WEST VIRGINIA CODE CHAPTER 8 ARTICLE 22

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PART I. PARTICIPATION IN STATE PUBLIC EMPLOYEES RETIREMENT SYSTEM.

§8-22-1. Membership in Public Employees Retirement System.

Any municipality may elect to become a participating public employer under the West Virginia Public Employees Retirement System created and established by, and administered pursuant to, the provisions of article ten, chapter five of this code, for the coverage of all employees eligible under the provisions of said article ten, except policemen and firemen covered by a policemen's pension and relief fund or firemen's pension and relief fund.

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PART II. GENERAL RETIREMENT SYSTEMS FOR

CLASS I, II AND III CITIES.

§8-22-2. Class I, II and III cities empowered and authorized to establish and maintain "employees retirement and benefit fund" or to maintain such fund heretofore established.

Every Class I, II and III city which is not a participating public employer in the said West Virginia Public Employees Retirement System is hereby empowered and authorized to and may establish and maintain an "employees retirement and benefit fund" in accordance with the provisions of this section two and sections three through fourteen of this article. Any Class I, II and III city which has heretofore established such a fund in accordance with the acts of the Legislature referred to in section fifteen of this article may continue to maintain said fund in accordance with the provisions of this section two and sections three through fourteen of this article, or said acts, as specified in said section fifteen.

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PART II. GENERAL RETIREMENT SYSTEMS FOR CLASS I, II AND III CITIES.

§8-22-3. Definitions.

For the purpose of sections two through fifteen of this article:

(a) "Prior service credit" shall mean the number of years that the member has been in the service of the city prior to the effective date of the employees retirement and benefit fund;

(b) "Earned service credit" shall mean the number of years that the member has contributed to the employees retirement and benefit fund;

(c) "Total service credit" shall mean the total of all prior service credit and all earned service credit;

(d) "Fund" shall mean the employees retirement and benefit fund;

(e) "Board" shall mean the board of trustees of the fund;

(f) "Member" shall mean an eligible employee of the city, who is a member of the fund;

(g) "Total disability in line of duty" shall mean total and permanent disablement from performing any work for pay, whether for the city by which employed at date of disability or other employer, which shall be caused by accidental injury sustained in the course of the operations usual to his employment and while in line of duty, and shall include all operations necessary, incident or appurtenant thereto, or connected therewith, whether such operations are conducted at the usual place of employment or elsewhere in connection with or in relation to his usual and customary employment;

(h) "Total disability not in line of duty" shall mean total and permanent disablement from performing any work for pay, whether for the city by which employed at date of disability or other employer, from any cause other than that set forth in subdivision (g) of this section;

(i) The term "actuarial equivalent" shall mean any annuity of equal value to the accumulated contributions, annuity or benefit when computed upon the basis of the actuarial tables in use by the fund;

(j) "Monthly salary" shall mean the amount earned each month by a member as an employee of the city: Provided, That to and including June 30, 1967, the maximum amount of salary to be considered hereunder for purposes of contributions and in the computation of benefits shall be $400 per month; and

(k) "Average salary" shall mean the highest annual average salary earned by a member during a period of five consecutive years within the total service of the member, subject to a

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maximum amount of $400 per month to and including June 30, 1967, and no such maximum amount after such date, but effective January 1, 1987, a city may provide that average salary be based on a three consecutive year period.

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§8-22-4. Board of trustees.

The governing body of each such city desiring to establish and maintain a fund as authorized in sections two through fourteen of this article shall by ordinance provide for a board of trustees of the fund.

The said board of trustees shall consist of the mayor and four members of the fund, to be appointed by the mayor, with the advice and consent of a majority of the members of the fund. The initial appointments shall be for a term of one, two, three and four years, respectively, after which all appointments shall be for a term of four years.

The presiding officer of the board shall be the mayor, and the secretary thereof shall be appointed by said board. It shall be the duty of such secretary to keep a full and permanent record of all the proceedings of the board, and said board may fix his compensation for this work which shall be paid out of said fund.

The mayor or any three members of the board shall have the power to call a meeting at any time that it is necessary in order to carry out the business of the board. Three members of the board shall constitute a quorum to transact business, but it shall require three or more affirmative votes to pass any matter before the board.

The board shall have charge of and administer the fund and shall order payments therefrom, and no money shall be paid out of the fund except upon the order of the board.

The governing body shall have plenary power and authority to make any and all rules and regulations pertaining to the fund not inconsistent with the provisions of sections two through fifteen of this article, the Constitution and the laws of this state.

Such board shall be a public corporation by the name and style of "The Board of Trustees of the Employees Retirement and Benefit Fund of (name the city)," by which name the board may sue and be sued, plead and be impleaded, contract and be contracted with, take and hold real and personal property, for the use of said fund, and have and use a common seal. Said board may also in its corporate name do and perform any and all other acts and business pertaining to the trust created hereby or by any conveyance, devise or dedication made for the uses and purposes of said board.

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§8-22-5. Employees eligible for participation in fund.

Employees eligible for participation in the fund shall include all employees who are employed by the city on a permanent basis. The following employees, however, shall not be eligible for participation in the fund:

(1) Appointive members of administrative boards and commissions, except employees of such boards and commissions;

(2) Individuals employed under contract for a definite period or for the performance of a particular or special service;

(3) Employees serving on a part-time basis of less than one-half time;

(4) Policemen and firemen covered by a policemen's pension and relief fund or firemen's pension and relief fund;

(5) Employees who are paid in part by the state, county or other governmental agency, and only in part by the city;

(6) Employees who are past sixty years of age on the effective date of the fund; and

(7) Employees who are hired after the effective date of the fund and who were past sixty years of age at the time they were so employed. Effective January 1, 1987, a city may disregard this exception.

In case of doubt, the board of trustees of the fund may make determination as to any individual's eligibility to become a member of the fund.

All employees eligible for participation at the effective date of the fund shall become members of the fund, unless they file a written election not to become a member within thirty days after the effective date of the fund.

Effective January 1, 1987, a city may provide that employees who did not participate in the fund when first eligible, or who were not permitted to join the fund when they were first hired due to the prior age sixty limitation, may now participate. Such members may purchase prior service by paying into the fund the employee contributions they would have contributed had they been in the fund plus interest at the rate of six percent annually. Members shall be given two years to pay these contributions.

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§8-22-6. Contributions; prior, earned and total service credits; service breaks.

Until June 30,1967, each member shall pay into the fund six percent of his monthly salary up to $400 a month. After June 30, 1967, each member shall contribute six percent of his monthly salary without any such maximum limitation. Effective January 1, 1987, a city may provide that contributions made by a member shall be before-tax, as permitted by section 414(h)(2) of the Internal Revenue Code. Each member shall continue to make such contributions until such time as such member retires or until he has contributed to the fund for a period of thirty-five years, that is, has thirty-five years of "earned service credit."

For prior service, each participating employee, in the employ of the city on the effective date of the fund, shall be credited, as of such date, with a prior service credit equal to the period or periods of service that the member has rendered to the city prior to the effective date of the fund. Any employee who is in the employ of the city on the effective date of the fund and who becomes a member of the fund shall be entitled to prior service credit even though such prior service was not continuous. Any individual who is not in the employ of the city on the effective date of the fund but who has been employed by the city in the past shall be entitled to prior service credit if he returns to the service of the city within two years from the date of the termination of his service and becomes a member of the fund within such two-year period.

Effective January 1, 1987, a city may provide that members who have been honorably discharged from the military shall receive up to two years prior service credit for military service prior to their employment with the city.

A member upon separation from the service shall be entitled to withdraw his contributions without interest in lieu of any benefits to which he may be entitled. A city may provide that contributions are credited with interest at the rate of six percent compounded annually from January 1, 1987. If such employee returns to the service of the city within two years and becomes a member of the fund, he shall be considered as a new employee and shall have forfeited all prior service credits unless he shall repay to the fund in cash at the time of reemployment the amount of money which he has withdrawn plus four percent interest compounded annually on said amount during the time he was separated from the service, but effective January 1, 1987, a city may require six percent interest. If, however, the break in service of such member is more than two years, he shall not be entitled to any prior service credit nor shall he be entitled to redeposit withdrawals but he shall reenter the fund as a new member.

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§8-22-7. Retirement pensions.

(a) After the effective date of the fund, any member of the fund who has at least ten years of continuous total service credit shall receive a vested right to a retirement pension which he may exercise upon or after attainment of age sixty. When he has attained the age of sixty years he may, at his option, apply for a retirement pension, the amount thereof to be determined in accordance with the provisions of subsection (e) of this section.

(b) Retirement for all members of the fund shall be compulsory at the age of seventy subject to the following conditions: The employee may be permitted to continue in the service if he so desires and if his services are still valuable to the city. Whether an employee's services are valuable at the age of seventy shall be determined by the appointing officer of the city. If he determines that such services are valuable, his determination must be certified to the board for approval. If the board approves, the employee may continue in the service of the city. The appointing officer shall annually certify to the board relative to the ability and competency of all employees over age seventy. The amount of any pension under the provisions of this subsection shall be determined in accordance with the provisions of subsection (e) of this section.

(c) Effective January 1, 1987, a city may provide that any member of the fund who has at least ten years of continuous total service credit shall receive a vested right to a retirement pension which he may exercise upon or after attainment of age fifty-five. When he has attained the age of fifty-five years he may, at his option, apply for a retirement pension, the amount thereof to be determined in accordance with the provisions of subsection (e) of this section, reduced by one quarter of one percent for each month (three percent per year) by which his retirement date precedes age sixty, except that if his age plus years of continuous service credit is equal to or greater than eighty-five, the benefit shall not be reduced.

(d) Although he has not attained the age of sixty, any member who has thirty-five years' total service and who becomes so physically or mentally disabled as to render he unfit for the performance of the duties of the position he occupies shall be entitled to an annual retirement pension, the amount thereof to be determined in accordance with the provisions of subsection (e) of this section.

(e) A member of the fund, upon retirement, shall be entitled to the following annual retirement pension, payable in twelve monthly installments:

For thirty-five years of total service credit to and including twenty-four years of total service credit, fifty percent of average salary plus one and two-thirds percent of average salary per year of service for each year above twenty-three years;

For twenty-three years of total service credit, fifty percent of average salary: Provided, That if a member has twenty-three years of total service credit he shall be entitled to a minimum retirement pension of $100 per month;

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For twenty-two years of total service credit, forty-nine percent of average salary;

For twenty-one years of total service credit, forty-eight percent of average salary;

For twenty years of total service credit, forty-seven percent of average salary;

For nineteen years of total service credit, forty-five percent of average salary;

For eighteen years of total service credit, forty-three percent of average salary;

For seventeen years of total service credit, forty-one percent of average salary;

For sixteen years of total service credit, thirty-nine percent of average salary;

For fifteen years of total service credit, thirty-six percent of average salary;

For fourteen years of total service credit, thirty-three percent of average salary;

For thirteen years of total service credit, thirty-one percent of average salary;

For twelve years of total service credit, twenty-nine percent of average salary;

For eleven years of total service credit, twenty-seven percent of average salary; and

For ten years of continuous total service credit, twenty-five percent of average salary.

The rate of a retirement pension shall be prorated for any fractional part of the total service credit of an employee of less than a full year.

(f) With the condition that no optional benefit shall be effective if the member dies within thirty days after the effective date of his retirement, such member may elect at least one year prior to such effective date of his retirement to receive a lesser retirement pension, on a joint and last survivor basis, in order to provide, on an actuarial equivalent basis, an annuity to a designated beneficiary under any of the following two options:

Option 1. Upon his death while on retirement, his lesser retirement pension shall be continued throughout the life of and paid to such individual having an insurable interest in his life, as he shall have named in a written designation duly acknowledged and filed with the board.

