

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

House Bill No. 3203

(By Delegates Morgan, Craig and Leach)



9

Passed April 8, 2005

In Effect Ninety Days from Passage

FILED

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H. B. 3203

(BY DELEGATES MORGAN, CRAIG AND LEACH)

H.B.

[Passed April ⁹~~8~~, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §8-13C-1 and §8-13C-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §8-13C-14, all relating to the use of proceeds from a pension relief municipal occupational tax, a pension relief municipal sales and service tax and a pension relief municipal use tax; the loss of authority to impose those taxes; authorizing a qualifying municipality, subject to meeting certain requirements, to close their existing pension and relief fund plan for policemen and firemen to those hired after a future date; authorizing a qualifying municipality, subject to meeting certain requirements, to establish a defined contribution plan for policemen and firemen hired on and after the future date; and authorizing policy and authorizing a qualifying municipality, subject to meeting certain requirements, to issue revenue bonds for the purpose of eliminating the unfunded actuarial accrued liability of the existing pension and relief fund plan for policemen and firemen and to issue refunding bonds issued to refund, in whole or in part, bonds issued for that purpose.

Be it enacted by the Legislature of West Virginia:

That §8-13C-1 and §8-13C-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §8-13C-14, all to read as follows:

ARTICLE 13C. MUNICIPAL TAX IN LIEU OF BUSINESS AND OCCUPATION TAX; AND MUNICIPAL TAXES APPLICABLE TO PENSION FUNDS; ADDITIONAL AUTHORITIES RELATING TO PENSIONS AND BOND ISSUANCE.

§8-13C-1. Findings.

1 The Legislature finds that:

2 (a) Imposing additional taxes creates an extra burden on the
3 citizens of the state;

4 (b) Imposing additional taxes can be detrimental to the
5 economy of the state;

6 (c) Imposing additional taxes is only proper under certain
7 circumstances;

8 (d) For many municipalities with severe unfunded liabilities
9 of the police and fire pension funds, all available sources of
10 local revenue have been exhausted. Property taxes are at the
11 maximum allowed by the State Constitution and local business
12 and occupation taxes and utility taxes are at the maximum rates
13 allowed by state law. Other fees have reached the economic
14 maximum and are causing relocation of business outside the
15 municipal boundaries;

16 (e) For many municipalities with severe unfunded police
17 and fire pension fund liabilities, revenue from existing sources
18 has become stagnant over the past few years with no expecta-
19 tion of significant future growth;

20 (f) For many municipalities with severe unfunded police
21 and fire pension fund liabilities, payments required under state
22 law to fund fire and police pension funds are now close to
23 equaling the city payrolls for police and fire protection and will
24 rise to exceed those payrolls within a ten-year period;

25 (g) For many municipalities with severe unfunded police
26 and fire pension fund liabilities, payments required under state
27 law to fund fire and police pension funds now constitute a large
28 percentage of those municipalities' total budget and will rise to
29 an even larger percentage of the available revenues in the next
30 ten years. Payment and benefit levels are dictated to the
31 municipalities by state law;

32 (h) As the required pension payments rise, many of the
33 municipalities with severe unfunded police and fire pension
34 fund liabilities will find it impossible to maintain at minimum
35 levels necessary and proper city services including, but not
36 limited to, police and fire protection, street maintenance and
37 repair and sanitary services;

38 (i) For some of the municipalities with severe unfunded
39 liabilities of the police and fire pension funds, the combination
40 of the steeply rising pension obligations and the stagnant
41 revenue sources raise the real possibility of municipal bank-
42 ruptcy in the near and predictable future. If this happens,
43 pensioners would either not receive the full benefits which they
44 have been promised or pressure would be placed on the state to
45 fund these programs;

46 (j) For a municipality that has the most severe unfunded
47 liability in its pension funds, paying off the unfunded liability
48 in a timely manner would cause tremendous financial hardship
49 and the loss of many services that would otherwise be provided
50 to the municipality's citizens;

