

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 3148

By Delegates Storch, Marple, Anderson, E. Pritt, and

C. Pritt

[By Request of Municipal Pensions Oversight Board]

[Originating in the Committee on Finance; February

15, 2023]

1 A BILL 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 of
4 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 II
6 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 §8-
11 22-28, inclusive, of this code, the term "paid police department" or "paid fire department" means
12 only a municipal police department or municipal fire department, as the case may be, maintained

13 and paid for out of public funds and whose employees are paid on a full-time basis out of public
14 funds. The term may not be taken to mean any department whose employees are paid nominal
15 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 to
27 a paid police or fire department met the medical requirements of chapter 2-2 of the National Fire
28 Protection Association Standards Number 1001 — Firefighters Professional Qualifications >74 as
29 updated from year to year: *Provided*, That any police officer or firefighter who was a member of the
30 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, all
56 holiday pay received by the member during the regularly scheduled shift, and hours of paid leave
57 taken in lieu of work. Base salary also includes longevity pay for years of service, pay for perfect
58 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, close
68 its existing policemen's or firemen's pension and relief fund to employees newly hired on or after
69 January 1, 2010, if the municipality enrolls those newly hired police officers or firefighters in a
70 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 I
73 or Class II municipality forming a new paid police department or paid fire department after June 30,
74 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 the
79 optional method of financing the unfunded actuarial accrued liability of the existing policemen's or
80 firemen's pension and relief fund as provided in §8-22-20(e) of this code, or the conservation
81 method as provided in §8-22-20 (f) of this code: Provided, That after July 1, 2023, any municipality
82 using the alternative method of financing that elects to close an existing pension and relief fund to
83 new hires shall adopt either the optional method of financing as provided in §8-22-20(e) of this
84 code, or the optional-II method of financing as provided in §8-22-20(g) of this code to finance the
85 unfunded actuarial accrued liability of the existing policemen's or firemen's pension and relief
86 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 and
12 how the objective is to be attained; (2) the progress being made toward realization of the financial
13 objective; (3) recent changes in the nature of the fund, benefits provided or actuarial assumptions
14 or methods; (4) the frequency of actuarial valuation reports and the date of the most recent
15 actuarial valuation report; (5) the method used to value fund assets; (6) the extent to which the
16 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 of
22 the fund.

23 (c)(1) Except as provided in subsections (e), ~~and (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 members
26 and, if no pension funding revenue bonds of a building commission of such municipality are
27 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 any
31 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) One
34 hundred seven percent of the amount contributed for the fiscal year ending June 30, 1990; or (ii)
35 an amount equal to the average of the contribution payments made in the five highest fiscal years
36 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 year.

73 (3) Notwithstanding any other provision of this section or article to the contrary, each
74 municipality shall contribute annually to its policemen's pension and relief fund and its firemen's
75 pension and relief fund an amount which may not be less than the normal cost, as determined by

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

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

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

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

97 (e)(1) Beginning January 1, 2010, municipalities may choose the optional method of
98 financing municipal policemen's or firemen's pension and relief funds as outlined in this
99 subsection in lieu of the standard or alternative methods as provided in subdivision (1), subsection
100 (c) of this section or the conservation method of financing as outlined in subdivision (1), subsection
101 (f) of this section.

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

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

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

127 (2) For those municipalities choosing the conservation method of finance, until a plan is

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

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

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

154 sufficient to pay normal cost.

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

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

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

179 (h) Beginning with the July 1, 2020, actuarial valuation, the existing actuarial deficiency,

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

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

Strike-throughs indicate language that would be stricken from a heading or the present law
and underscoring indicates new language that would be added.