Option 2. Upon his death while on retirement, one half of his lesser retirement pension shall be continued throughout the life of and paid to such individual having an insurable interest in his life as he shall have named in a written designation duly acknowledged and filed with the board.

Effective January 1, 1987, a city may provide that an election may be made at any time prior to the date his benefits commence.

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(g) A member who has attained the age of sixty years and who has less than ten years' total service credit shall be entitled to an annuity which shall be the actuarial equivalent of his total accumulation account at the time of his retirement.

(h) Effective January 1, 1987, a city may provide that if an actuarial valuation of the plan determines that the required city contribution is less than six percent of payroll, then the board of trustees may provide ad hoc cost-of-living increases to retired members and beneficiaries, provided such change does not increase the city cost to an amount greater than six percent of payroll. Such cost-of-living increases are limited to the increase in the national consumer price index.

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§8-22-8. Disability pensions; annuities.

A member may qualify for a disability pension under any one of the following mutually exclusive provisions:

(1) If a member receives total disability in line of duty, he shall be entitled during the time of his disability to a monthly disability pension equal to fifty percent of the monthly salary of the member at date of disability: Provided, That the minimum payment shall be $100 per month. Any benefits payable from the retirement and benefit fund shall be reduced by benefits payable from workers' compensation due to the total disability of the member.

(2) If a member receives total disability not in line of duty while an employee of the city after he has had at least ten years' total service credit and such member is not entitled to a retirement pension under the provisions of section seven of this article, he shall be entitled during the time of his disability to one half of the retirement pension to which he would have been entitled under the provisions of said section seven had he been sixty years of age at date of disability and had elected to take retirement: Provided, That he shall be entitled to a minimum payment of $50 per month and a maximum payment of $100 per month. Effective January 1, 1987, a city may provide that the maximum payment be $300 per month.

(3) If a member becomes so physically or mentally disabled as to render him unfit for the performance of the duties of the position he occupies, but his disability does not constitute either total disability in line of duty or total disability not in line of duty, and such member has less than ten years' total service credit, he shall be entitled to an annuity which shall be the actuarial equivalent of his total accumulation at the date of his disability.

The board of trustees of the fund shall order a periodic reexamination of members of the fund receiving a disability pension, and if the disability no longer exists the payment thereunder shall be discontinued: Provided, That no such reexamination of any such member shall be ordered as aforesaid after such member attains the age of sixty years.

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§8-22-9. Death benefits; return of contributions.

(a) A beneficiary or beneficiaries of a deceased member, which member was not receiving a retirement pension under the provisions of section seven of this article at the date of his death, may qualify for death benefits under either of the following mutually exclusive provisions:

(1) If the member died as a result of personal injury or disease arising out of and in the course of his employment with the city, the surviving spouse shall be entitled during widowhood or widowerhood to a monthly benefit equal to thirty-three and one-third percent of the final monthly salary of the member, but not to exceed $125 per month. In the event there be no surviving spouse, or if remarriage occurs before the youngest child attains age eighteen, each child under age eighteen shall be entitled until age eighteen to a monthly benefit equal to twenty percent of the member's final monthly salary, subject to a total payment to all such children of fifty percent of such final monthly salary, or $125 per month, whichever is the lesser. If there be no surviving spouse or children under age eighteen, the deceased member's dependent father or mother or both, the question of dependency to be determined by the board, shall each be entitled until death to a monthly payment equal to one sixth of the deceased member's final monthly salary, but the payment to either parent shall not exceed $50 per month. Effective January 1, 1987, a city may provide that the above maximum benefit limitations of this section nine shall no longer apply. Any benefits payable from the retirement and benefit fund shall be reduced by benefits payable from workers' compensation due to the death of the member.

(2) If the member died from any cause other than that stated in subdivision (1) of this subsection, and such member at the date of his death had ten or more years' total service credit, his beneficiary or beneficiaries shall be entitled, for a period not to exceed ten years, to death benefits in accordance with the retirement pension table contained in section seven of this article. The death benefits shall be paid to such individual or individuals having an insurable interest in the member's life as such member shall have nominated in a designation filed with the board. As to any spouse beneficiary, the marriage must have occurred at least one year prior to the death of the member in order that the spouse may be eligible for benefits under this subdivision (2).

(b) If a member receiving a retirement pension under the provisions of section seven of this article at the date of his death dies with a spouse or beneficiary surviving (concerning which retirement pension the optional benefit provisions set forth in subsection (f) of said section seven are not applicable), and such member had been receiving such retirement pension for less than ten years, such surviving spouse or beneficiary shall be entitled to receive death benefits equivalent to the deceased member's retirement pension for the remaining period of ten years dating from the date of the member's retirement. The death benefits shall be paid to such individual or individuals having an insurable interest in the member's life as such member shall have nominated in a designation filed with the board; but a surviving spouse shall not be entitled to death benefits under the provisions of this subsection unless such surviving spouse was married to the member before the date of his retirement and such

marriage took place at least one year prior to the date of the death of the member. If the surviving spouse remarries, such spouse's death benefits shall be terminated and shall not be resumed upon subsequent change in the marital status of such spouse.

(c) If a member dies with less than ten years' total service credit so that he was not entitled to a retirement pension during life, the member's total contributions to the fund, without interest, shall be returned to such individual or individuals having an insurable interest in the member's life as such member shall have nominated in a designation filed with the board, and in the absence of any such designation, to the member's estate.

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§8-22-10. Contributions by city.

Effective January 1, 1987, the financial objective of each municipality shall not be less than to contribute to the fund annually an amount which, together with the contributions from the members, will be sufficient to meet the normal cost of the fund including the cost of administration and amortize any actuarial deficiency over a period of not more than forty years, but for those funds in existence on January 1, 1987, its actuarial deficiency, if any, shall not be amortized over a period longer than that which remains under its current schedule. For purposes of determining this minimum financial objective (1) the value of the fund's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and (2) all costs, deficiencies, rate of interest and other factors under the fund shall be determined on the basis of actuarial assumptions and methods which in aggregate are reasonable, taking into account the experience of the fund and reasonable expectations, and which in combination offer the qualified actuary's best estimate of anticipated experience under the fund. If as a result of this legislation a municipality's financial commitment to the fund is materially increased, the municipality may elect to phase in this increase over the five fiscal years commencing January 1, 1987.

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§8-22-11. Investment of funds.

The board shall keep as an available sum for the purpose of making retirement, disability and death payments and administration expense an amount estimated to meet such payments for a period not to exceed ninety days. The board in acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of the fund shall exercise judgment and care which persons of experience, prudence, discretion and intelligence exercise in the management of financial affairs, considering the probable income as well as the probable security of the investment and with regard to the permanent disposition of the fund. Within the limitations of the foregoing standard, the board is authorized in its sole discretion to invest and reinvest any funds received by it in the following:

(1) Any direct obligation of, or obligation guaranteed as to the payment of both principal and interest by, the United States of America;

(2) Any evidence of indebtedness issued by any United States government agency guaranteed as to the payment of both principal and interest, directly or indirectly, by the United States of America including, but not limited to, the following: Government national mortgage association, federal land banks, federal home loan banks, federal intermediate credit banks, banks for cooperatives, Tennessee valley authority, United States postal service, farmers home administration, export-import bank, federal financing bank, federal home loan mortgage corporation, student loan marketing association and federal farm credit banks;

(3) Any evidence of indebtedness issued by the federal national mortgage association to the extent such indebtedness is guaranteed by the government national mortgage association;

(4) Any evidence of indebtedness that is secured by a first lien deed of trust or mortgage upon real property situate within this state, if the payment thereof is substantially insured or guaranteed by the United States of America or any agency thereof;

(5) Direct and general obligations of this state;

(6) Any undivided interest in a trust, the corpus of which is restricted to mortgages on real property and, unless all of such property is situate within the state and insured, such trust at the time of the acquisition of such undivided interest, is rated in one of the three highest rating grades by an agency which is nationally known in the field of rating pooled mortgage trusts;

(7) Any bond, note, debenture, commercial paper or other evidence of indebtedness of any private corporation or association: Provided, That any such security is, at the time of its acquisition, rated in one of the three highest rating grades by an agency which is nationally known in the field of rating corporate securities: Provided, however, That if any commercial paper or any such security will mature within one year from the date of its issuance, it shall,

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at the time of its acquisition, be rated in one of the two highest rating grades by any such nationally known agency and commercial paper or other evidence of indebtedness of any private corporation or association shall be purchased only upon the written recommendation from an investment advisor that has over $300 million in other funds under its management;

(8) Negotiable certificates of deposit issued by any bank, trust company, national banking association or savings institution which mature in less than one year and are fully collateralized;

(9) Interest earning deposits including certificates of deposit, with any duly designated state depository, which deposits are fully secured by a collaterally secured bond as provided in section four, article one, chapter twelve of this code; and

(10) Mutual funds registered with the securities and exchange commission which have assets in excess of $300 million.

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§8-22-11a. Restrictions on investment.

Moneys invested as permitted by §8-22-11 of this code are subject to the restrictions and conditions contained in this section:

(1) At no time may more than 75 percent of the portfolio of either fund be invested in securities described in §8-22-11(7) of this code;

(2) At no time may more than 20 percent of the portfolio of either fund be invested in securities described in §8-22-11(7) of this code which mature within one year from the date of issuance thereof;

(3) At no time may more than nine percent of the portfolio be invested in securities issued by a single private corporation or association; and

(4) At no time may more than 60 percent of the portfolio be invested in equity mutual funds under §8-22-11(10) of this code.

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§8-22-12. Individual accounts; actuarial data; tables.

The board of trustees shall maintain an individual account with each member, showing the amount of the member's contributions and the interest accumulations thereon. It shall collect and keep in convenient form such data as may be necessary for the preparation of the required mortality and service tables, and for the compilation of such other information as may be needed for the actuarial valuation of the fund. The board of trustees shall adopt appropriate tables for the purpose of evaluating and computing retirement, disability and death allowances.

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§8-22-13. Reports by board of trustees.

The board of trustees for each retirement fund shall have regularly scheduled actuarial valuation reports prepared by a qualified actuary.

An actuarial valuation report shall be prepared at least once every five years commencing with the later of (1) July 1, 1987, or (2) five years following the most recently prepared actuarial valuation report.

For purposes of this section the term "qualified actuary" means only an actuary who is a member of the society of actuaries or the American academy of actuaries. The qualified actuary shall be designated a fiduciary and shall discharge his duties with respect to a fund solely in the interest of the members and members' beneficiaries of that fund. In order for the standard of this section to be met, the qualified actuary shall certify that the actuarial valuation report is complete and accurate and that in his opinion the technique and assumptions used are reasonable and meet the requirements of this section of this article.

The board of trustees shall submit to the governing body an annual report showing the condition of the fund under its control. It shall certify in such report the amount of accumulated cash and securities in the fund and shall present a full account of the operation of the system.

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§8-22-14. Custodian of fund; duties; bond.

The treasurer of the city shall be the custodian of all of the assets of the fund, and shall deposit and pay out the moneys of the fund upon, and in accordance with, any proper order of the board of trustees. Such treasurer shall be liable upon his official bond as treasurer for the faithful performance of his duties in respect to such fund, and the official bond of the treasurer covering such fund shall be executed with a good and financially responsible surety company, authorized to do business in this state, as surety for such fund. Such fund shall not be used for any other purpose than provided in sections two through fourteen of this article.