51 (k) Only for a municipality that has the most severe
52 unfunded liability in its pension funds would the imposition of
53 the pension relief municipal occupational tax, the pension relief
54 municipal sales and service tax, the pension relief municipal
55 use tax or any combination of those taxes be an appropriate
56 method of addressing the unfunded liability;

57 (l) Only for a municipality that does not impose or ceases
58 to impose a business and occupation or privilege tax would the
59 imposition of an alternative municipal sales and service tax and
60 an alternative municipal use tax be appropriate;

61 (m) Only for a municipality that has the most severe
62 unfunded liability in its pension funds would the closure of its
63 existing pension and relief fund plan for policemen and firemen
64 to those newly employed and the creation of a defined contribu-
65 tion plan for newly employed policemen and firemen be
66 appropriate; and

67 (n) Only for a municipality that has the most severe
68 unfunded liability in its pension funds, that closes its existing
69 pension and relief fund plan for policemen and firemen to those
70 newly employed and that creates a defined contribution plan for
71 newly employed policemen and firemen, would the issuance of
72 bonds to address the unfunded liability of its existing pension
73 and relief fund plan for policemen and firemen be appropriate.

§8-13C-9. Restriction on use of certain revenues.

1 (a) All proceeds from a pension relief municipal occupa-
2 tional tax, a pension relief municipal sales and service tax and
3 a pension relief municipal use tax imposed pursuant to this
4 article shall be used solely for one of the following purposes:

5 (1) Directly reducing the unfunded actuarial accrued
6 liability of policemen's and firemen's pension and relief funds
7 of the qualifying municipality imposing the tax; or

8 (2) Meeting the principal, interest and any reserve require-
9 ment obligations of any bonds issued pursuant to section
10 fourteen of this article.

11 (b) For any qualifying municipality that chooses to apply
12 the proceeds from a pension relief municipal occupational tax,
13 a pension relief municipal sales and service tax, a pension relief
14 municipal use tax or any permitted combination of these taxes
15 directly to reducing the unfunded actuarial accrued liability of
16 policemen's and firemen's pension and relief funds, the
17 qualifying municipality loses its authority to impose those taxes
18 after:

19 (1) The unfunded actuarial accrued liability of the qualify-
20 ing municipality's policemen's and firemen's pension and relief
21 funds is eliminated; or

22 (2) Sufficient moneys accrue from the proceeds of the
23 pension relief municipal occupational tax, the pension relief
24 municipal sales and service tax, the pension relief municipal
25 use tax or any permitted combination of these taxes to eliminate
26 the unfunded actuarial accrued liability of the qualifying
27 municipality's policemen's and firemen's pension and relief
28 funds.

29 (c) For any qualifying municipality that chooses to apply
30 the proceeds from a pension relief municipal occupational tax,
31 a pension relief municipal sales and service tax, a pension relief
32 municipal use tax or any permitted combination of these taxes
33 to the principal, interest and any reserve requirement and
34 arbitrage rebate obligations on any bonds issued pursuant to
35 section fourteen of this article, the qualifying municipality loses
36 its authority to impose those taxes after:

37 (1) The principal, interest and any reserve requirement and
38 arbitrage rebate obligations on the bonds issued pursuant to
39 section fourteen of this article are met;

40 (2) Sufficient moneys accrue from the proceeds of the
41 pension relief municipal occupational tax, the pension relief
42 municipal sales and service tax, the pension relief municipal
43 use tax or any permitted combination of these taxes to meet the
44 principal, interest and any reserve requirement and arbitrage
45 rebate obligations on the bonds issued pursuant to section
46 fourteen of this article; and

47 (3) After retirement of bonds issued pursuant to section
48 fourteen of this article, any unfunded actuarial accrued liability
49 of the qualifying municipality's policemen's and firemen's
50 pension and relief funds is eliminated.

