

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4430**

BY DELEGATES STORCH, GEARHEART, EVANS,

ANDERSON AND PETHTEL

(BY REQUEST OF THE MUNICIPAL PENSIONS OVERSIGHT BOARD)

[Passed March 8, 2022; in effect ninety days from passage.]



1 AN ACT to amend and reenact §8-22-16 of the Code of West Virginia, 1931, as amended, relating  
2 to providing definitions of “base salary” and “overtime and other remuneration” for a  
3 policemen’s pension and relief fund and a firemen’s pension and relief fund.

*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.**

1 (a) Except as provided in subsection (e) of this section, passed into law during the fourth  
2 extraordinary session of the Legislature in 2009, in every Class I and Class II city having, or which  
3 may hereafter have, a paid police department and a paid fire department, or either of such  
4 departments, the governing body shall, and in every Class III city and Class IV town or village  
5 having, or which may hereafter have, a paid police department and a paid fire department, or  
6 either of such departments, the governing body may, by ordinance provide for the establishment  
7 and maintenance of a policemen’s pension and relief fund and for a firemen’s pension and relief  
8 fund for the purposes hereinafter enumerated and, thereupon, there shall be created boards of  
9 trustees which shall administer and distribute the moneys authorized to be raised by this section  
10 and the following sections of this article. For the purposes of this section and §8-22-17 through  
11 §8-22-28, inclusive, of this code, the term “paid police department” or “paid fire department”  
12 means only a municipal police department or municipal fire department, as the case may be,  
13 maintained and paid for out of public funds and whose employees are paid on a full-time basis  
14 out of public funds. The term may not be taken to mean any department whose employees are  
15 paid nominal salaries or wages or are only paid for services actually rendered on an hourly basis.

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

25 (c) After June 30, 1981, for the purposes of §8-22-16 through §8-22-28, inclusive, of this  
26 code, the word "member" means any paid police officer or firefighter who at time of appointment  
27 to a paid police or fire department met the medical requirements of chapter 2-2 of the National  
28 Fire Protection Association Standards Number 1001 — Firefighters Professional Qualifications  
29 >74 as updated from year to year: *Provided*, That any police officer or firefighter who was a  
30 member of the fund prior to July 1, 1981, shall be considered a member after June 30, 1981.

31 (d) (1) For purposes of §8-22-16 through §8-22-28, inclusive, of this code, the words  
32 "salary or compensation" mean remuneration actually received by a member, plus the member's  
33 deferred compensation under sections 125, 401(k), 414(h)(2) and 457 of the United States  
34 Internal Revenue Code of 1986, as amended: *Provided*, That the remuneration received by the  
35 member during any 12-consecutive-month period used in determining benefits which is in excess  
36 of an amount which is 20 percent greater than the "average adjusted salary" received by the  
37 member in the two consecutive 12-consecutive-month periods immediately preceding the 12-  
38 consecutive-month period used in determining benefits shall be disregarded: *Provided, however*,  
39 That the "average adjusted salary" means the arithmetic average of each year's adjusted salary,  
40 the adjustment made to reflect current salary rate and such average adjusted salary shall be  
41 determined as follows: Assuming "year-one" means the second 12-consecutive-month period

42 preceding such 12-consecutive-month period used in determining benefits, “year-two” means the  
43 12-consecutive-month period immediately preceding the 12-consecutive-month period used in  
44 determining benefits and “year-three” means the 12-consecutive-month period used in  
45 determining benefits, year-one total remuneration shall be multiplied by the ratio of year-three  
46 base salary, exclusive of all overtime and other remuneration, to year-one base salary, exclusive  
47 of all overtime and other remuneration, such product shall equal “year-one adjusted salary”; year-  
48 two total remuneration shall be multiplied by the ratio of year-three base salary, exclusive of all  
49 overtime and other remuneration, to year-two base salary, exclusive of all overtime and other  
50 remuneration, such product shall equal “year-two adjusted salary”; and the arithmetic average of  
51 year-one adjusted salary and year-two adjusted salary shall equal the average adjusted salary.  
52 For inclusion in base salary or overtime and other remuneration, any payments to a member shall  
53 have pension deductions withheld from the payment to the member.

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

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

66 (e)(1) Any municipality, as that term is defined in §8-1-2 of this code, or municipal  
67 subdivision as defined in §8-22A-2 of this code may, by a majority vote of its governing body,

68 close its existing policemen's or firemen's pension and relief fund to employees newly hired on or  
69 after January 1, 2010, if the municipality enrolls those newly hired police officers or firefighters in  
70 a retirement plan created in §8-22A-1 *et seq.* of this code and approved and administered by the  
71 West Virginia Consolidated Public Retirement Board. On and after July 1, 2010, no new  
72 policemen's or firemen's pension and relief fund may be established under this section. A Class  
73 I or Class II municipality forming a new paid police department or paid fire department after June  
74 30, 2010, shall, notwithstanding the provisions of §8-22A-2 of this code, enroll the department  
75 members in the Municipal Police Officers and Firefighters Retirement System established in §8-  
76 22A-1 *et seq.* of this code.

77 (2) Any municipality using the alternative method of financing that elects to close an  
78 existing pension and relief fund to new hires pursuant to this subsection shall also adopt either  
79 the optional method of financing the unfunded actuarial accrued liability of the existing  
80 policemen's or firemen's pension and relief fund as provided in §8-22-20(e) of this code, or the  
81 conservation method as provided in §8-22-20 (f) of this code.

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

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*

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The within ..... this the.....  
day of ....., 2022.

.....  
*Governor*