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§8-22-15. Action by city required before new provisions are applicable.

Notwithstanding any provisions in sections two through fourteen of this article to the contrary, the provisions of said sections two through fourteen shall not be applicable to any fund established by any city prior to the effective date of this section, unless and until such city shall by ordinance provide for the application thereof. In the absence of any such ordinance, any such established fund shall be governed and controlled by and administered in accordance with the provisions of chapter one hundred fourteen, acts of the Legislature, regular session, 1947, and the amendments by (1) chapter ninety-two, acts of the Legislature, regular session, 1949, (2) chapter one hundred twenty-nine, acts of the Legislature, regular session, 1955, and (3) chapter thirty-nine, acts of the Legislature, regular session, 1968, if and only if an ordinance were adopted on and after May 8, 1968, and prior to the effective date of this section providing for the application of said chapter thirty-nine.

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§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"

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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 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

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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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§8-22-16a. Legislative findings.

The Legislature finds that prudence often dictates a review of well meaning actions previously taken. The Legislature further finds that implementation of the cost of living benefit enacted during the one thousand nine hundred ninety regular legislative session would be disadvantageous to members of the municipal policemen and firemen pension funds and municipal budgets due to the large cost associated with that benefit and that this fact was unknown at the time of enactment of the cost of living benefit. The Legislature further finds that the fiscal integrity of the various municipal policemen and firemen pension funds will be in extreme jeopardy if an alternative benefit is not enacted. The Legislature further finds that maintenance of an actuarially sound pension system is incumbent upon the administrators of the various funds and is also incumbent upon the Legislature when it enacts changes to the benefit structure. The Legislature further finds that the implementation of the cost of living benefit enacted in the one thousand nine hundred ninety regular legislative session would prevent the maintenance of an actuarially sound pension system and would jeopardize the interests of the members of the retirement funds, therefore, it is necessary to amend the cost of living benefit as previously enacted.

WV Legislature

§8-22-17. Powers and duties of boards of trustees; training.

(a) Boards of trustees shall be public corporations by the name and style of "The Board of Trustees of the Policemen's Pension and Relief Fund of (name of municipality)", or "The Board of Trustees of the Firemen's Pension and Relief Fund of (name of municipality)", as the case may be, by which names they may sue and be sued, plead and be impleaded, contract and be contracted with, take and hold real and personal property for the use of the policemen's pension and relief fund or the firemen's pension and relief fund and have and use a common seal. In the absence of a seal, the seal of the president of the corporation shall be equivalent to a common seal. A board of trustees may also in its corporate name do and perform any and all other acts and business pertaining to the trust created hereby or by any conveyance, devise or dedication made for the uses and purposes of the board.

(b) After June 30, 1981, any board of trustees and any members of a board shall, as fund fiduciaries, discharge their duties with respect to pension and relief funds solely in the interest of the members and members' beneficiaries for the exclusive purpose of providing benefits to members and their beneficiaries and defraying reasonable expenses of administering the fund.

(c) The board of trustees of each fund shall deliver a copy of the fund's current rules, regulations and procedures to the State Treasurer or oversight board established by section eighteen-a of this article on or before March 1, 2010, and thereafter within thirty days of any approved change in the rules, regulations or procedures.

(d) Each member of a board of trustees shall attend training in matters relating to trustee duties as may be required by the oversight board pursuant to section eighteen-a of this article.

WV Legislature

§8-22-18. Members of board of trustees; how elected; presiding officers; secretary.

(a) The Board of Trustees of the Policemen's Pension and Relief Fund shall consist of the mayor of the municipality and four members of the paid police department, to be chosen as hereinafter in this section specified. The mayor of such municipality shall give notice of an election to be held on the second Monday of the month following the adoption of the ordinance providing for the establishment and maintenance of such fund, which notice shall be served upon each member of the paid police department and which shall notify each member that between the hours of 9:00 a.m. and 6:00 p.m., on the day designated for such election, an election will be held for such purpose and that each member shall furnish in writing the names of four members of the paid police department voted for; and all votes so cast shall be counted and canvassed by the mayor and the governing body for the first election, and thereafter the votes shall be counted by the then existing members of such board, who after such election shall announce the results, and the four members of the paid police department receiving the highest number of votes shall, with the mayor, constitute "The Board of Trustees of the Policemen's Pension and Relief Fund of (name of municipality)". As to the first election held following the adoption of the ordinance providing for the establishment and maintenance of such fund, the member receiving the highest number of votes shall serve for a period of four years, the member receiving the second highest number of votes shall serve for a period of three years, the member receiving the third highest number of votes shall serve for a period of two years and the member receiving the fourth highest number of votes shall serve for a period of one year.

(b) After the first election, the board shall hold a similar election each year to elect one member to succeed, for a term of four years, the retiring member. In the case of a tie vote being received by any two individuals for the office of trustee, such tie vote shall be decided by casting lots, or in any other way which may be agreed upon by the individuals for whom such tie vote was cast. The results of such election shall be entered in the record of the proceedings of the board and the members so elected shall, except as herein above specified with respect to the first election, serve for four years and until their successors are elected and have qualified. The election for such members of the board of trustees shall be held annually upon the second Monday of the same month during which the first election was held. In case of a vacancy by death or resignation among the members so elected, the remaining members of the board shall choose the successor, or successors, until the next annual election at which latter time all vacancies shall be filled: *Provided*, That in the case of an elected member retiring during his or her term, the retired member may continue to serve the remainder of his or her term.

(c) The Board of Trustees of the Firemen's Pension and Relief Fund shall consist of the mayor of the municipality and four members of the paid fire department, to be chosen in the same manner and for such terms as is provided above in this section for the election of policemen to the policemen's pension and relief fund board of trustees.

(d) The presiding officer of any such board of trustees shall be the mayor of the municipality and the secretary thereof shall be appointed by the board. It shall be the duty of such

secretary to keep a full and permanent record of all of the proceedings of the board and said trustees may fix the secretary's compensation for this work, which shall be paid out of the funds of said policemen's pension and relief fund or firemen's pension and relief fund, as the case may be.

(e) For all pension and relief funds closed after January 1, 2010, pursuant to §8-22-20(e) of this code and those closed after April 1, 2011, pursuant to §8-22-20(f) of this code, the boards shall continue to elect four trustees until there are no more beneficiaries to be paid from the fund. The electors of trustees for pension and relief funds closed after January 1, 2010, pursuant to §8-22-20(e) of this code and those closed after April 1, 2011, pursuant to §8-22-20(f) of this code are to include active police officers or firefighters as the case may be, as well as retired members of the pension fund. Trustees are elected in the same manner and for the same terms but may be members of the paid police or fire departments or retirees from the paid police or fire departments.

WV Legislature

§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. Investment of those funds may be with the Board of Treasury Investments or the Investment Management Board at the discretion of the oversight board;

(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

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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.

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(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.

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§8-22-18b. Creation of Municipal Pensions Security Fund; transfer of certain powers, duties and functions of Treasurer's office to Municipal Pensions Oversight Board.

(a) The Legislature finds that an important part of oversight of municipal policemen's and firemen's pension and relief funds is monitoring the performance required of the various funds to qualify to receive distribution of insurance premium tax revenues provided by section fourteen-d, article three, chapter thirty-three of this code. The duties and functions of the State Treasurer's office with respect to monitoring and distribution are transferred from the State Treasurer's office to the West Virginia Municipal Pensions Oversight Board effective January 1, 2010: Provided, That until the oversight board is fully organized and operating, some duties and functions being performed by the State Treasurer's office prior to January 1, 2010, may be continued by that office temporarily as necessary to effect an orderly transition of responsibilities and provide for prompt distribution of the insurance premium tax proceeds for expenses of the oversight board and to the municipal policemen's and firemen's pension and relief funds.

(b) There is hereby created in the State Treasury a nonexpiring special revenue fund designated the West Virginia Municipal Pensions Security Fund which shall be administered by the West Virginia Municipal Pensions Oversight Board solely for the purposes as provided in this article and article three, chapter thirty-three of this code. All earnings shall accrue to and be retained by the fund unless otherwise provided in this article.

(c) Until the oversight board advises the Insurance Commissioner and the State Treasurer in writing that the oversight board is prepared to receive into and distribute from the West Virginia Municipal Pensions Security Fund premium tax revenues as provided in section fourteen-d, article three, chapter thirty-three of this code and section seven, article twelve-c of said chapter, the commissioner shall continue to transfer the funds into the Municipal Pensions and Protection Fund and the State Treasurer shall continue to disburse funds to the qualifying municipal pension and relief funds, and shall disburse funds as necessary for the establishment and early operation of the oversight board. The Insurance Commissioner, the State Treasurer and oversight board shall share information freely as required for efficient transfer of powers and duties related to the premium tax revenues generated pursuant to chapter thirty-three of this code to be allocated to the municipal policemen's and firemen's pension and relief funds. When the oversight board assumes full responsibility to receive funds into and disburse funds from the Municipal Pensions Security Fund, the State Treasurer shall transfer to it all funds remaining in the Municipal Pensions and Protection Fund and close the Municipal Pensions and Protection Fund.

WV Legislature

§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.

WV Legislature

§8-22-19. Levy to maintain fund.

(a)(1) In order for a municipal policemen's or firemen's pension and relief fund or the trustee of an issue of pension funding revenue bonds issued by the building commission of a municipality, as the case may be, to receive the allocable portion of moneys from the Municipal Pensions Security Fund created in § 8-22-18b of this code, the governing body of the municipality shall levy annually and in the manner provided by law for other municipal levies and include within the maximum levy or levies permitted by law and, if necessary, in excess of any charter provision, a tax at such rate as will, after crediting: (A) The amount of the contributions received during the year from the members of the respective paid police department or paid fire department; and (B) the allocable portion of the funds from the Municipal Pensions Security Fund created in §8-22-18b of this code payable to such municipality's municipal policemen's and firemen's pension and relief funds, provide funds equal to the amount necessary to meet the minimum standards for actuarial soundness as provided in § 8-22-20 of this code. The amount deposited in a municipal policemen's or firemen's pension and relief fund shall be irrevocably contributed, accumulated, and invested as fund assets as described in §8-22-22 and §8-22-22a of this code. The amount deposited with the trustee of an issue of pension funding revenue bonds shall be used for the purpose of paying debt service on such bonds. One 12th of each municipality's annual contributions shall be deposited with the municipality's pension trust funds as fund assets on at least a monthly basis and any revenues received from any source by a municipality which are specifically collected for the purpose of allocation for deposit into the policemen's pension and relief fund or firemen's pension and relief fund shall be so deposited within five days of receipt by the municipality. A municipality may prepay its monthly required contributions in increments greater than 1/12. Heretofore surplus reserves accumulated before the effective date of this section shall be irrevocably contributed, aggregated, and invested as fund assets described in §8-22-22 and §8-22-22a of this code. Any actuarial deficiency arising under this section and §8-22-20 of this code shall not be the obligation of the State of West Virginia.

(2) The levies authorized under the provisions of this section, or any part of them, may by the governing body be laid in addition to all other municipal levies and, to that extent, beyond the limit of levy imposed by the charter of the municipality; and the levies shall supersede and if necessary exclude levies for other purposes, where other purposes have not already attained priority, and within the limitations on taxes or tax levies imposed by the constitution and laws.

(b) The public corporations are authorized to take by gift, grant, devise, or bequest any money or real or personal property on such terms as to the investment and expenditures thereof as may be fixed by the grantor or determined by the trustees.

