

ENROLLED

**Senate Bill No. 514**

(By Senators Gaunch and Plymale)

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[Passed March 13, 2015; in effect ninety day from passage.]

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AN ACT to amend and reenact §33-3-14d of the Code of West Virginia, 1931, as amended, relating to investments by local policemen's and firemen's pension and relief fund boards; requiring annual review of investment performance; requiring investment with the Investment Management Board in certain circumstances; and reallocating certain tax revenue in certain circumstances.

*Be it enacted by the Legislature of West Virginia:*

That §33-3-14d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.**

**§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.**

1           (a) (1) For the purpose of providing additional revenue for municipal policemen's and  
2 firemen's pension and relief funds and the Teachers Retirement System Reserve Fund and for  
3 volunteer and part-volunteer fire companies and departments, there is hereby levied and imposed an  
4 additional premium tax equal to one percent of taxable premiums for fire insurance and casualty  
5 insurance policies. For purposes of this section, casualty insurance does not include insurance on

1 the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or  
2 insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other  
3 credit transaction while the debtor is disabled as defined in the policy.

4 (2) All moneys collected from this additional tax shall be received by the commissioner and  
5 paid by him or her into a special account in the State Treasury, designated the Municipal Pensions  
6 and Protection Fund: *Provided*, That on or after January 1, 2010, the commissioner shall pay ten  
7 percent of the amount collected to the Teachers Retirement System Reserve Fund created in section  
8 eighteen, article seven-a, chapter eighteen of this code, twenty-five percent of the amount collected  
9 to the Fire Protection Fund created in section thirty-three of this article for allocation by the  
10 Treasurer to volunteer and part-volunteer fire companies and departments and sixty-five percent of  
11 the amount collected to the Municipal Pensions and Protection Fund: *Provided, however*, That upon  
12 notification by the Municipal Pensions Oversight Board pursuant to the provisions of section  
13 eighteen-b, article twenty-two, chapter eight of this code, on or after January 1, 2010, or as soon  
14 thereafter as the Municipal Pensions Oversight Board is prepared to receive the funds, sixty-five  
15 percent of the amount collected by the commissioner shall be deposited in the Municipal Pensions  
16 Security Fund created in section eighteen-b, article twenty-two, chapter eight of this code. The net  
17 proceeds of this tax after appropriation thereof by the Legislature is distributed in accordance with  
18 the provisions of this section, except for distribution from proceeds pursuant to subsection (d),  
19 section eighteen-a, article twenty-two, chapter eight of this code.

20 (b) (1) Before August 1 of each year, the treasurer of each municipality in which a municipal  
21 policemen's or firemen's pension and relief fund is established shall report to the State Treasurer the  
22 average monthly number of members who worked at least one hundred hours per month and the  
23 average monthly number of retired members of municipal policemen's or firemen's pension and relief

1 fund or the Municipal Police Officers and Firefighters Retirement System during the preceding fiscal  
2 year: *Provided*, That beginning in the year 2010 and continuing thereafter, the report shall be made  
3 to the oversight board created in section eighteen-a, article twenty-two, chapter eight of this code.  
4 These reports received by the oversight board shall be provided annually to the State Treasurer by  
5 September 1.

6 (2) Before September 1 of each calendar year, the State Treasurer, or the Municipal Pensions  
7 Oversight Board, once in operation, shall allocate and authorize for distribution the revenues in the  
8 Municipal Pensions and Protection Fund which were collected during the preceding calendar year  
9 for the purposes set forth in this section. Before September 1 of each calendar year and after the  
10 Municipal Pensions Oversight Board has notified the Treasurer and commissioner pursuant to  
11 section eighteen-b, article twenty-two, chapter eight of this code, the Municipal Pensions Oversight  
12 Board shall allocate and authorize for distribution the revenues in the Municipal Pensions Security  
13 Fund which were collected during the preceding calendar year for the purposes set forth in this  
14 section. In any year the actuarial report required by section twenty, article twenty-two, chapter eight  
15 of this code indicates no actuarial deficiency in the municipal policemen's or firemen's pension and  
16 relief fund, no revenues may be allocated from the Municipal Pensions and Protection Fund or the  
17 Municipal Pensions Security Fund to that fund. The revenues from the Municipal Pensions and  
18 Protection Fund shall then be allocated to all other pension and relief funds which have an actuarial  
19 deficiency.

20 (3) The Municipal Pensions Oversight Board shall annually review the investment  
21 performance of each municipal policemen's or firemen's pension and relief fund. If the municipal  
22 pension and relief fund's board fails for three consecutive years to comply with the investment  
23 provisions established by section twenty-two-a, article twenty-two, chapter eight of this code, the

1 oversight board may require the municipal policemen's or firemen's pension and relief fund to invest  
2 with the Investment Management Board to continue to receive its allocation of funds from the  
3 premium tax. If the municipal pension and relief fund fails to move its investments to the  
4 Investment Management Fund within the eighteen-month drawdown period, provided in subsection  
5 (e), section nineteen, article twenty-two, chapter eight of this code, the revenues shall be reallocated  
6 to all other municipal policemen's or firemen's pension and relief funds that have drawn down one  
7 hundred percent of their allocations.

