

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 3148**

BY DELEGATES STORCH, MARPLE, ANDERSON, E. PRITT AND C. PRITT

(BY REQUEST OF MUNICIPAL PENSIONS OVERSIGHT BOARD)

[Passed March 6, 2023; in effect ninety days from passage.]



1 AN ACT to amend and reenact §8-22-16 and §8-22-20 of the Code of West Virginia, 1931, as  
2 amended, all relating to financing options for municipal policemen's and firemen's  
3 pensions and relief funds; prohibiting municipalities from using the conservation method  
4 of financing for their municipal policemen's and firemen's pension and relief funds; and  
5 providing that certain municipalities may convert to either the optional method or optional  
6 II method of financing under certain circumstances.

*Be it enacted by the Legislature of West Virginia:*

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

**§8-22-16. Pension and relief funds for policemen and firemen; creation of boards of  
trustees; definitions; continuance of funds; average adjusted salary.**

1 (a) Except as provided in subsection (e) of this section, passed into law during the fourth  
2 extraordinary session of the Legislature in 2009, in every Class I and Class II city having, or which  
3 may hereafter have, a paid police department and a paid fire department, or either of such  
4 departments, the governing body shall, and in every Class III city and Class IV town or village  
5 having, or which may hereafter have, a paid police department and a paid fire department, or  
6 either of such departments, the governing body may, by ordinance provide for the establishment  
7 and maintenance of a policemen's pension and relief fund and for a firemen's pension and relief  
8 fund for the purposes hereinafter enumerated and, thereupon, there shall be created boards of  
9 trustees which shall administer and distribute the moneys authorized to be raised by this section  
10 and the following sections of this article. For the purposes of this section and §8-22-17 through  
11 §8-22-28, inclusive, of this code, the term "paid police department" or "paid fire department"  
12 means only a municipal police department or municipal fire department, as the case may be,

13 maintained and paid for out of public funds and whose employees are paid on a full-time basis  
14 out of public funds. The term may not be taken to mean any department whose employees are  
15 paid nominal salaries or wages or are only paid for services actually rendered on an hourly basis.

16 (b) Any policemen's pension and relief fund and any firemen's pension and relief fund  
17 established in accordance with the provisions of former §8-6-1 *et seq.* of this code or this article  
18 shall be or remain mandatory and shall be governed by §8-22-16 through §8-22-28, inclusive, of  
19 this code (with like effect, in the case of a Class III city or Class IV town or village, as if such Class  
20 III city or Class IV town or village were a Class I or Class II city) and may not be affected by the  
21 transition from one class of municipal corporation to a lower class as specified in §8-1-3 of this  
22 code: *Provided*, That any Class III or Class IV town or village that hereafter becomes a Class I or  
23 Class II city may not be required to establish a pension and relief fund if the town or village is a  
24 participant in an existing pension plan regarding paid firemen and/or policemen.

25 (c) After June 30, 1981, for the purposes of §8-22-16 through §8-22-28, inclusive, of this  
26 code, the word "member" means any paid police officer or firefighter who at time of appointment  
27 to a paid police or fire department met the medical requirements of chapter 2-2 of the National  
28 Fire Protection Association Standards Number 1001 — Firefighters Professional Qualifications  
29 >74 as updated from year to year: *Provided*, That any police officer or firefighter who was a  
30 member of the fund prior to July 1, 1981, shall be considered a member after June 30, 1981.

31 (d) (1) For purposes of §8-22-16 through §8-22-28, inclusive, of this code, the words  
32 "salary or compensation" mean remuneration actually received by a member, plus the member's  
33 deferred compensation under sections 125, 401(k), 414(h)(2) and 457 of the United States  
34 Internal Revenue Code of 1986, as amended: *Provided*, That the remuneration received by the  
35 member during any 12-consecutive-month period used in determining benefits which is in excess  
36 of an amount which is 20 percent greater than the "average adjusted salary" received by the  
37 member in the two consecutive 12-consecutive-month periods immediately preceding the 12-  
38 consecutive-month period used in determining benefits shall be disregarded: *Provided, however*,

39 That the “average adjusted salary” means the arithmetic average of each year’s adjusted salary,  
40 the adjustment made to reflect current salary rate and such average adjusted salary shall be  
41 determined as follows: Assuming “year-one” means the second 12-consecutive-month period  
42 preceding such 12-consecutive-month period used in determining benefits, “year-two” means the  
43 12-consecutive-month period immediately preceding the 12-consecutive-month period used in  
44 determining benefits and “year-three” means the 12-consecutive-month period used in  
45 determining benefits, year-one total remuneration shall be multiplied by the ratio of year-three  
46 base salary, exclusive of all overtime and other remuneration, to year-one base salary, exclusive  
47 of all overtime and other remuneration, such product shall equal “year-one adjusted salary”; year-  
48 two total remuneration shall be multiplied by the ratio of year-three base salary, exclusive of all  
49 overtime and other remuneration, to year-two base salary, exclusive of all overtime and other  
50 remuneration, such product shall equal “year-two adjusted salary”; and the arithmetic average of  
51 year-one adjusted salary and year-two adjusted salary shall equal the average adjusted salary.  
52 For inclusion in base salary or overtime and other remuneration, any payments to a member shall  
53 have pension deductions withheld from the payment to the member.