(c) In addition to all other sums provided for pensions in this section, it is the duty of every municipality in which any fund or funds have been or shall be established to assess and collect from each member of the paid police department or paid fire department or both each month, the sum of seven percent of the actual salary or compensation of such member;

and the amount so collected shall become a regular part of the policemen's pension and relief fund, if collected from a policeman, and of the firemen's pension and relief fund, if collected from a fireman: *Provided,* That for members of the funds who are police officers or firefighters newly hired on or after January 1, 2010, the municipality shall assess and collect nine and one-half percent of the actual salary or compensation. Only those funds for which the board of trustees has collected and paid the contributions as herein provided and meeting minimum standards for actuarial soundness shall be eligible to receive moneys from the additional fire and casualty insurance premium tax as provided in §33-3-14d of this code: *Provided, however*, That the board of trustees for each pension and relief fund may assess and collect from each member of the paid police department or paid fire department or both each month not more than an additional two and one-half percent of the actual salary or compensation of each member, but not to exceed nine and one-half percent total contribution: *Provided further*, That if any board of trustees decides to assess and collect any additional amount pursuant to this subdivision above the member contribution required by this section, then that board of trustees may not reduce the additional amount until the respective pension and relief fund no longer has any actuarial deficiency: *And provided further*, That if any board of trustees decides to assess and collect any additional amount, any board of trustees decision and any additional amount is not the liability of the State of West Virginia. Member contributions shall be deposited in the pension and relief fund within five days of being collected. In the event that a municipality's building commission has issued pension funding revenue bonds, then the trustee for such bonds shall only be eligible to receive money from the additional fire and casualty insurance premium tax in §33-3-14d of this code if the board of trustees for the policemen's and firemen's pension and relief funds for which such bonds have been issued has collected and paid the contributions as herein provided and is meeting minimum standards for actuarial soundness.

(d)(1) For the fiscal year beginning on July 1, 2010, and subject to provisions of §8-22-18b and §33-3-14d of this code and for each fiscal year thereafter, the Municipal Pensions Oversight Board shall receive and retain the moneys allocated to the Municipal Pensions Security Fund until such time as the treasurer of the municipality applies for the allocable portion and certifies in writing to Municipal Pensions Oversight Board that:

(A) The municipality has irrevocably contributed the amount required under this section and §8-22-20 of this code to the pension and relief fund for the required period; and, as applicable, the trustee for the pension funding revenue bonds has filed with the governing body of the municipality and the oversight board a report showing all debt service payments have been made with previously received proceeds from the municipality and the allocable portion of the premium tax allocation received from the Municipal Pensions Security Fund for the preceding twelve months: and

(B) The board of trustees of the pension and relief fund has made a report to the governing body of the municipality and to the oversight board on the condition of its fund with respect to the fiscal year.

(2) When the aforementioned application and certification are made, the allocable portion of

moneys from the Municipal Pensions Security Fund shall be paid to the corresponding policemen's or firemen's pension and relief fund or, if pension funding revenue bonds have been issued by such municipality's building commission and remain outstanding, to the trustee for such pension funding revenue bonds. Payment to a municipal pension and relief fund or to the trustee for pension funding revenue bonds, as applicable, shall be made by electronic funds transfer.

(e) The State Auditor and the oversight board have the power, and the duty as each considers necessary, to perform or review audits on the pension and relief funds or to employ an independent consulting actuary or accountant to determine the compliance of the aforementioned certification with the requirements of this section and §8-22-20 of this code. The expense of the audit or determination shall be paid from the Municipal Pensions Security Fund pursuant to provisions of §8-22-18b of this code. If the allocable portion of the Municipal Pensions Security Fund is not paid to the pension and relief fund or to the trustee for pension funding revenue bonds, as applicable, within 18 months, the portion is forfeited by the pension and relief fund and is allocable to other eligible municipal policemen's and firemen's pension and relief funds in accordance with §33-3-14d of this code.

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§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.

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

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

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

(c)(1) Except as provided in subsections (e), (f), and (g) of this section, beginning June 30, 1991, and thereafter, the financial objective of each municipality shall not be less than to contribute to the fund annually an amount which, together with the contributions from the members and, if no pension funding revenue bonds of a building commission of such municipality are outstanding, the allocable portion of the Municipal Pensions and Protection Fund for municipal pension and relief funds established under §33-3-14d of this code or a municipality's allocation from the Municipal Pensions Security Fund created in §8-22-18b of this code and other income sources as authorized by law will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than forty years beginning from July 1, 1991: *Provided*, That in the fiscal year ending June 30, 1991, the municipality may elect to make its annual contribution to the fund using an alternative contribution in an amount not less than: (i) One hundred seven percent of the amount contributed for the fiscal year ending June 30, 1990; or (ii) an amount equal to the average of the contribution payments made in the five highest fiscal years beginning with the fiscal year ending 1984, whichever is greater: *Provided, however*, That contribution payments in subsequent fiscal years under this alternative contribution method may not be less than 107 percent of the amount contributed in the prior fiscal year: *Provided further*,

That in order to avoid penalizing municipalities and to provide flexibility when making contributions, municipalities using the alternative contribution method may exclude a one-time additional contribution made in any one year in excess of the minimum required by this section: *And provided further*, That the governing body of any municipality may elect to provide an employer continuing contribution of one percent more than the municipality's required minimum under the alternative contribution plan authorized in this subsection: *And provided further*, That if any municipality decides to contribute an additional one percent, then that municipality may not reduce the additional contribution until the respective pension and relief fund no longer has any actuarial deficiency: *And provided further*, That any decision and any contribution payment by the municipality is not the liability of the State of West Virginia: *And provided further*, That if any municipality or any pension fund board of trustees makes a voluntary election and thereafter fails to contribute the voluntarily increase as provided in this section and in §8-22-19(c) of this code, then the board of trustees is not eligible to receive funds allocated under §33-3-14d of this code: *And provided further*, That prior to using this alternative contribution method the actuary of the fund shall certify in writing that the fund is projected to be solvent under the alternative contribution method for the next consecutive 15-year period. For purposes of determining this minimum financial objective: (i) The value of the fund's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value; and (ii) all costs, deficiencies, rate of interest and other factors under the fund shall be determined on the basis of actuarial assumptions and methods which, in aggregate, are reasonable (taking into account the experience of the fund and reasonable expectations) and which, in combination, offer the qualified actuary's best estimate of anticipated experience under the fund: *And provided further*, That any municipality which elected the alternative funding method under this section and which has an unfunded actuarial liability of not more than 25 percent of fund assets, may, beginning September 1, 2003, elect to revert to the standard funding method, which is to contribute to the fund annually an amount which is not less than an amount which, together with the contributions from the members and, if no pension funding revenue bonds of a building commission of such municipality are outstanding, the allocable portion of the Municipal Pensions and Protection Fund for municipal pension and relief funds established under §33-3-14d of this code and other income sources as authorized by law, will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than 40 years, beginning from July 1, 1991.

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

(3) Notwithstanding any other provision of this section or article to the contrary, each municipality shall contribute annually to its policemen's pension and relief fund and its firemen's pension and relief fund an amount which may not be less than the normal cost, as determined by the annual actuarial valuation report required by this section: *Provided*, That in any fiscal year in which the actuarial valuation report determines that a municipality's policemen's pension and relief fund or firemen's pension and relief fund is funded at 125

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percent or higher and the Municipal Pensions Oversight Board's actuary provides an actuarial recommendation that the normal cost does not need to be paid by the employer for that fiscal year, that municipality may elect to make no contribution for that fiscal year. A municipality's election not to contribute the normal cost in any year does not affect the payments required by §8-22-19 of this code by members to a pension and relief fund and these payments are to continue as required by that section.

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

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

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

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

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

(3) A municipality choosing the optional method of financing a policemen's or firemen's

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pension and relief fund as provided in this subsection shall close the fund to police officers or fire fighters newly hired on or after January 1, 2010, and provide for those employees to be members of the Municipal Police Officers and Firefighters Retirement System as established in §8-22A-1 *et seq.*, of this code.

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

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

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

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

(5) If a municipality using the conservation method fully funds its pension and relief fund or

funds by a pension funding program authorized by §8-33-4a of this code, then the trustees of the policemen's or firemen's pension and relief fund are to pay pension obligations out of the pension and relief fund; and the minimum standard for annual municipality contributions to each policemen's or firemen's pension and relief fund shall be an amount which, together with member contributions and other income sources as authorized by law, is sufficient to meet the normal cost of the fund.

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

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

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

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demographic and investment experience and consistent with the Actuarial Standards of Practice published by the Actuarial Standards Board.

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

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§8-22-20a. Hiring of actuary; preparation of actuarial valuations.

(a)(1) The Legislature finds that it is in the best interests of the state and its municipalities to have accurate data regarding the various municipal police and firemen's pension and relief funds.

(2) The Legislature finds that the State Treasurer should contract with an actuary as a consultant for the municipal police and firemen's pension and relief funds and among other duties the actuary shall determine if there is consistent reporting from the various funds. The Legislature further finds that the State Treasurer or oversight board should share the results of the actuary's annual valuation with the appropriate municipality.

(b) Except as hereinafter provided, beginning July 1, 2002, the State Treasurer shall select by competitive bid and contract with a single qualified actuary. The actuary shall serve as a consultant to the Treasurer with regard to the operation of the municipal policemen's and firemen's pension and relief funds and shall report annually to the Treasurer with regard to all funds existing in this state by virtue of this article. Costs associated with the actuary's work shall be paid out of the Municipal Pensions and Protection Fund established pursuant to section fourteen-d, article three, chapter thirty-three of this code. The State Treasurer shall provide the single qualified actuary until the oversight board assumes the duty of providing for the actuary. Thereafter, it shall be the duty of the Municipal Pensions Oversight Board to contract for or to employ the single qualified actuary which, at a minimum, shall serve as a consultant to the oversight board and report annually to the oversight board with regard to all municipal policemen's and firemen's pension and relief funds existing in this state by virtue of this article, and which shall be paid from moneys deposited in the Municipal Pensions Security Fund. Copies of the annual report prepared by the actuary shall be sent to the Joint Committee on Government and Finance, the chair of the House of Delegates Committee on Pensions and Retirement and the chair of the Senate Committee on Pensions. Each municipal pension and relief fund shall receive a copy of the actuary's results related to that fund.

(c) With respect to each municipal policemen's or firemen's pension and relief fund, the actuary shall complete an annual valuation in accordance with actuarial standards of practice promulgated by the actuarial standards board of the American Academy of Actuaries. The report of the valuation shall include: (1) A summary of the benefit provisions evaluated; (2) a summary of the census data and financial information used in the valuation; (3) a description of the actuarial assumptions, actuarial costs method and asset valuation method used in the valuation, including a statement of the assumed rate of payroll growth and assumed rate of growth or decline in the number of the fund members' contributions to the pension fund; (4) a summary of findings that includes a statement of the actuarial accrued pension liabilities and unfunded actuarial accrued pension liabilities; (5) a schedule showing the effect of any changes in the benefit provisions, actuarial assumptions or cost methods since the last annual actuarial valuation; (6) a statement of whether contributions to the pension fund are in accordance with the provisions of this chapter and whether they are expected to be sufficient; and (7) any other matters determined by the Treasurer or, on

or after January 1, 2010, the oversight board, to be necessary or appropriate.

(d)(1) The hiring of an actuary under the provisions of this section shall not be construed to make the municipal policemen's and firemen's pension and relief funds the responsibility or obligation of the State of West Virginia.

