WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

OFFICE OF WEST VIRGINIANS SECRETARY OF STATE

Committee Substitute

for

House Bill 3148

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

(BY REQUEST OF MUNICIPAL PENSIONS OVERSIGHT BOARD)

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

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

Committee Substitute

for

House Bill 3148

By Delegates Storch, Marple, Anderson, E. Pritt and C. Pritt (By Request of Municipal Pensions Oversight Board)

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

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

Be it enacted by the Legislature of West Virginia:

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

- §8-22-16. Pension and relief funds for policemen and firemen; creation of boards of trustees; definitions; continuance of funds; average adjusted salary.
- (a) Except as provided in subsection (e) of this section, passed into law during the fourth extraordinary session of the Legislature in 2009, in every Class I and Class II city having, or which may hereafter have, a paid police department and a paid fire department, or either of such departments, the governing body shall, and in every Class III city and Class IV town or village having, or which may hereafter have, a paid police department and a paid fire department, or either of such departments, the governing body may, by ordinance provide for the establishment and maintenance of a policemen's pension and relief fund and for a firemen's pension and relief fund for the purposes hereinafter enumerated and, thereupon, there shall be created boards of trustees which shall administer and distribute the moneys authorized to be raised by this section and the following sections of this article. For the purposes of this section and §8-22-17 through §8-22-28, inclusive, of this code, the term "paid police department" or "paid fire department" means only a municipal police department or municipal fire department, as the case may be,

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

- (b) Any policemen's pension and relief fund and any firemen's pension and relief fund established in accordance with the provisions of former §8-6-1 *et seq.* of this code or this article shall be or remain mandatory and shall be governed by §8-22-16 through §8-22-28, inclusive, of this code (with like effect, in the case of a Class III city or Class IV town or village, as if such Class III city or Class IV town or village were a Class I or Class II city) and may not be affected by the transition from one class of municipal corporation to a lower class as specified in §8-1-3 of this code: *Provided*, That any Class III or Class IV town or village that hereafter becomes a Class I or Class II city may not be required to establish a pension and relief fund if the town or village is a participant in an existing pension plan regarding paid firemen and/or policemen.
- (c) After June 30, 1981, for the purposes of §8-22-16 through §8-22-28, inclusive, of this code, the word "member" means any paid police officer or firefighter who at time of appointment to a paid police or fire department met the medical requirements of chapter 2-2 of the National Fire Protection Association Standards Number 1001 Firefighters Professional Qualifications >74 as updated from year to year: *Provided*, That any police officer or firefighter who was a member of the fund prior to July 1, 1981, shall be considered a member after June 30, 1981.
- (d) (1) For purposes of §8-22-16 through §8-22-28, inclusive, of this code, the words "salary or compensation" mean remuneration actually received by a member, plus the member's deferred compensation under sections 125, 401(k), 414(h)(2) and 457 of the United States Internal Revenue Code of 1986, as amended: *Provided*, That the remuneration received by the member during any 12-consecutive-month period used in determining benefits which is in excess of an amount which is 20 percent greater than the "average adjusted salary" received by the member in the two consecutive 12-consecutive-month periods immediately preceding the 12-consecutive-month period used in determining benefits shall be disregarded: *Provided*, *however*,

That the "average adjusted salary" means the arithmetic average of each year's adjusted salary, the adjustment made to reflect current salary rate and such average adjusted salary shall be determined as follows: Assuming "year-one" means the second 12-consecutive-month period preceding such 12-consecutive-month period used in determining benefits, "year-two" means the 12-consecutive-month period 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, to 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 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.

§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.

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

(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

Enr CS for HB 3148

49

50

51

52

53

54

55

56

57

58

59

60

61

62

63

64

65

66

67

68

69

70

71

72

73

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 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 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

179

180

181

182

183

184

185

186

187

188

189

190

191

192

193

194

195

196

197

198

199

200

201

202

203

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 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.

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

certify that the foregoing bill is correctly enrolled.		
There Marriso		
Clerk of the House of Delegates		
Clerk of the Senate	OFFICE OF WE SECRETARY	
Originated in the House of Delegates.	9 7	
In effect ninety days from passage.	3: 30 STATE	U
Speaker of the House of Delegates	<i>\$</i> 28	

President of the Senate

PRESENTED TO THE GOVERNOR

MAR 16 2023

Time 3:59pm