54 (2) “Base salary” means the pay the member receives for his or her regularly scheduled  
55 shift. The regularly scheduled shift includes all scheduled hours, all scheduled overtime hours,  
56 all holiday pay received by the member during the regularly scheduled shift, and hours of paid  
57 leave taken in lieu of work. Base salary also includes longevity pay for years of service, pay for  
58 perfect attendance, and any hourly adjustments for position title or special skill sets.

59 (3) “Overtime and other remuneration” mean all unscheduled hours worked which includes  
60 any hours not on the member’s regular work schedule paid at straight time rates and or overtime  
61 rates, all payouts of accrued paid time off not used in lieu of work (i.e. payouts of accrued holiday  
62 hours, compensatory time, vacation time, sick time), and any bonuses granted and paid to the  
63 member. Any payment to a member that is not part of the member’s regularly scheduled work

64 cycle is overtime and other remuneration. Any other payments to members where pension  
65 deductions are made that do not meet the definition of base salary.

66 (e)(1) Any municipality, as that term is defined in §8-1-2 of this code, or municipal  
67 subdivision as defined in §8-22A-2 of this code may, by a majority vote of its governing body,  
68 close its existing policemen's or firemen's pension and relief fund to employees newly hired on or  
69 after January 1, 2010, if the municipality enrolls those newly hired police officers or firefighters in  
70 a retirement plan created in §8-22A-1 *et seq.* of this code and approved and administered by the  
71 West Virginia Consolidated Public Retirement Board. On and after July 1, 2010, no new  
72 policemen's or firemen's pension and relief fund may be established under this section. A Class  
73 I or Class II municipality forming a new paid police department or paid fire department after June  
74 30, 2010, shall, notwithstanding the provisions of §8-22A-2 of this code, enroll the department  
75 members in the Municipal Police Officers and Firefighters Retirement System established in §8-  
76 22A-1 *et seq.* of this code.

77 (2) Any municipality using the alternative method of financing that elects to close an  
78 existing pension and relief fund to new hires pursuant to this subsection shall also adopt either  
79 the optional method of financing the unfunded actuarial accrued liability of the existing  
80 policemen's or firemen's pension and relief fund as provided in §8-22-20(e) of this code, or the  
81 conservation method as provided in §8-22-20 (f) of this code: *Provided*, That after July 1, 2023,  
82 any municipality using the alternative method of financing that elects to close an existing pension  
83 and relief fund to new hires shall adopt either the optional method of financing as provided in §8-  
84 22-20(e) of this code, or the optional-II method of financing as provided in §8-22-20(g) of this code  
85 to finance the unfunded actuarial accrued liability of the existing policemen's or firemen's pension  
86 and relief fund.

87 (3) Except as provided in §8-22A-32 of this code, if the qualifying municipality elects to  
88 close enrollment in an existing municipal pension and relief fund to newly hired police officers and  
89 firefighters pursuant to this section, all current active members, retirees, and other beneficiaries

90 covered by the existing policemen's or firemen's pension and relief fund shall remain covered by  
91 that plan and shall be paid all benefits of that plan in accordance with Part III of this article.

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

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

10 (b) The actuarial valuation report provided pursuant to subsection (a) of this section shall  
11 consist of, but is not limited to, the following disclosures: (1) The financial objective of the fund  
12 and how the objective is to be attained; (2) the progress being made toward realization of the  
13 financial objective; (3) recent changes in the nature of the fund, benefits provided or actuarial  
14 assumptions or methods; (4) the frequency of actuarial valuation reports and the date of the most  
15 recent actuarial valuation report; (5) the method used to value fund assets; (6) the extent to which  
16 the qualified actuary relies on the data provided and whether the data was certified by the fund's  
17 auditor or examined by the qualified actuary for reasonableness; (7) a description and explanation  
18 of the actuarial assumptions and methods; (8) an evaluation of each plan using the alternative  
19 funding method, to assess advantages of changing to other funding methods as provided in this  
20 article; and (9) any other information required in §8-22-20a of this code or that the qualified  
21 actuary feels is necessary or would be useful in fully and fairly disclosing the actuarial condition  
22 of the fund.

