

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **Senate Bill 477**

By Senators Nelson and Plymale

[Introduced January 26, 2023; referred  
to the Committee on Pensions]

1 A BILL to amend and reenact §8-22-20 of the Code of West Virginia, 1931, as amended, all  
 2 relating to prohibiting municipalities from using the conservation method of financing for  
 3 their municipal policemen's and firemen's pension and relief funds; and providing that a  
 4 municipality may convert to either the optional method or optional II method of financing.

*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.**

**§8-22-20. 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 conservation method of financing,  
163 subdivision (1), subsection (f), may choose to convert to the optional method of financing,  
164 subdivision (1), subsection (e), or optional-II method of financing its municipal policemen's and  
165 firemen's pension and relief funds as outlined in this subsection, in lieu of the conservation method  
166 as provided in subdivision (1), subsection (f) of this section.

167 (2) For those municipalities choosing the optional-II method of finance, the minimum  
168 standard for annual municipality contributions to each policemen's or firemen's pension and relief  
169 fund shall be an amount which, together with the contributions from the members and, if no  
170 pension funding revenue bonds of a building commission of such municipality are outstanding, the



171 allocable portion of the Municipal Pensions Security Fund created in §8-22-18b of this code, and  
172 other income sources as authorized by law, will be sufficient to meet the normal cost of the fund  
173 and amortize any actuarial deficiency over a period of not more than 40 years beginning July 1,  
174 2023. The required contribution shall be determined each plan year as described in subsections  
175 (b) and (d) of this section by the actuary retained by the oversight board, based on an actuarial  
176 valuation reflecting actual demographic and investment experience and consistent with the  
177 Actuarial Standards of Practice published by the Actuarial Standards Board.

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

196 (i) Notwithstanding the foregoing until any pension funding revenue bonds issued by a

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

NOTE: The purpose of this bill is to prohibit municipalities from using the conservation method of financing for their municipal policemen's and firemen's pension and relief funds; and to provide that a municipality may convert to either the optional method or optional-II method of financing.

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