(2) Any actuarial deficiency identified by the actuary under this section or this article is not an obligation of the State of West Virginia.

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§8-22-21. Duties and bond of custodian of funds.

The treasurer of the municipality shall be the custodian of all of the assets of the policemen's pension and relief fund and firemen's pension and relief fund, and shall deposit and pay out the moneys thereof upon, and in accordance with, any proper order of the board of trustees. Such treasurer shall be liable upon his official bond as treasurer for the faithful performance of his duties in respect to such fund or funds, and the official bond of the treasurer covering such fund or funds shall be executed with a good and financially responsible surety company authorized to do business in this state, as surety for such fund or funds. The treasurer of the municipality shall as a fund fiduciary, discharge his duties with respect to such pension and relief fund solely in the interest of the members and members' beneficiaries for the exclusive purpose of providing benefits to such members and their beneficiaries and defraying reasonable expenses of administering the fund. Such fund or funds shall be trust funds and shall not be used for any other purpose than provided herein. Such treasurer shall keep in convenient form such data as may be necessary for an actuarial valuation report of such fund and for checking the actuarial experience of such fund.

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§8-22-22. Investment of funds by boards of trustees; exercise of discretion in making investments; report of investment plan.

(a) The board of trustees may invest a portion or all of the fund assets in any of the pools, funds and securities managed by the West Virginia Investment Management Board or West Virginia Board of Treasury Investments or as otherwise provided in this section. The board of trustees shall keep as an available sum for the purpose of making regular retirement, disability retirement, death benefit, payments and administrative expenses in an estimated amount not to exceed payments for a period of ninety days in short-term investments. The board of trustees, in acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of the fund, shall do so in accordance with the provisions of the Uniform Prudent Investor Act codified as article six-c, chapter forty-four of this code. Within the limitations of the Uniform Prudent Investor Act, the board of trustees is authorized in its sole discretion to invest and reinvest any funds received by it and not invested with the West Virginia Investment Management Board or West Virginia Board of Treasury Investments.

(b) The board of trustees of each fund may delegate investment authority to professional investment advisors registered with the Securities and Exchange Commission, in accordance with the Investment Advisors Act of 1940, and registered with the appropriate state regulatory agencies, if applicable, and who manage assets in excess of $75 million.

(c) The board of trustees of each fund shall deliver to the State Treasurer or oversight board on or before March 1, 2010, a copy of the pension and relief fund's investment policy. A board of trustees shall submit to the oversight board any change to the investment policy within thirty days of the board's authorizing the change.

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§8-22-22a. Restrictions on investments; diversification of investments; disclosure of fees and costs.

(a) Moneys invested as permitted by section twenty-two of this article and not invested with the West Virginia Investment Management Board or the Board of Treasury Investments are subject to the following restrictions and conditions contained in this section:

(1) The board of trustees of each fund shall diversify fund investment so as to minimize the risk of large losses unless, under the circumstances, it is clearly prudent not to do so.

(2) The board shall hold in equity investments no more than seventy-five percent of the total pension assets managed by the board.

(3) The board shall hold in international securities no more than thirty percent of the total pension assets managed by the board.

(4) The board may not at the time of purchase hold more than five percent of the assets managed by the board in the equity securities of any single company or association.

(5) The board may purchase any security trading on the New York Stock Exchange, the American Stock Exchange and the NASDAQ over-the-counter market for its pension portfolio unless it is otherwise restricted by this section. No more than twenty-five percent of the board's total retirement plan assets may be invested in any one industry.

(6) The board shall annually review, establish and modify, if necessary, the board's investment objectives and investment policy so as to provide for the financial security of the trust funds giving consideration to the following:

(A) Preservation of capital;

(B) Diversification;

(C) Risk tolerance;

(D) Rate of return;

(E) Stability;

(F) Turnover;

(G) Liquidity; and

(H) Reasonable cost of fees.

(7) The board is expressly prohibited from investing in any class, style or strategy of alternative investments, including a real estate investment trust, private equity fund such as a venture capital, private real estate or buy-out fund; commodities fund; distressed debt

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fund; mezzanine debt fund; hedge fund; or fund consisting of any combination of private equity, distressed or mezzanine debt, hedge funds, private real estate, commodities and other types and categories of investment permitted under this article unless the investments satisfy all of the following:

(A) A professional third-party fiduciary investment adviser registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940, as amended, recommends the investment;

(B) The board or a committee designated by the board approves the investment;

(C) The total maximum alternative investment exposure of all strategies in this subdivision may not be more than twenty-five percent of the total pension portfolio at any time;

(D) The total maximum alternative investment exposure of a single fund strategy in this subdivision may not be more than ten percent of the total pension portfolio at any time; and

(E) The board requires that all of the plan assets be invested in liquid securities that are defined as securities that can be transacted quickly and efficiently for the plan, priced daily and settled within five business days.

(8) Notwithstanding the investment limitations set forth in this section, it is recognized that the assets managed by the board may temporarily exceed the investment limitations in this section due to market appreciation, depreciation and rebalancing limitations. Accordingly, the limitations on investments set forth in this section shall not be considered to have been violated if the board rebalances the assets it manages to comply with the limitations set forth in this section at least once every twelve months based on the latest available market information and any other reliable market data that the board considers advisable to take into consideration.

(9) The board shall hold in fixed income and cash equivalent investments no less than twenty-five percent and no more than seventy-five percent of total pension assets. No more than five percent may be held in one issuer or twenty-five percent in one industry: Provided, That the board may exceed this limitation if the investments are held in United States securities.

(10) Fixed income securities shall be of generally high quality and have a quality rating of "B-" or better by Moody's, Standard & Poor's, or other recognized agency, unless held by a registered investment advisor and governed by prospectus. The total fixed income portfolio shall have an average Standard & Poor's quality rating of at least "A-". For registered mutual funds, the prospectus of the fund will govern the investment policies of the fund investments.

(11) The maximum maturity for any fixed income securities is thirty years. The weighted average portfolio maturity of all fixed income securities may not exceed ten years.

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(12) The board is authorized in its sole discretion to invest and reinvest any funds received by it in the following fixed income securities:

(A) Obligations issued by the U. S. government, its agencies and instrumentalities;

(B) Obligations of foreign governments and their subdivisions, agencies and government-sponsored enterprises;

(C) Obligations of international agencies or supranational entities;

(D) Mortgage-related and other asset-backed securities;

(E) Corporate debt securities, including convertible securities and corporate commercial paper;

(F) Inflation-index bonds issued by corporations;

(G) Bank certificates of deposit, fixed time deposits and bankers acceptances; and

(H) Debt securities, issued by states or local governments and their agencies, authorities and other instrumentalities.

(13) The board is authorized in its sole discretion to invest and reinvest any funds received by it in the following cash and cash equivalents:

(A) Treasury bills;

(B) Money market funds;

(C) Short-term investment funds;

(D) Commercial paper;

(E) Bankers' acceptances;

(F) Repurchase agreements; and

(G) Certificates of deposit.

(14) Investments in cash equivalents shall be of the highest quality and , if rated, shall be ranked at least A2/P2 or higher.

(b) The board of trustees of each fund shall obtain an independent performance evaluation of the funds at least annually and the evaluation shall consist of comparisons with other funds having similar investment objectives for performance results with appropriate market indices; and

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(c) Each entity conducting business for each pension fund shall fully disclose all fees and costs of investing conducted on a quarterly basis to the trustees of the fund and to the oversight board in the manner directed by the oversight board. Entities conducting business in mutual funds for and on behalf of each pension fund shall timely file revised prospectus and normal quarterly and annual Securities and Exchange Commission reporting documents with the board of trustees of each pension fund.

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§8-22-23. Rules and regulations as to distribution of funds; proof of age.

The board of trustees of the policemen's pension and relief fund and the board of trustees of the firemen's pension and relief fund shall make rules and regulations, not inconsistent with the provisions of sections sixteen through twenty-eight of this article, for the distribution of the moneys of such funds according to the qualifications of those to whom any portion of such moneys shall be paid and the amount thereof: Provided, That such rules and regulations shall not be enforced until the same have been approved by the governing body.

At the time of the original appointment of any member to the paid police or fire department, such member shall, at the request of the board of trustees, furnish to said board a certified copy of his birth certificate or other proof of his date of birth satisfactory to the board.

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§8-22-23a. Eligibility for total and temporary disability pensions and total and permanent disability pensions; reporting; light duty.

(a) All members applying for total and temporary or total and permanent disability benefits after June 30, 1981, shall be examined by at least two physicians under the direction of the staff at Marshall University, West Virginia University, Morgantown, or West Virginia University, Charleston: *Provided*, That if a member's medical condition cannot be agreed on by the two physicians, a third physician shall examine the member: *Provided, however*, That beginning January 1, 2010, and continuing thereafter, a member applying for total and temporary or total and permanent disability benefits shall be examined by two physicians, one of which shall be chosen and paid by the member, and one of which shall be chosen and paid by the oversight board. If the two physicians disagree, the oversight board shall select and pay for a third examining physician: *Provided further*, That starting July 1, 2023, and continuing thereafter, the physician(s) chosen by the oversight board to perform the independent medical examination(s) may perform an in-person or virtual examination of a member's physical or mental health, or both, or at the discretion of the oversight board, a medical record review of the member's physical or mental health, or both. The selection of the method of examination is at the discretion of the oversight board in consultation with the physician.

(1) Disability benefits shall be awarded if in the opinion of two of the examining physicians the member is by reason of the disability unable to perform adequately the job duties required.

(2) Each medical examination shall include the review of the member's medical history, but an examining physician may not have access to the disability examination report or disability recommendation of another physician.

(3) The physicians shall send copies of their reports to both the board of trustees of the member's pension and relief fund and the oversight board.

(4) The expense of the member's transportation to medical examinations shall be paid by the board of trustees. Medical expense shall not exceed the reasonable and customary charges for similar services.

(5) Beginning January 1, 2010, and thereafter, if a member is charged with an offense that has the potential to lead to the member's termination, the member's municipal pensions and relief fund board of trustees may not consider the member's eligibility for disability benefits until after investigation of the charge is completed and any disciplinary decision is implemented.

(6) No later than January 1, 2011, and annually thereafter, each board of trustees shall report to the oversight board the total number of disability applications received during the prior fiscal year, the status of each application as of the end of the fiscal year, total applications granted and denied, and the percentage of disability-benefit recipients to the

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total number of active members of the fund.

(b) Effective for members becoming eligible for total and temporary disability benefits after June 30, 1981, initially or previously under this subsection allowance for initial or additional total and temporary disability payments, the amount thereof to be determined as specified in section twenty-four of this article shall be paid to the member during the disability for a period not exceeding 26 weeks if after a medical examination in accordance with subsection (a) of this section two examining physicians report in writing to the board of trustees that: (1) The member has become so totally, physically or mentally disabled, from any reason, as to render the member totally, physically or mentally, incapacitated for employment as a police officer or firefighter; and (2) it has not been determined if the disability is permanent or it has been determined that the disability may be alleviated or eliminated if the member follows a reasonable medical treatment plan or reasonable medical advice: *Provided*, That, in any event, a member is not eligible for total and temporary disability payments following the fourth consecutive 26-week period of total and temporary disability unless subsequent disability results from a cause unrelated to the cause of the four previous periods of total and temporary disability. During the two-year period of total and temporary disability, the department is required to restore the member to his or her former position in the department at any time the member is determined to no longer be disabled: *Provided, however*, That the department may refill, on a temporary basis, the position vacated by the member after the first 26 weeks of his or her temporary disability.