23           (c)(1) Except as provided in subsections (e), (f), and (g) of this section, beginning June  
24 30, 1991, and thereafter, the financial objective of each municipality shall not be less than to  
25 contribute to the fund annually an amount which, together with the contributions from the  
26 members and, if no pension funding revenue bonds of a building commission of such municipality  
27 are outstanding, the allocable portion of the Municipal Pensions and Protection Fund for municipal  
28 pension and relief funds established under §33-3-14d of this code or a municipality's allocation  
29 from the Municipal Pensions Security Fund created in §8-22-18b of this code and other income  
30 sources as authorized by law will be sufficient to meet the normal cost of the fund and amortize  
31 any actuarial deficiency over a period of not more than forty years beginning from July 1, 1991:  
32 *Provided*, That in the fiscal year ending June 30, 1991, the municipality may elect to make its  
33 annual contribution to the fund using an alternative contribution in an amount not less than: (i)  
34 One hundred seven percent of the amount contributed for the fiscal year ending June 30, 1990;  
35 or (ii) an amount equal to the average of the contribution payments made in the five highest fiscal  
36 years beginning with the fiscal year ending 1984, whichever is greater: *Provided, however*, That  
37 contribution payments in subsequent fiscal years under this alternative contribution method may  
38 not be less than 107 percent of the amount contributed in the prior fiscal year: *Provided further*,  
39 That in order to avoid penalizing municipalities and to provide flexibility when making  
40 contributions, municipalities using the alternative contribution method may exclude a one-time  
41 additional contribution made in any one year in excess of the minimum required by this section:  
42 *And provided further*, That the governing body of any municipality may elect to provide an  
43 employer continuing contribution of one percent more than the municipality's required minimum  
44 under the alternative contribution plan authorized in this subsection: *And provided further*, That if  
45 any municipality decides to contribute an additional one percent, then that municipality may not  
46 reduce the additional contribution until the respective pension and relief fund no longer has any  
47 actuarial deficiency: *And provided further*, That any decision and any contribution payment by the  
48 municipality is not the liability of the State of West Virginia: *And provided further*, That if any



49 municipality or any pension fund board of trustees makes a voluntary election and thereafter fails  
50 to contribute the voluntarily increase as provided in this section and in §8-22-19(c) of this code,  
51 then the board of trustees is not eligible to receive funds allocated under §33-3-14d of this code:  
52 *And provided further*, That prior to using this alternative contribution method the actuary of the  
53 fund shall certify in writing that the fund is projected to be solvent under the alternative contribution  
54 method for the next consecutive 15-year period. For purposes of determining this minimum  
55 financial objective: (i) The value of the fund's assets shall be determined on the basis of any  
56 reasonable actuarial method of valuation which takes into account fair market value; and (ii) all  
57 costs, deficiencies, rate of interest and other factors under the fund shall be determined on the  
58 basis of actuarial assumptions and methods which, in aggregate, are reasonable (taking into  
59 account the experience of the fund and reasonable expectations) and which, in combination, offer  
60 the qualified actuary's best estimate of anticipated experience under the fund: *And provided*  
61 *further*, That any municipality which elected the alternative funding method under this section and  
62 which has an unfunded actuarial liability of not more than 25 percent of fund assets, may,  
63 beginning September 1, 2003, elect to revert to the standard funding method, which is to  
64 contribute to the fund annually an amount which is not less than an amount which, together with  
65 the contributions from the members and, if no pension funding revenue bonds of a building  
66 commission of such municipality are outstanding, the allocable portion of the Municipal Pensions  
67 and Protection Fund for municipal pension and relief funds established under §33-3-14d of this  
68 code and other income sources as authorized by law, will be sufficient to meet the normal cost of  
69 the fund and amortize any actuarial deficiency over a period of not more than 40 years, beginning  
70 from July 1, 1991.

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

74           (3) Notwithstanding any other provision of this section or article to the contrary, each  
75 municipality shall contribute annually to its policemen's pension and relief fund and its firemen's  
76 pension and relief fund an amount which may not be less than the normal cost, as determined by  
77 the annual actuarial valuation report required by this section: *Provided*, That in any fiscal year in  
78 which the actuarial valuation report determines that a municipality's policemen's pension and  
79 relief fund or firemen's pension and relief fund is funded at 125 percent or higher and the Municipal  
80 Pensions Oversight Board's actuary provides an actuarial recommendation that the normal cost  
81 does not need to be paid by the employer for that fiscal year, that municipality may elect to make  
82 no contribution for that fiscal year. A municipality's election not to contribute the normal cost in  
83 any year does not affect the payments required by §8-22-19 of this code by members to a pension  
84 and relief fund and these payments are to continue as required by that section.

