WEST VIRGINIA CODE: §8-22-16

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

(a) Except as provided in subsection (e) of this section, passed into law during the fourth extraordinary session of the Legislature in 2009, in every Class I and Class II city having, or which may hereafter have, a paid police department and a paid fire department, or either of such departments, the governing body shall, and in every Class III city and Class IV town or village having, or which may hereafter have, a paid police department and a paid fire department, or either of such departments, the governing body may, by ordinance provide for the establishment and maintenance of a policemen's pension and relief fund and for a firemen's pension and relief fund for the purposes hereinafter enumerated and, thereupon, there shall be created boards of trustees which shall administer and distribute the moneys authorized to be raised by this section and the following sections of this article. For the purposes of this section and §8-22-17 through §8-22-28, inclusive, of this code, the term "paid police department" or "paid fire department" means only a municipal police department or municipal fire department, as the case may be, maintained and paid for out of public funds and whose employees are paid on a full-time basis out of public funds. The term may not be taken to mean any department whose employees are paid nominal salaries or wages or are only paid for services actually rendered on an hourly basis.

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

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

(d) (1) For purposes of §8-22-16 through §8-22-28, inclusive, of this code, the words "salary or compensation" mean remuneration actually received by a member, plus the member's deferred compensation under sections 125, 401(k), 414(h)(2) and 457 of the United States

Internal Revenue Code of 1986, as amended: *Provided*, That the remuneration received by the member during any 12-consecutive-month period used in determining benefits which is in excess of an amount which is 20 percent greater than the "average adjusted salary" received by the member in the two consecutive 12-consecutive-month periods immediately preceding the 12-consecutive-month period used in determining benefits shall be disregarded: *Provided, however*, That the "average adjusted salary" means the arithmetic average of each year's adjusted salary, the adjustment made to reflect current salary rate and such average adjusted salary shall be determined as follows: Assuming "year-one" means the second 12-consecutive-month period preceding such 12-consecutive-month period used in determining benefits, "year-two" means the 12-consecutive-month period immediately preceding the 12-consecutive-month period used in determining benefits and "year-three" means the 12-consecutive-month period used in determining benefits, year-one total remuneration shall be multiplied by the ratio of year-three base salary, exclusive of all overtime and other remuneration, to year-one base salary, exclusive of all overtime and other remuneration, such product shall equal "year-one adjusted salary"; year-two total remuneration shall be multiplied by the ratio of year-three base salary, exclusive of all overtime and other remuneration, to year-two base salary, exclusive of all overtime and other remuneration, such product shall equal "year-two adjusted salary"; and the arithmetic average of year-one adjusted salary and year-two adjusted salary shall equal the average adjusted salary. For inclusion in base salary or overtime and other remuneration, any payments to a member shall have pension deductions withheld from the payment to the member.

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

(3) "Overtime and other remuneration" mean all unscheduled hours worked which includes any hours not on the member's regular work schedule paid at straight time rates and or overtime rates, all payouts of accrued paid time off not used in lieu of work (i.e. payouts of accrued holiday hours, compensatory time, vacation time, sick time), and any bonuses granted and paid to the member. Any payment to a member that is not part of the member's regularly scheduled work cycle is overtime and other remuneration. Any other payments to members where pension deductions are made that do not meet the definition of base salary.

(e)(1) Any municipality, as that term is defined in §8-1-2 of this code, or municipal subdivision as defined in §8-22A-2 of this code may, by a majority vote of its governing body, close its existing policemen's or firemen's pension and relief fund to employees newly hired on or after January 1, 2010, if the municipality enrolls those newly hired police officers or firefighters in a retirement plan created in §8-22A-1 *et seq*. of this code and approved and administered by the West Virginia Consolidated Public Retirement Board. On and after July 1, 2010, no new policemen's or firemen's pension and relief fund may be established under

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this section. A Class I or Class II municipality forming a new paid police department or paid fire department after June 30, 2010, shall, notwithstanding the provisions of §8-22A-2 of this code, enroll the department members in the Municipal Police Officers and Firefighters Retirement System established in §8-22A-1 *et seq*. of this code.

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

(3) Except as provided in §8-22A-32 of this code, if the qualifying municipality elects to close enrollment in an existing municipal pension and relief fund to newly hired police officers and firefighters pursuant to this section, all current active members, retirees, and other beneficiaries covered by the existing policemen's or firemen's pension and relief fund shall remain covered by that plan and shall be paid all benefits of that plan in accordance with Part III of this article.

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