

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 446

BY SENATORS NELSON, CLEMENTS, TRUMP, AND

PLYMALE

[Introduced January 20, 2022; referred
to the Committee on Pensions; and then to the
Committee on Finance]

1 A BILL 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 fund and 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 ~~shall~~ may not be taken to mean any department whose employees
 15 are paid nominal salaries or wages or are only paid for services actually rendered on an hourly

16 basis.

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

27 (c) After June 30, 1981, for the purposes of §8-22-16 through §8-22-28, inclusive, of this
28 code, the word "member" means any paid police officer or firefighter who at time of appointment
29 to a paid police or fire department met the medical requirements of chapter 2-2 of the National
30 Fire Protection Association Standards Number 1001 -- Firefighters Professional Qualifications
31 >74 as updated from year to year: *Provided*, That any police officer or firefighter who was a
32 member of the fund prior to July 1, 1981, shall be considered a member after June 30, 1981.

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

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

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

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

68 (e)(1) Any municipality, as that term is defined in §8-1-2 of this code, or municipal
69 subdivision as defined in §8-22A-2 of this code may, by a majority vote of its governing body,
70 close its existing policemen's or firemen's pension and relief fund to employees newly hired on or
71 after January 1, 2010, if the municipality enrolls those newly hired police officers or firefighters in
72 a retirement plan created in §8-22A-1 *et seq.* of this code and approved and administered by the
73 West Virginia Consolidated Public Retirement Board. On and after July 1, 2010, no new
74 policemen's or firemen's pension and relief fund may be established under this section. A Class I
75 or Class II municipality forming a new paid police department or paid fire department after June
76 30, 2010, shall, notwithstanding the provisions of §8-22A-2 of this code, enroll the department
77 members in the Municipal Police Officers and Firefighters Retirement System established in §8-
78 22A-1 *et seq.* of this code.

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

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

NOTE: The purpose of this bill is to providing definitions of "base salary" and "overtime and other remuneration" for a policemen's pension fund and firemen's pension and relief fund.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.