of this chapter, as applicable.
(d) A municipality does not have a lien on any property as security for payments due under subsection (a) of this section except as provided in subsection (e) of this section.

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

(f) Notwithstanding the provisions of section four, article eleven of this chapter, any ordinance enacted or substantially amended under the provisions of this section shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for the publication is the municipality.

(g) In the event fifteen percent of the qualified voters of the municipality, by petition duly signed by them in their own handwriting and filed with the recorder of the municipality within forty-five days after the expiration of the publication, protest against the ordinance as enacted or amended, the ordinance shall not become effective until it is ratified by a majority of the legal votes cast by the qualified voters of the municipality at a regular municipal election or special municipal election, as directed by the governing body. Voting may not take place until after notice of the
submission is given by publication as provided in subsection (f) of this section.

(h) The powers and authority granted to municipalities and to the governing bodies of municipalities in this section are in addition and supplemental to the powers and authority named in any charters of the municipalities.

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.

§8-22-20. 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 qual-
ified 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 except from
public safety assessments as provided in section thirteen-a,
article thirteen of this chapter, 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: 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 subse-
quent 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, municipali-
ties 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 pro-
vided 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 voluntary 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 experi-
ence 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 deficiency 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 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.

(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 except from public safety assessments as provided in section thirteen-a, article thirteen of this chapter, 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
(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 subsection (1), subsection (c), or the optional method as provided in subsection (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 employee'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 and any funds received pursuant to section thirteen-a, article thirteen of this chapter, 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 conservation 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 policemen's or firemen'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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is disapproved this the 3rd Day of April, 2012.

Governor
PRESENTED TO THE GOVERNOR

MAR 29 2021

Time 4:20 pm