WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 358
(SENATORS JENKINS, PLYMALE, CHAFIN AND MCCABE,
ORIGINAL SPONSORS)

[PASSED APRIL 11, 2013; IN EFFECT 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; to amend said code by adding thereto a new section, designated §8-22-18c; and to amend and reenact §8-22A-4 and §8-22A-9 of said code, all relating to municipal policemen and firemen pensions; providing additional investigatory and legal powers and duties of the West Virginia Municipal Pensions Oversight Board; liability disclaimer for board acts or omissions concerning investigatory or legal actions; requiring certain notice of lawsuit to the West Virginia Municipal Pensions Oversight Board; limiting certain court orders under certain circumstances; clarifying refunds to members; clarifying circumstances under which a member may retire when the member’s service has been interrupted by duty with the armed forces of the United States; extending the cut-off date for the West Virginia Municipal Police Officers and Firefighters Retirement System plan to 2017; and continuing the municipality’s disability retirement purchase requirement until 2017.

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; that said code be amended by adding thereto a new section, designated §8-22-18c; and that §8-22A-4 and §8-22A-9 of said code be amended and reenacted, all to read as follows:

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN’S PENSION AND RELIEF FUND; FIREFRINEN’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, 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. 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 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.

§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 firefighter 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 refunded all pension and relief fund deductions made from the member’s salary or compensation, but without interest.

Any member contribution made in fiscal years beginning on July 1, 1981, and thereafter by any members of such fund, which is in excess of the percentages, required in section nineteen of this article of such member’s salary or compensation as defined in section sixteen of this article, shall be refunded with eight percent interest to such member upon completion of the calculation of the member’s retirement benefit.


(a) Any member of a paid police or fire department who is entitled to a retirement pension hereunder, and who has been in the honorable service of such department for twenty years, may, upon written application to the board of trustees, be retired from all service in such department without medical examination or disability. On such retirement the board of trustees shall authorize the payment of annual retirement pension benefits commencing upon the member’s retirement or upon the member’s attaining the age of fifty years, whichever is later, 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.
(b) Any member of any such department who is entitled to a retirement pension under the provisions of subsection (a) of this section and who has been in the honorable service of such department for more than twenty years at the time of the member’s retirement shall receive, in addition to the sixty 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 fifty 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 2013 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 fifty for a member’s service with the armed forces of the United States 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 or 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.

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

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, 2017, 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-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, 2017. 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: Provided, That pursuant to the amendments made to this subsection during the 2013 regular session of the Legislature, participating municipalities shall reinstate or purchase the insurance coverage for all plan members no later than July 1, 2013, and continue coverage through January 1, 2017.

(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 this article: 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.
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 of the House of Delegates

The within is approved this the day of April, 2013.

Governor