8 (4) The moneys, and the interest earned thereon, in the Municipal Pensions and Protection  
9 Fund allocated to volunteer and part-volunteer fire companies and departments shall be allocated and  
10 distributed quarterly to the volunteer fire companies and departments. Before each distribution date,  
11 the State Fire Marshal shall report to the State Treasurer the names and addresses of all volunteer  
12 and part-volunteer fire companies and departments within the state which meet the eligibility  
13 requirements established in section eight-a, article fifteen, chapter eight of this code.

14 (c) (1) Each municipal pension and relief fund shall have allocated and authorized for  
15 distribution a pro rata share of the revenues allocated to municipal policemen's and firemen's pension  
16 and relief funds based on the corresponding municipality's average monthly number of police  
17 officers and firefighters who worked at least one hundred hours per month during the preceding  
18 fiscal year. On and after July 1, 1997, from the growth in any moneys collected pursuant to the tax  
19 imposed by this section and interest thereon there shall be allocated and authorized for distribution  
20 to each municipal pension and relief fund, a pro rata share of the revenues allocated to municipal  
21 policemen's and firemen's pension and relief funds based on the corresponding municipality's  
22 average number of police officers and firefighters who worked at least one hundred hours per month  
23 and average monthly number of retired police officers and firefighters. For the purposes of this

1 subsection, the growth in moneys collected from the tax collected pursuant to this section is  
2 determined by subtracting the amount of the tax collected during the fiscal year ending June 30,  
3 1996, from the tax collected during the fiscal year for which the allocation is being made and interest  
4 thereon. All moneys received by municipal pension and relief funds under this section may be  
5 expended only for those purposes described in sections sixteen through twenty-eight, inclusive,  
6 article twenty-two, chapter eight of this code.

7 (2) Each volunteer fire company or department shall receive an equal share of the revenues  
8 allocated for volunteer and part-volunteer fire companies and departments.

9 (3) In addition to the share allocated and distributed in accordance with subdivision (1) of  
10 this subsection, each municipal fire department composed of full-time paid members and volunteers  
11 and part-volunteer fire companies and departments shall receive a share equal to the share distributed  
12 to volunteer fire companies under subdivision (2) of this subsection reduced by an amount equal to  
13 the share multiplied by the ratio of the number of full-time paid fire department members who are  
14 also members of a municipal firemen's pension and relief fund or the Municipal Police Officers and  
15 Firefighters Retirement System to the total number of members of the fire department.

16 (d) The allocation and distribution of revenues provided in this section are subject to the  
17 provisions of section twenty, article twenty-two, chapter eight of this code and sections eight-a and  
18 eight-b, article fifteen of said chapter.

19 (e) Based upon the findings of an audit by the Treasurer, the Legislature hereby finds and  
20 declares that during the period of 1982 through April 27, 2012, allocations from the Municipal  
21 Pensions and Protection Fund were miscalculated and errors were made in amounts transferred,  
22 resulting in overpayments and underpayments to the relief and pension funds and to the Teachers  
23 Retirement System, and that the relief and pension funds and the Teachers Retirement System were

1 not at fault for any of the overpayments and underpayments. The Legislature hereby further finds  
2 and declares that any attempt by the Municipal Pension Oversight Board or other entity to recover  
3 any of the overpayments would be unjust and create economic hardship for the entities that received  
4 overpayments. No entity, including, without limitation, the Municipal Pension Oversight Board,  
5 may seek to recover from a relief or pension fund, the Teachers Retirement System or the state any  
6 overpayments received from the Municipal Pensions and Protection Fund and the overpayments are  
7 not subject to recovery, offset or litigation. Pursuant to the audit by the Treasurer, the amount of  
8 \$3,631,846.55 is determined owed to specific relief and pension funds through the period of April  
9 27, 2012. The Treasurer is hereby authorized to transfer the amount of \$3,631,846.55 from the  
10 Unclaimed Property Trust Fund to the Municipal Pensions and Protection Fund, which is hereby  
11 reopened for the sole purpose of the transfer and remittances pursuant to this subsection, and to use  
12 the amount transferred to remit the amounts due to the pension and relief funds. The payment of  
13 \$3,631,846.55 to the pension and relief funds is complete satisfaction of any amounts due and no  
14 entity, including, without limitation, the Municipal Pension Oversight Board and any pension or  
15 relief fund, may seek to recover any further amounts.