

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2603

BY DELEGATES WALTERS, FOLK, ANDERSON, HAMILTON,

O'NEAL, E. EVANS AND PETHTEL

[Passed April 6, 2017; in effect ninety days from passage.]

1 AN ACT to amend and reenact §8-22-20 of the Code of West Virginia, 1931, as amended, relating
2 to municipal policemen's or firemen's pension and relief funds that are funded at one
3 hundred and twenty-five percent or more; and authorizing certain costs not be paid.

Be it enacted by the Legislature of West Virginia:

1 That §8-22-20 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

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

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

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

10 (b) The actuarial valuation report provided pursuant to subsection (a) of this section shall
11 consist of, but is not limited to, the following disclosures: (1) The financial objective of the fund
12 and how the objective is to be attained; (2) the progress being made toward realization of the
13 financial objective; (3) recent changes in the nature of the fund, benefits provided or actuarial

14 assumptions or methods; (4) the frequency of actuarial valuation reports and the date of the most
15 recent actuarial valuation report; (5) the method used to value fund assets; (6) the extent to which
16 the qualified actuary relies on the data provided and whether the data was certified by the funds
17 Auditor or examined by the qualified actuary for reasonableness; (7) a description and explanation
18 of the actuarial assumptions and methods; (8) an evaluation of each plan using the alternative
19 funding method, to assess advantages of changing to other funding methods as provided in this
20 article; and (9) any other information required in section twenty-a of this article or that the qualified
21 actuary feels is necessary or would be useful in fully and fairly disclosing the actuarial condition
22 of the fund.

23 (c)(1) Except as provided in subsections (e) and (f) of this section, beginning June 30,
24 1991, and thereafter, the financial objective of each municipality shall not be less than to
25 contribute to the fund annually an amount which, together with the contributions from the
26 members and the allocable portion of the Municipal Pensions and Protection Fund for municipal
27 pension and relief funds established under section fourteen-d, article three, chapter thirty-three of
28 this code or a municipality's allocation from the Municipal Pensions Security Fund created in
29 section eighteen-b of this article and other income sources as authorized by law will be sufficient
30 to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not
31 more than forty years beginning from July 1, 1991: *Provided*, That in the fiscal year ending June
32 30, 1991, the municipality may elect to make its annual contribution to the fund using an
33 alternative contribution in an amount not less than: (i) One hundred seven percent of the amount
34 contributed for the fiscal year ending June 30, 1990; or (ii) an amount equal to the average of the
35 contribution payments made in the five highest fiscal years beginning with the fiscal year ending
36 1984, whichever is greater: *Provided, however*, That contribution payments in subsequent fiscal
37 years under this alternative contribution method may not be less than one hundred seven percent
38 of the amount contributed in the prior fiscal year: *Provided further*, That in order to avoid penalizing
39 municipalities and to provide flexibility when making contributions, municipalities using the

40 alternative contribution method may exclude a one-time additional contribution made in any one
41 year in excess of the minimum required by this section: *And provided further*, That the governing
42 body of any municipality may elect to provide an employer continuing contribution of one percent
43 more than the municipality's required minimum under the alternative contribution plan authorized
44 in this subsection: *And provided further*, That if any municipality decides to contribute an additional
45 one percent, then that municipality may not reduce the additional contribution until the respective
46 pension and relief fund no longer has any actuarial deficiency: *And provided further*, That any
47 decision and any contribution payment by the municipality is not the liability of the State of West
48 Virginia: *And provided further*, That if any municipality or any pension fund board of trustees
49 makes a voluntary election and thereafter fails to contribute the voluntarily increase as provided
50 in this section and in subsection (c), section nineteen of this article, then the board of trustees is
51 not eligible to receive funds allocated under section fourteen-d, article three, chapter thirty-three
52 of this code: *And provided further*, That prior to using this alternative contribution method the
53 actuary of the fund shall certify in writing that the fund is projected to be solvent under the
54 alternative contribution method for the next consecutive fifteen-year period. For purposes of
55 determining this minimum financial objective: (i) The value of the fund's assets shall be
56 determined on the basis of any reasonable actuarial method of valuation which takes into account
57 fair market value; and (ii) all costs, deficiencies, rate of interest and other factors under the fund
58 shall be determined on the basis of actuarial assumptions and methods which, in aggregate, are
59 reasonable (taking into account the experience of the fund and reasonable expectations) and
60 which, in combination, offer the qualified actuary's best estimate of anticipated experience under
61 the fund: *And provided further*, That any municipality which elected the alternative funding method
62 under this section and which has an unfunded actuarial liability of not more than twenty-five
63 percent of fund assets, may, beginning September 1, 2003, elect to revert to the standard funding
64 method, which is to contribute to the fund annually an amount which is not less than an amount
65 which, together with the contributions from the members and the allocable portion of the Municipal

66 Pensions and Protection Fund for municipal pension and relief funds established under section
67 fourteen-d, article three, chapter thirty-three of this code and other income sources as authorized
68 by law, will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency
69 over a period of not more than forty years, beginning from July 1, 1991.