(c) Effective for members becoming eligible for total and permanent disability benefits initially under this subsection or becoming eligible for total and temporary disability benefits under subsection (b) of this section after June 30, 1981, allowance for total and permanent disability payments, the amount thereof to be determined as specified in section twenty-four of this article, shall be paid to the member after a medical examination in accordance with subsection (a) of this section, two examining physicians report in writing to the board of trustees that the member has become so totally, physically or mentally, and permanently disabled, as a proximate result of service rendered in the performance of his or her duties in the department, as to render the member totally, physically or mentally, and permanently incapacitated for employment as a police officer or firefighter or, if the member has been a member of either of the departments for a period of not less than five consecutive years preceding the disability, the member has become so totally, physically or mentally, and permanently disabled, from any reason other than service rendered in the performance of his or her duties in the department, as to render the member totally, physically or mentally, and permanently incapacitated for employment as a police officer or firefighter. The phrase "totally, physically or mentally, and permanently disabled" shall not be construed to include a medical condition which may be corrected if the member follows a reasonable medical treatment plan or reasonable medical advice.

(d) Effective for members becoming eligible for total and temporary disability benefits after June 30, 1981, under the provisions of subsection (b) of this section, any payments for total and temporary disability for a period during the disability not exceeding 26 weeks shall cease at the end of the 26-week period under the following conditions:

(1) The member fails to be examined as provided in subsection (a) of this section; or (2) the member is examined or reexamined as provided in said subsection and two examining physicians report to the board of trustees that the member's medical condition does not meet the requirements of subsection (b) or (c) of this section. Effective for members becoming eligible for total and temporary disability benefits after June 30, 1981, under subsection (b) of this section, subsequent to the member's receipt of total and temporary disability payments for a period of two years, the payments shall cease at the end of the two-year period under the following conditions: (A) The member fails to be examined as provided in subsection (a) of this section; or (B) the member is examined or reexamined as provided in said subsection and two examining physicians report to the board of trustees that the member's medical condition does not meet the requirements of subsection (c) of this section.

(e) Notwithstanding other provisions of this section to the contrary, a member of a municipal policemen's or firemen's pension and relief fund who is found to be disabled from performing the full range of tasks relevant to police officer or firefighter employment, but capable of performing a restricted or light-duty police officer or firefighter job made available at the discretion of the employing municipality may choose to continue working and retain an active membership in his or her pension and relief fund.

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§8-22-24. Disability pensions.

(a) The monthly sum to be paid to each member eligible for disability received as a proximate result of service rendered in the performance of his or her duties under the provisions of §8-22-23(a) of this code is equal to 60 percent of the monthly salary being received by the member, at the time he or she is so disabled, or the sum of $500 per month, whichever is greater: *Provided*, That the limitation provided in subsection (b) of this section is not exceeded: *Provided, however*, That effective on or after July 1, 2015, if the member was granted disability as a result of service rendered in the performance of his or her duties under the provisions of §8-22-23a of this code and if the member at the time of the disablement was under the age of 50 and had 21 to 30 years of service, the member may after attaining the age of 50 petition the pension board of trustees of the policemen's pension or the pension board of trustees of the firemen's pension to begin receiving the retirement pension benefit the member is now eligible for in place of the disability pension benefit the member is currently receiving. Any change from a disability pension retirement benefit to a regular retirement pension benefit shall reset the supplemental benefit start date to the first day of July following the second anniversary of the commencement of the regular pension retirement benefit at or after age 50: *Provided further*, That nothing in this section shall allow a policemen's pension board of trustees or a firemen's pension board of trustees to change a previously awarded total disability incurred not in the line of duty to a total disability granted as a result of service rendered in the performance of his or her duties for the purpose of qualifying the member for a regular retirement at age 50.

(b) Effective for any member who becomes eligible for disability benefits on or after July 1, 1981, under the provisions of §8-22-23a of this code, as a proximate result of service rendered in the performance of the member's duties within such departments, the member's monthly disability payment as provided in subsection (a) of this section may not, when aggregated with the monthly amount of state workers' compensation, result in the disabled member receiving a total monthly income from the sources in excess of one hundred percent of the basic compensation which is paid to members holding the same position which the member held within the department at the time of the member's disability. Lump sum payments of state workers' compensation benefits are not considered for purposes of this subsection unless the lump sum payments represent commuted values of monthly state workers' compensation benefits.

(c) Any member who has served on active duty with the armed forces of the United States as described in §8-22-27 of this code, whether prior or subsequent to becoming a member of a paid police or fire department covered by the provisions of this article, and who, on July 1, 1986, is receiving or thereafter receives a disability pension, shall receive in addition to the 60 percent or minimum $500 authorized in subsection (a) of this section, one additional percent for each year served in active military duty, up to a maximum of four additional percent.

(d) Beginning on and after April 1, 1991, the monthly sum to be paid to a member who becomes eligible for total disability incurred not in the line of duty is the monthly benefit

provided in subsection (a) of this section: *Provided*, That for any person receiving benefits under this subsection who is self-employed or employed by another, there shall be offset against the benefits the amount of $1 for each $3 of income derived from self-employment or employment by another: *Provided, however*, That a person receiving disability benefits must file a certified copy of his or her tax return on or before April 15 of each year to demonstrate either unemployment or income earned from self-employment or employment by another: *Provided further*, That there is no offset of benefit for any income derived from self-employment or employment by another when the annual total amount of the income is $18,200 or less: *And provided further*, That beginning on or after July 1, 2026, a member who previously qualified for a total disability incurred not in the line of duty and who has attained the Social Security normal retirement age is no longer required to provide his or her tax return to the trustees of the policemen's pension and relief fund or the firemen's pension and relief fund in order to continue receiving the total disability incurred not in the line of duty.

(e) The $18,200 limit in subsection (d) of this section shall be automatically increased when the minimum wage, as provided in §21-5C-2 of this code, increases, by the same percentage of the increase in the minimum wage.

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§8-22-25. Retirement pensions.

(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.

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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.

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§8-22-25a. Deferred retirement option plans; authorization; requirements; limitations.

(a) A deferred retirement option plan (DROP) is a method to encourage retention of a worker beyond normal retirement age by permitting the worker to freeze retirement benefits at a certain time prior to ceasing work, to continue to work for a specified period, and to have retirement benefits which accrue while the employee continues working set aside in an account which the worker will then receive in a lump sum upon finally discontinuing work. The Legislature acknowledges that a DROP may be a useful and economical tool for retaining experienced and trained employees and for planning for turnovers in the workforce. Experience, however, dictates that a DROP may place a heavy financial burden on the employer and the affected retirement system, negating any positive benefit offered by the DROP if the DROP is not carefully planned to be economically favorable to the employer and revenue neutral for the affected retirement system while remaining attractive to the targeted employee.

(b)(1) The governing bodies of municipalities participating in policemen's and firemen's pension and relief funds pursuant to §8-22-16 through §8-22-28 of this code, are authorized to voluntarily offer DROPs. A participating municipality may design and establish a DROP to best meet the municipality's needs so long as the DROP complies with federal law, the requirements set forth in this section and be approved by the Municipal Pensions Oversight Board.

(2) Prior to approval by the Municipal Pensions Oversight Board, a municipality shall submit a proposed DROP to the board for analysis by the qualified actuary retained or employed by the board. The actuary shall examine the plan and, in light of the elements of the DROP and the actuarial projections of the impact of the DROP on the affected pension and relief fund, advise the board of the anticipated impact on the municipal pension and relief fund. The board shall seek to approve only those DROPs which, in the best judgment of the actuary, are designed to have no negative impact on the member's pension and relief fund. The submitting municipality shall reimburse the board for actuarial costs of analyzing the plan.

(c) To be eligible to enter a DROP, the member of the policemen's or firemen's pension and relief fund must be in active employment and an active member of his or her pension and relief fund for at least six months beyond attaining eligibility for regular retirement as provided in §8-22-25 of this code and have received a satisfactory performance evaluation within the prior 12 months. The member may defer retirement for a period of not less than one nor more than five years but must complete the period by age 65. The member may elect to commence participation after July 1, 2011.

(d)(1) During the DROP participation period, the member shall continue with full-time employment in a covered position subject to the municipality's requirements. A member's retirement benefits are calculated as of the DROP participation date and a member may not accumulate additional retirement benefits during the DROP participation period. Upon beginning participation, the member is treated as retired and receiving benefits for purposes

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of the retirement system: *Provided*, That for the purpose of distributing premium tax proceeds required in §33-3-14d of this code, he or she shall be included in the calculation of the municipality's average number of policemen or firemen for each month that he or she works at least one hundred hours. During the DROP participation period, the employer shall continue to make regular contributions to the employee's pension and relief fund.

(2) Benefit payments are accumulated for the member in the pension and relief fund in an accumulation account during the DROP participation period. At the end of the participation period, the amount in the accumulation account owing to the member, plus interest not to exceed three and one-half percent, shall be paid to the member in a lump sum. Monthly retirement payments shall be paid directly to the member starting in the month following the end of the DROP participation period.

(3) A member may voluntarily terminate DROP participation early with 60 days' advance notice. Deferred accumulated benefits will be paid with no interest for the DROP period and benefits payments will commence following the early termination date. Covered employment must terminate before benefit distributions may be made. Should the employer wish to terminate the employment during the participation period, the member may terminate participation with 30 days' notice and the deferred accumulation balance shall be paid with interest according to the DROP design: *Provided*, That if the employee is terminated for cause during the participation period, the member may terminate participation with 30 days' notice and the deferred accumulation balance shall be paid without interest according to the DROP design.

(4) A member who is unable to continue working because of disability shall cease participation the first day of the month following notice of disability to the employer and the pension and relief fund. The accumulation account balance shall be paid to the member with no interest. No additional benefits are due the member on account of the disability.

(5) In the event of death of a member during DROP participation, the accumulation account of the member through the member's date of death is payable to the member's beneficiary or beneficiaries, with interest according to DROP design.

(6) A member entering the DROP is contractually obligated to terminate employment at the end of the DROP participation period. Failure to terminate voluntarily results in termination of employment for cause, except that a member who continues to work with the consent of the employer past the DROP participation period shall have all benefits frozen during the extension period and no additional benefit accumulates. During the period of time the member continues to work beyond the end of the DROP participation period with the consent of the employer, the employer shall continue to make regular contributions to the employee's pension and relief fund. Regular retirement benefits will commence the month following eventual employment termination or death. The member's accumulation account balance is frozen in value following the end of the DROP participation period.

(e) The oversight board shall annually report to the Legislature's Joint Committee on

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Pensions and Retirement, and to the Legislature as required by §4-1-23 and §5-1-20 of this code, on DROPs submitted to the board for approval and the status of any DROP that has been approved. Once every five years, the oversight board shall have its contracted actuary provide a report to the Legislature's Joint Committee on Pensions and Retirement on the status of each active Deferred Retirement Option Plan (DROP). The reports shall include any experienced impact on an affected pension and relief fund.

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§8-22-25b. Right to benefits not subject to execution, etc.; assignments prohibited; deductions for group insurance; setoffs for fraud; exception for certain domestic relations orders; assets exempt from taxes.