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

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

91           (d) For purposes of this section, the term "qualified actuary" means only an actuary who  
92 is a member of the Society of Actuaries or the American Academy of Actuaries. The qualified  
93 actuary shall be designated a fiduciary and shall discharge his or her duties with respect to a fund  
94 solely in the interest of the members and members' beneficiaries of that fund. In order for the  
95 standards of this section to be met, the qualified actuary shall certify that the actuarial valuation  
96 report is complete and accurate and that in his or her opinion the technique and assumptions  
97 used are reasonable and meet the requirements of this section.

98           (e)(1) Beginning January 1, 2010, municipalities may choose the optional method of  
99 financing municipal policemen's or firemen's pension and relief funds as outlined in this

100 subsection in lieu of the standard or alternative methods as provided in subdivision (1), subsection  
101 (c) of this section or the conservation method of financing as outlined in subdivision (1), subsection  
102 (f) of this section.

103 (2) For those municipalities choosing the optional method of finance, the minimum  
104 standard for annual municipality contributions to each policemen's or firemen's pension and relief  
105 fund shall be an amount which, together with the contributions from the members and, if no  
106 pension funding revenue bonds of a building commission of such municipality are outstanding,  
107 the allocable portion of the Municipal Pensions Security Fund created in §8-22-18b of this code,  
108 and other income sources as authorized by law, will be sufficient to meet the normal cost of the  
109 fund and amortize any actuarial deficiency over a period of not more than 40 years beginning  
110 January 1, 2010: *Provided*, That those municipalities using the standard method of financing in  
111 2009 shall continue to amortize their actuarial deficiencies over a period of not more than 40 years  
112 beginning July 1, 1991. The required contribution shall be determined each plan year as described  
113 above by the actuary retained by the oversight board, based on an actuarial valuation reflecting  
114 actual demographic and investment experience and consistent with the Actuarial Standards of  
115 Practice published by the Actuarial Standards Board.

116 (3) A municipality choosing the optional method of financing a policemen's or firemen's  
117 pension and relief fund as provided in this subsection shall close the fund to police officers or fire  
118 fighters newly hired on or after January 1, 2010, and provide for those employees to be members  
119 of the Municipal Police Officers and Firefighters Retirement System as established in §8-22A-1  
120 *et seq.*, of this code.

121 (f)(1) Beginning April 1, 2011, any municipality using the alternative method of financing  
122 may choose a conservation method of financing its municipal policemen's and firemen's pension  
123 and relief funds as outlined in this subsection, in lieu of the alternative method as provided in  
124 subdivision (1), subsection (c), or the optional method as provided in subsection (e) of this section.  
125 Effective July 1, 2023, the conservation method of financing shall no longer be able to be chosen

126 by a municipality using the alternative method of financing its municipal policemen's and firemen's  
127 pension and relief funds.

128 (2) For those municipalities choosing the conservation method of finance, until a plan is  
129 funded at 100 percent a part of each plan member's employee contribution to the fund equal to  
130 one and one-half percent of the employee's compensation, shall be deposited into and remain in  
131 the trust and accumulate investment return. In addition, until a plan is funded at 100 percent and  
132 all pension funding revenue bonds issued by a municipality's building commission are paid in full,  
133 an actuarially determined portion of the premium tax allocation to each fund provided in  
134 accordance with §33-3-14d and §33-12C-7 of this code shall also be deposited into and remain  
135 in the trust and accumulate investment return. This variable percentage of premium tax allocation  
136 to be retained in each fund shall be determined annually by the qualified actuary provided  
137 pursuant to subsection (a) of this section to be an amount required, along with other assets of the  
138 fund as necessary to reach a funded level of 100 percent in 35 years from the time of adoption of  
139 the conservation financing method. The variable percentage shall be calculated using a  
140 prospective four-year rolling average.

141 (3) Upon adoption of the conservation method of finance, the municipality shall close its  
142 pension and relief funds to new members and shall place police officers and firefighters newly  
143 hired after adoption of the conservation method into the Municipal Police Officers and Firefighters  
144 Retirement System created in §8-22A-1 *et seq.* of this code.