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

73 (3) Notwithstanding any other provision of this section or article to the contrary, each
74 municipality shall contribute annually to its policemen's pension and relief fund and its firemen's
75 pension and relief fund an amount which may not be less than the normal cost, as determined by
76 the annual actuarial valuation report required by this section: *Provided*, That in any fiscal year in
77 which the actuarial valuation report determines that a municipality's policemen's pension and
78 relief fund or firemen's pension and relief fund is funded at one hundred and twenty-five percent
79 or higher and the Municipal Pensions Oversight Board's actuary provides an actuarial
80 recommendation that the normal cost does not need to be paid by the employer for that fiscal
81 year, that municipality may elect to make no contribution for that fiscal year. A municipality's
82 election not to contribute the normal cost in any year does not affect the payments required by
83 section nineteen of this article by members to a pension and relief fund and these payments are
84 to continue as required by that section.

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

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

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

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

102 (2) For those municipalities choosing the optional method of finance, the minimum
103 standard for annual municipality contributions to each policemen’s or firemen’s pension and relief
104 fund shall be an amount which, together with the contributions from the members and allocable
105 portion of the Municipal Pensions and Protection Fund or Municipal Pensions Security Fund
106 created in section eighteen-b of this article, and other income sources as authorized by law, will
107 be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a
108 period of not more than forty years beginning January 1, 2010: *Provided*, That those municipalities
109 using the standard method of financing in 2009 shall continue to amortize their actuarial
110 deficiencies over a period of not more than forty years beginning July 1, 1991. The required
111 contribution shall be determined each plan year as described above by the actuary retained by
112 the oversight board, based on an actuarial valuation reflecting actual demographic and investment
113 experience and consistent with the Actuarial Standards of Practice published by the Actuarial
114 Standards Board.

115 (3) A municipality choosing the optional method of financing a policemen’s or firemen’s
116 pension and relief fund as provided in this subsection shall close the fund to police officers or fire

117 fighters newly hired on or after January 1, 2010, and provide for those employees to be members
118 of the Municipal Police Officers and Firefighters Retirement System as established in article
119 twenty-two-a of this chapter.

120 (f)(1) Beginning April 1, 2011, any municipality using the alternative method of financing
121 may choose a conservation method of financing its municipal policemen's and firemen's pension
122 and relief funds as outlined in this subsection, in lieu of the alternative method as provided in
123 subdivision (1), subsection (c), or the optional method as provided in subsection (e) of this section.

124 (2) For those municipalities choosing the conservation method of finance, until a plan is
125 funded at one hundred percent, a part of each plan member's employee contribution to the fund
126 equal to one and one-half percent of the employee's compensation, shall be deposited into and
127 remain in the trust and accumulate investment return. In addition, until a plan is funded at one
128 hundred percent, an actuarially determined portion of the premium tax allocation to each fund
129 provided in accordance with section fourteen-d, article three, and section seven, article twelve-c
130 of chapter thirty-three of this code shall also be deposited into and remain in the trust and
131 accumulate investment return. This variable percentage of premium tax allocation to be retained
132 in each fund shall be determined annually by the qualified actuary provided pursuant to subsection
133 (a) of this section to be an amount required, along with other assets of the fund as necessary to
134 reach a funded level of one hundred percent in thirty-five years from the time of adoption of the
135 conservation financing method. The variable percentage shall be calculated using a prospective
136 four-year rolling average.

137 (3) Upon adoption of the conservation method of finance, the municipality shall close its
138 pension and relief funds to new members and shall place police officers and firefighters newly
139 hired after adoption of the conservation method into the Municipal Police Officers and Firefighters
140 Retirement System created in article twenty-two-a of this chapter.

141 (4) Upon adoption of the conservation method of financing, the minimum standard for
142 annual municipality contributions to each policemen's or firemen's pension and relief fund shall

143 be an amount which, together with member contributions and premium tax proceeds not required
144 to be retained in the trust pursuant to this subsection, and other income sources as authorized by
145 law, is sufficient to meet the annual benefit and administrative expense payments from the funds
146 on a pay-as-you-go basis: *Provided*, That at the time the actuarial report required by this section
147 indicates no actuarial deficiency in the municipal policemen's or firemen's pension and relief fund,
148 the minimum annual required contribution of the municipality may not be less than an amount
149 which together with all member contributions and other income authorized by law, is sufficient to
150 pay normal cost.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2017.

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Governor