The right of a person to any benefit provided in this article shall not be subject to execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other process whatsoever, nor shall any assignment thereof be enforceable in any court except that the benefits or contributions under municipal policemen's pension and relief funds and firemen's pension and relief funds shall be subject to "qualified domestic relations orders" as that term is defined in Section 414(p) of the Internal Revenue Code as applicable to governmental plans: *Provided*, That should a member be covered by a group insurance or prepayment plan participated in by a participating municipality, and should he or she be permitted to, and elect to, continue such coverage as a retirant, he or she may authorize the board of trustees to have deducted from his or her retirement pension the payments required of him or her to continue coverage under such group insurance or prepayment plan: *Provided, however*, That a participating municipality shall have the right of setoff for any claim arising from embezzlement by, or fraud of, a member, retirant or beneficiary. The assets of the retirement system are exempt from state, county and municipal taxes.

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§8-22-26. Death benefits.

(a) In case:

(1) Any member of a paid police or fire department who has been in continuous service for more than five years dies from any cause other than as specified in subsection (b) of this section before retirement on a disability pension pursuant to §8-22-24 of this code if prior to July 1, 1981, or pursuant to §8-22-23a and §8-22-24 of this code if after June 30, 1981, or a retirement pension pursuant to §8-22-25(a) and §8-22-25(b) of this code, leaving in either case a surviving spouse, or any dependent child or children under the age of 18 years, or dependent father or mother, or both, or any dependent brothers or sisters, or both, under the age of 18 years, or any dependent child over the age of 18 years of age who is totally physically or mentally disabled so long as such condition exists; or

(2) Any former member of any such department who is on a disability pension pursuant to §8-22-24 of this code if prior to July 1, 1981, , or pursuant to §8-22-23a and §8-22-24 of this code if after June 30, 1981, or is receiving or is entitled to receive retirement pension benefits pursuant to §8-22-25(a) and §8-22-25(b) of this code, dies from any cause other than as specified in subsection (b) of this section leaving in either case a surviving spouse or any dependent child or children under the age of 18 years, or dependent father or mother, or both, or any dependent brothers or sisters, or both, under the age of 18 years, or any dependent child over the age of 18 years of age who is totally physically or mentally disabled so long as such condition exists; then in any of the cases set forth in this subdivision and subdivision (1) of this subsection, the board of trustees of such pension and relief fund shall, immediately following the death of the member, pay to or for each entitled surviving dependent the following pension benefits: To the surviving spouse, until death or remarriage, a sum per month equal to 60 percent of the member's pension or, in the event the member was not receiving a pension at the time of the member's death, a sum per month equal to 60 percent of the monthly retirement pension such member would have been entitled to receive pursuant to §8-22-25 of this code on the date of the member's death if the member had then been eligible for a retirement pension, or the sum of $300 per month, whichever is greater; to each dependent child, a sum per month equal to 20 percent of the member's pension or, in the event the member was not receiving a pension on the date of the member's death, a sum per month equal to 20 percent of the monthly retirement pension the member would have been entitled to receive pursuant to §8-22-25 of this code on the date of the member's death if the member had then been eligible for a retirement pension, or until the child attains the age of 18 years or marries, whichever first occurs; to each dependent orphaned child, a sum per month equal to 25 percent of the member's pension or, in the event the member was not receiving a pension on the date of the member's death, a sum per month equal to 25 percent of the monthly retirement pension the member would have been entitled to receive pursuant to §8-22-25 of this code on the date of the member's death if the member had then been eligible for a retirement pension, until the child attains the age of 18 years or marries, whichever first occurs; to each dependent father or mother, a sum per month for each equal to 10 percent of the member's pension or, in the event the member was not receiving a pension on the date of the member's death, a sum per month

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equal to 10 percent of the monthly retirement pension the member would have been entitled to receive pursuant to §8-22-25 of this code on the date of the member's death if the member had then been eligible for a retirement pension; to each dependent brother or sister, the sum of $50 per month until he or she attains the age of 18 years or marries, whichever first occurs, but in no event shall the aggregate amount paid to all brothers and sisters of the member exceed $100 per month. If at any time, because of the number of dependents, all dependents cannot be paid in full as herein provided, then each dependent shall receive his or her pro rata share of the payments. In no case shall the payments to the surviving spouse and children be cut below 65 percent of the total amount paid to all dependents.

(b) The surviving spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any member who dies by reason of service rendered in the performance of the member's duties shall, regardless of the length of the member's service and irrespective of whether the member was or was not entitled to receive, or was or was not receiving, disability pension or temporary disability payments at the time of the member's death, receive the death benefits provided for in subsection (a) of this section. If the member had less than three years' service at the time of the member's death, the member's pension shall be computed on the basis of the actual number of years of service.

(c) If a member dies without leaving a spouse, dependent child or children, or dependent father or mother, or dependent brothers or sisters, the member's contributions to the fund plus six percent interest shall be refunded to the member's named beneficiary or, if no beneficiary has been named, to the member's estate to the extent that the contributions plus interest exceed any disability or retirement benefits that the member may have received before the member's death.

(d) This section shall not be construed as creating or establishing any contractual or vested rights in favor of any individual who may be or become qualified as a beneficiary of the death benefits authorized to be made pursuant to this section. This section and benefits provided pursuant to this section are expressly subject to subsequent legislative enactments as may provide for any change, modification, or elimination of the beneficiaries or benefits specified herein.

(e) Notwithstanding the provisions of §8-22-24 of this code, the benefit provided for in this section shall be calculated as if the member had remained unemployed throughout any period of disability.

(f) For the purpose of distributing premium tax proceeds as required by §33-3-14d of this code, one beneficiary of the death benefit authorized by this section shall be included in the average monthly number of retired police officers and firefighters.

(g) If there are no survivors entitled to receive benefits pursuant to the provisions of this section because of death, age, or marital status, to the extent the member's contributions to the fund plus six percent interest exceed any survivor benefits already paid, any excess shall be refunded to the member's named beneficiary. If there is no named beneficiary, any excess

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shall be paid to the member's heirs to be distributed in accordance with §42-1-1 *et seq.* of this code relating to intestate succession.

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§8-22-26a. Supplemental pension benefits entitlement; benefit payable; application of section; construction.

(a) Except as otherwise provided in this section, all retirees, surviving beneficiaries, disability pensioners or future retirees shall receive as a supplemental pension benefit an annualized monthly amount commencing on July 1, based on a percentage increase equal to any increase in the consumer price index as calculated by the United States Department of Labor, Bureau of Statistics, for the preceding year: Provided, That the supplemental pension benefit specified herein shall not exceed four percent per year: Provided, however, That no retiree shall be eligible for the supplemental pension benefit specified herein until July 1, after the expiration of two years from the date of retirement of said retiree: Provided further, That persons retiring prior to the effective date of this section shall receive the supplemental benefit provided for in this section immediately upon retirement and shall not be subject to the two year delay: And provided further, That the supplemental benefit shall only be calculated on the allowable amount, which is the first $15,000 of the total annual benefit paid. If at any time, after the supplemental benefit becomes applicable, the total accumulated percentage increase in benefit on the allowable amount becomes less than seventy-five percent of the total accumulated percentage increase in the consumer price index over that same period of time, the four percent limitation shall be inapplicable until such time as the supplemental benefit paid equals seventy-five percent of the accumulated increase in the consumer price index. The supplemental pension benefit payable under the provisions of this section shall be paid in equal monthly installments.

(b) Upon commencement of the payment of death benefits pursuant to section twenty-six of this article, there shall be calculated on the allowable amount, which is the first $15,000 of the annual allowable benefit under said section twenty-six, the supplemental benefit provided for in subsection (a) of this section using the date that the retirement benefit provided for pursuant to section twenty-five of this article began as the base year. The amount of the death benefit provided pursuant to section twenty-six of this article shall be calculated without regard to any supplemental benefit previously paid under this section. After the initial calculation made pursuant to this subsection the beneficiary of the benefits provided for pursuant to section twenty-six, shall, after reindexation, thereafter receive the supplemental benefit provided for in subsection (a).

(c) Persons becoming disabled and eligible for a benefit under subsection (d), section twenty-four of this article after January 1, 1991, shall receive as an annualized monthly supplemental benefit commencing on each July the first an amount based on a percentage increase equal to any increase in the consumer price index as calculated by the United States Department of Labor, Bureau of Statistics, for the preceding year: Provided, That the supplemental pension benefit shall not exceed four percent per year: Provided, however, That the benefit provided herein shall not commence until July 1, in the second year after what would have been the earliest service retirement date pursuant to section twenty-five of this article for the person receiving the disability benefit: Provided further, That for persons becoming eligible for a benefit under subsection (d), article twenty-four of this section who

were not employed in the preceding year and file a copy of his or her income tax return by the fifteenth of April each year, evidencing said lack of employment, the benefit provided herein shall commence on July 1, in the second year after the date of disablement: And provided further, That the supplemental benefit shall only be calculated on the allowable amount, which is the first $15,000 of the total annual benefit paid. If at any time after the commencement of the payment of the supplemental benefit provided under this subsection the total accumulated percentage increase in benefit on the allowable amount becomes less than seventy-five percent of the total accumulated increase in the consumer price index for that same period of time, the four percent limitation shall be inapplicable until such time as the supplemental benefit paid equals seventy-five percent of the accumulated increase in the consumer price index.

(d) Persons receiving a disability pension pursuant to section twenty-four of this article prior to January 1, 1991, shall receive commencing each July first, as an annualized monthly supplemental benefit an amount based on a percentage increase equal to any increase in the consumer price index as calculated by the United States Department of Labor, Bureau of Statistics, for the preceding year: Provided, That the supplemental benefit provided herein shall not exceed two percent per year: Provided, however, That beginning July 1, two years after what would have been the earliest service retirement date pursuant to section twenty-five of this article the supplemental benefit provided herein shall not exceed four percent per year. The amount of supplemental benefit provided in this subsection shall not exceed four percent beginning July 1, in any twelve month period for any pensioner who files a certified copy of his or her tax return evidencing that said pensioner was unemployed in the preceding year and received no earned income. The tax return shall be filed by the fifteenth of April in any such year. If at any time after July 1, in the second year from what would have been the earliest service retirement date pursuant to section twenty-five of this article the total accumulated percentage increase in the supplemental benefit provided pursuant to this subsection on the allowable amount becomes less than the seventy-five percent of the total accumulated percentage increase in the consumer price index over that same period of time, the maximum percentage shall be inapplicable until such time as the percentage increase in the supplemental benefit paid equals seventy-five percent of the accumulated increase in the consumer price index. The supplemental benefit provided in this subsection shall only be calculated on the allowable amount, which is the first $15,000 of the annual benefit paid.

(e) Any supplemental benefits paid during a period of nonentitlement may be withheld out of subsequent regular monthly pension benefits.

(f) During the fiscal year ending on June 30, 1996, and each year thereafter, each municipal policemen's and firemen's pension fund shall be reviewed by a qualified actuary who shall make a determination as to its actuarial soundness. Based upon the actuary's determination of the actuarial soundness of the fund, the actuary shall certify to the board of trustees of the fund the amount of increase in supplemental benefits, if any, which may be paid, and which will preserve the minimum standards for actuarial soundness of the fund, as set forth in section twenty of this article. The board of trustees shall increase supplemental benefits by an amount which is equal to the actuary's certified recommendation, up to the four

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percent limit contained in this section or the increase in the consumer price index, whichever is less. If the actuary determines that it is necessary to preserve the actuarial soundness of the fund, the board of trustees of the fund shall increase the percentage of the members' contribution from seven percent to the amount certified by the actuary not to exceed eight and one-half percent, but only for so long as is necessary to achieve the minimum standards for actuarial soundness required by section twenty of this article. In any year in which there is no supplemental benefit paid, such year shall not be included in the reindexation calculation provided pursuant to this section.

(g) This section shall be construed liberally to effectuate the purpose of establishing minimum pension benefits under this article for members and surviving spouses.