145 (4) Upon adoption of the conservation method of financing, the minimum standard for  
146 annual municipality contributions to each policemen's or firemen's pension and relief fund shall  
147 be an amount which, together with member contributions and premium tax proceeds not required  
148 to be retained in the trust pursuant to this subsection, and if no pension funding revenue bonds  
149 of a building commission of such municipality are outstanding, and other income sources as  
150 authorized by law, is sufficient to meet the annual benefit and administrative expense payments  
151 from the funds on a pay-as-you-go basis: *Provided*, That at the time the actuarial report required

152 by this section indicates no actuarial deficiency in the municipal policemen's or firemen's pension  
153 and relief fund, the minimum annual required contribution of the municipality may not be less than  
154 an amount which together with all member contributions and other income authorized by law, is  
155 sufficient to pay normal cost.

156 (5) If a municipality using the conservation method fully funds its pension and relief fund  
157 or funds by a pension funding program authorized by §8-33-4a of this code, then the trustees of  
158 the policemen's or firemen's pension and relief fund are to pay pension obligations out of the  
159 pension and relief fund; and the minimum standard for annual municipality contributions to each  
160 policemen's or firemen's pension and relief fund shall be an amount which, together with member  
161 contributions and other income sources as authorized by law, is sufficient to meet the normal cost  
162 of the fund.

163 (g)(1) Beginning July 1, 2023, any municipality using the alternative method of financing  
164 provided in subdivision (1), subsection (c) of this section, or the conservation method of financing  
165 provided in subdivision (1), subsection (f) of this section, may choose to convert to the optional  
166 method of financing provided in subdivision (1), subsection (e) of this section, or the optional-II  
167 method of financing its municipal policemen's and firemen's pension and relief funds as provided  
168 in this subsection, in lieu of the method of financing it is currently using.

169 (2) For those municipalities choosing the optional-II method of finance, the minimum  
170 standard for annual municipality contributions to each policemen's or firemen's pension and relief  
171 fund shall be an amount which, together with the contributions from the members and, if no  
172 pension funding revenue bonds of a building commission of such municipality are outstanding,  
173 the allocable portion of the Municipal Pensions Security Fund created in §8-22-18b of this code,  
174 and other income sources as authorized by law, will be sufficient to meet the normal cost of the  
175 fund and amortize any actuarial deficiency over a period of not more than 40 years beginning July  
176 1, 2023. The required contribution shall be determined each plan year as described in subsections  
177 (b) and (d) of this section by the actuary retained by the oversight board, based on an actuarial

178 valuation reflecting actual demographic and investment experience and consistent with the  
179 Actuarial Standards of Practice published by the Actuarial Standards Board.

180 (h) Beginning with the July 1, 2020, actuarial valuation, the existing actuarial deficiency,  
181 prior to reflecting any new gains or losses as of July 1, 2020, such as those due to investment  
182 experience, differences between actual and expected contributions, demographic experience,  
183 and changes to actuarial assumptions, shall continue to be amortized as required by subsections  
184 (c) and (e) of this section: *Provided*, That on July 1, 2020, and each successive annual valuation  
185 date thereafter, the annual impacts on the funding deficiency due to: (i) New gains or losses on  
186 assets and liabilities; and (ii) changes in actuarial assumptions, shall each be amortized over a  
187 closed period of 15 years, thereby creating layers of amortization bases rather than amortizing  
188 the entire actuarial deficiency over the same single and decreasing period: *Provided, however*,  
189 That impacts on the funding deficiency due to plan changes shall be amortized over closed five  
190 year periods. The management of these amortization bases by the actuary should entail the  
191 consideration, at least every five years, of whether to implement strategies, such as the  
192 synchronization of certain amortization layers, to help avoid volatility to the sum of the  
193 amortization payments generally resulting from the expiration of charge and credit layers at  
194 different times. The required contribution shall be determined each plan year as described above  
195 by the actuary retained by the oversight board, based on an actuarial valuation reflecting actual  
196 demographic and investment experience and consistent with the Actuarial Standards of Practice  
197 published by the Actuarial Standards Board.

198 (i) Notwithstanding the foregoing until any pension funding revenue bonds issued by a  
199 municipality's building commission are paid in full, the allocable portion of money from the  
200 Municipal Pension Security Fund from the premium tax allocation for such municipality's  
201 policemen's and firemen's pension and relief funds, as applicable, shall be deposited pursuant to  
202 §8-22-19(d)(2) with the trustee for the pension funding revenue bonds and shall not be deposited  
203 into the applicable policemen's or firemen's pension and relief funds of such municipality.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

.....  
*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

Originated in the House of Delegates.

In effect ninety days from passage.

.....  
*Speaker of the House of Delegates*

.....  
*President of the Senate*

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The within is ..... this the.....  
Day of ....., 2023.

.....  
*Governor*