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§8-22-27. General provisions concerning disability pensions, retirement pensions and death benefits.

(a) In determining the years of service of a member in a paid police or fire department for the purpose of ascertaining certain disability pension benefits, all retirement pension benefits and certain death benefits, the following provisions shall be applicable:

(1) Absence from the service because of sickness or injury for a period of two years or less shall not be construed as time out of service; and

(2) Any member of any paid police or fire department covered by the provisions of sections sixteen through twenty-eight of this article who has been or will be on qualified military service in the armed forces of the United States, has an honorable discharge from the armed forces, presents himself or herself for resumption of duty to his or her appointing municipal official within six months from his or her date of discharge and is accepted by two medical examiners, at least one of which is appointed by the oversight board as being mentally and physically capable of performing the required duties as a member of the paid police or fire department, shall be given credit for continuous service in the paid police or fire department. The six-month period in which a member has to resume employment and receive credit for continuous service is extended to a period not to exceed two years if the member has been hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, qualified military service. No member of a paid police or fire department shall be required to pay the monthly assessment during a period of qualified military service. However, a member who desires to make up member assessments, in whole or in part, has five years from the date of return to work, but shall not be required to pay any interest or other charges for the assessments being made up. The employer must pay the employer contributions for the periods made up by the member within ninety days of each payment, or within ninety days of the normal due date. A member who resumes duty with a paid police or fire department after qualified military service is entitled to accrued benefits only to the extent that the member made up the member assessments.

(b) As to any former member of a paid police or fire department receiving disability pension benefits or retirement pension benefits from a policemen's or firemen's pension and relief fund, on July 1, 1985, the following provisions shall govern and control the amount of the pension benefits:

(1) A former member who on June 30, 1962, was receiving disability pension benefits or retirement pension benefits from a policemen's or firemen's pension and relief fund, shall continue to receive pension benefits, but on and after July 1, 1985, the pension benefits shall be no less than the amount of $500 per month; and

(2) A former member who became entitled to disability pension benefits or retirement pension benefits on or after July 1, 1962, shall continue to receive pension benefits, but on and after July 1, 1985, shall receive the disability pension benefits, or retirement pension benefits provided in section twenty-four or twenty-five of this article, as the case may be.

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(c) As to any surviving spouse, dependent child or children, or dependent father or mother, or dependent brothers or sisters, of any former member of a paid police or fire department, receiving any death benefits from a policemen's pension and relief fund or firemen's pension and relief fund, on July 1, 1985, the following provisions shall govern and control the amount of such death benefits:

(1) A surviving spouse, dependent child or children or dependent father or mother, or dependent brothers or sisters, of any former member, who on June 30, 1962, was receiving any death benefits from a policemen's pension and relief fund or firemen's pension and relief fund, shall continue to receive death benefits, but on and after July 1, 1985, the death benefits shall be no less than the following amounts: To a surviving spouse, until death or remarriage, the sum of $300 per month; to each dependent child the sum of $30 per month, until the child attains the age of eighteen years or marries, whichever first occurs; to each dependent orphaned child, the sum of $45 per month, until the child attains the age of eighteen years or marries, whichever first occurs; to each dependent father and mother the sum of $30 per month for each; to each dependent brother or sister, the sum of $50 per month, until the individual attains the age of eighteen years or marries, whichever first occurs, but in no event shall the aggregate amount paid to the brothers and sisters exceed $100 per month. If at any time, because of the number of dependents, all dependents cannot be paid in full as herein provided, then each dependent shall receive a pro rata share of the payments. In no case shall the payments to the surviving spouse and children be cut below sixty-five percent of the total amount paid to all dependents; and

(2) A surviving spouse, dependent child or children, or dependent father or mother, or dependent brothers or sisters, of any former member who became eligible for death benefits on or after July 1, 1962, shall continue to receive death benefits, but on and after July 1, 1985, shall receive the death benefits provided in section twenty-six of this article.

(d) A former member who is receiving disability pension benefits on July 1, 1985, shall continue to receive disability pension benefits provided in section twenty-four of this article.

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§8-22-27a. Correction of errors; underpayments; overpayments.

(a) General rule. — Upon learning of errors, the Municipal Policemen's Pension and Relief Fund Board of Trustees or the Municipal Firemen's Pension and Relief Fund Board of Trustees shall correct errors in the plan in a timely manner whether the individual, municipality, or board of trustees was at fault for the error with the intent of placing the affected individual, municipality, and pension board of trustees in the position each would have been in had the error not occurred. Should the municipal policemen's or firemen's pension and relief fund board of trustees fail to correct discovered errors, the Municipal Pensions Oversight Board shall order the pension fund board of trustees to correct such errors. In the event the Municipal Pensions Oversight Board issues an order pursuant to this section, the governing body of the city may by resolution temporarily appoint up to four additional members to the board of trustees for the purpose of implementing the provisions of the order. The additional board members shall serve until all corrective actions ordered by the Municipal Pensions Oversight Board are completed or until the municipality authorizes continued erroneous payments to retirants or beneficiaries of a retirant as authorized by subsection (d) of this section. Any order issued by the Municipal Pensions Oversight Board shall be enforceable by an action at law.

(b) Underpayments to the plan. — Any error resulting in an underpayment to the plan may be corrected by the member or retirant remitting the required employee contribution or underpayment and the municipality remitting the required municipality contribution or underpayment. The rate of interest applicable to employer error payments in a municipal policemen's or municipal firemen's pension and relief fund shall be the actuarial interest rate assumption as approved by the Municipal Pensions Oversight Board for completing the actuarial valuation for the plan year immediately preceding the first day of the plan year in which the employer error payment is made, compounded per annum. Any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the employer. The employer may remit total payment and the employee reimburse the employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the plan will result in the plan correcting an erroneous underpayment from the plan, the correction of the underpayment from the plan shall be made only after the board of trustees receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) Overpayments to the plan by an employee. — When mistaken or excess employee contributions or overpayments have been made to the plan, the municipal policemen's or municipal firemen's pension and relief fund board of trustees shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of Section 401(a), et seq. of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the municipal policemen's or municipal

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firemen's pension and relief fund board of trustees may require the municipality employing the individual to pay the individual the amounts as wages, with the board of trustees crediting the employer with a corresponding amount to offset against its future contributions to the plan. If the municipality has no future liability for municipality contributions to the plan, the board of trustees shall refund said amount directly to the municipality: Provided, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the board of trustees for returning employee overpayments.

(d) Overpayments from the plan. — If any error results in any member, retirant, beneficiary, entity, or other individual receiving from the plan more than he or she would have been entitled to receive had the error not occurred, the board of trustees, after learning of the error, shall correct the error in a timely manner. Unless otherwise authorized by the governing body of the city in which the fund was established as provided herein, if correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board of trustees shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity, or other person who received the overpayment from the plan shall repay the amount of any overpayment to the municipal policemen's pension fund or municipal firemen's pension fund in any manner permitted by the board of trustees of that fund. The governing body of the city in which the overpaying municipal fund is established may, by majority vote, authorize continued overpayment of retirement benefits for any member, retirant, beneficiary, entity, or individual who retired prior to the effective date of this section as enacted during the regular legislative session of 2017: Provided, That where the governing body of the city authorizes continued overpayment, it shall also authorize continued payment into the fund in an amount equal to that which it would be responsible to pay under the applicable actuarial method used by the city without reduction to any retirement benefit. Interest shall not accumulate on any corrective payment made to the plan pursuant to this subsection.

(e) Underpayments from the plan. — If any error results in any member, retirant, beneficiary, entity, or other individual receiving from the plan less than he or she would have been entitled to receive had the error not occurred, the board of trustees, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board of trustees shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board of trustees shall pay the amount of such underpayment to the member, retirant, beneficiary, or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the municipal policemen's pension fund or municipal firemen's pension fund pursuant to this subsection.

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§8-22-27b. Fraud; penalties; and repayment.

Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of a municipal policemen's or municipal firemen's pension and relief fund in any attempt to defraud that system is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail not more than one year, or both fined and confined. Any increased benefit received by any person as a result of the falsification or fraud shall be returned to the fund on demand by the board of trustees or by demand of the Municipal Pensions Oversight Board.

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§8-22-28. Period in which payments limited to income from fund; reduced payments where fund insufficient.

Until the expiration of three years from the time of the creation of any such fund, unless otherwise authorized by ordinance of the municipality, no payment shall be made to any member or beneficiary except from the income arising from said fund; and if at any time prior to July 1, 1981, there shall not be sufficient money to the credit of said pension and relief fund to pay each member and beneficiary entitled to the benefits thereof the full amount per month, as herein provided, then an equal percentage of such monthly payments shall be made to each member and beneficiary thereof, until the earlier of: (a) July 1, 1983, and (b) such time when said fund is so replenished as to warrant payment in full to each of such members and beneficiaries.

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§8-22-28a. Distribution of remaining assets in a closed municipal policemen's or firemen's pension and relief fund.

(a)(1) Upon the cessation of any and all benefit payments to retirees or retiree beneficiaries because of death or disqualification, the board shall transfer the remaining assets of a policemen's pension and relief fund or a firemen's pension and relief fund to the municipality to be used solely by the municipality's governing body to fund future retirement obligations for the municipality's police or fire department members who are in the Municipal Police Officers and Firefighters Retirement System established under §8-22A-1 et seq. of this code, subject to subdivision (2) of this subsection.

(2) If within five years prior to the death of the last remaining retiree or beneficiary the Municipal Pensions Oversight Board provided any state aid to the fund pursuant to §33-3-14d(b)(2) of this code, an amount equal to the aggregate amount of state aid provided to the fund during that period shall be repaid from the assets of the fund to the Municipal Pensions Oversight Board prior to the municipality's use of the remaining assets for the purposes described in subdivision (1) of this subsection. If the amount to be repaid is greater than the total assets of the fund, then the entire amount of the fund shall be repaid to the Municipal Pensions Oversight Board.

(b) The Municipal Pensions Oversight Board shall deposit any repaid amounts into the Municipal Pensions Security Fund for reallocation to municipal policemen's or firemen's pension and relief funds with an actuarial deficiency during the next allocation cycle pursuant to §33-3-14d(b)(2) of this code.

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PART IV. PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-29. Pension plans for employees of waterworks system, sewerage system or combined waterworks and sewerage system may be continued.

Any city which owns a waterworks system or sewerage system or combined waterworks and sewerage system, which does not hereafter become a participating public employer under the said West Virginia Public Employees Retirement System, which does not establish and maintain an employees' retirement and benefit fund in accordance with the provisions of sections two through fourteen of this article and which has heretofore provided, under the provisions of former section twenty-one-a, article four of this chapter, a pension plan or plans on behalf of and pertaining to all or part of the employees of said waterworks system or sewerage system or combined waterworks and sewerage system, may continue to maintain such plan or plans, financed from the general operation funds of said waterworks system or sewerage system or combined waterworks and sewerage system, and administered by a pension board or pension commission. Any such pension board or pension commission shall continue to be composed of such members as shall be approved by the governing body, giving proper representation to the employees of such waterworks system or sewerage system or combined waterworks and sewerage system. The chief financial executive officer or treasurer of such pension board or pension commission shall continue to maintain bond with a surety company qualified to do business in this state in an amount equal to the value of any funds or securities in the control of or owned by the pension board or pension commission. After reserving such funds as may be deemed necessary by the pension board or pension commission to provide such amounts as may be required to meet temporary commitments, the remainder shall continue to be invested in general obligation bonds of the United States, this state or any political subdivision of this state.

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