**§8-13C-14. Authorization for closure of existing retirement plans,
creation of defined contribution plans and issu-
ance of bonds for certain qualifying municipali-
ties.**

1 (a) Notwithstanding any other section of code to the
2 contrary and subject to subsection (b) of this section, any
3 qualifying municipality, as that term is defined in section two
4 of this article, has the following authority:

5 (1) To close its existing pension and relief fund plan for
6 policemen and firemen provided in article twenty-two of this
7 chapter for policemen and firemen hired on and after a future
8 date to be set by the governing body of the municipality;

9 (2) To establish a defined contribution plan for policemen
10 and firemen hired on and after the future date set by the
11 governing body of the municipality to close its existing pension
12 and relief fund plan for policemen and firemen; and

13 (3) to issue revenue bonds for the purpose of eliminating
14 the unfunded actuarial accrued liability of the existing pension
15 and relief fund plan for policemen and firemen and to issue

16 refunding bonds issued to refund, in whole or in part, bonds
17 issued for such purpose.

18 (b) The authority granted in subsection (a) of this section is
19 subject to the following:

20 (1) No qualifying municipality may close an existing
21 pension and relief fund plan for policemen and firemen
22 pursuant to subdivision (1), subsection (a) of this section unless
23 the qualifying municipality also establishes a defined contribu-
24 tion plan for policemen and firemen pursuant to subdivision (2),
25 subsection (a) of this section. No qualifying municipality may
26 establish a defined contribution plan for policemen and firemen
27 pursuant to subdivision (2), subsection (a) of this section unless
28 the qualifying municipality also closes its existing pension and
29 relief fund plan for policemen and firemen pursuant to subdivi-
30 sion (1), subsection (a) of this section. No qualifying municipal-
31 ity may issue bonds pursuant to subdivision (3), subsection (a)
32 of this section unless the qualifying municipality also closes its
33 existing pension and relief fund plan for policemen and firemen
34 pursuant to subdivision (1), subsection (a) of this section and
35 establishes a defined contribution plan for policemen and
36 firemen pursuant to subdivision (2), subsection (a) of this
37 section. If a qualifying municipality elects not to issue bonds
38 pursuant to subdivision (3), subsection (a) of this section,
39 nothing in this section may be construed to prohibit the qualify-
40 ing municipality from closing its existing pension and relief
41 fund plan for policemen and firemen pursuant to subdivision
42 (1), subsection (a) of this section and establishing a defined
43 contribution plan for policemen and firemen pursuant to
44 subdivision (2), subsection (a) of this section.

45 (2) No qualifying municipality may exercise any authority
46 provided in subsection (a) of this section unless it obtains a
47 determination of the unfunded actuarial accrued liability of its

48 existing pension and relief fund plans for policemen and
49 firemen from the State Treasurer;

50 (3) If the qualifying municipality chooses to issues bonds
51 pursuant to subdivision (3), subsection (a) of this section, the
52 following applies:

53 (A) The proceeds of the revenue bonds shall be at least
54 equal to the unfunded actuarial accrued liability as determined
55 by the State Treasurer plus any reserve fund requirements and
56 any costs, including accrued or capitalized interest, associated
57 with issuing the bonds. All of the proceeds shall be applied to
58 the payment of the unfunded actuarial accrued liability, the
59 funding of reserve requirements and the payment of costs
60 associated with the issuance of the bonds, and may not be used
61 for any other purpose; and

62 (B) The proceeds of any refunding bonds shall be used to
63 refund all or any portion of the revenue bonds authorized in this
64 section, to fund any required reserve requirements for such
65 refunding bonds and to pay costs of issuance associated with
66 such refunding bonds and for no other purpose;

67 (4) If the qualifying municipality elects to issue bonds
68 pursuant to subdivision (3), subsection (a) of this section, the
69 qualifying municipality shall impose a pension relief municipal
70 occupational tax, a pension relief municipal sales and service
71 tax, a pension relief municipal use tax or any permitted combi-
72 nation of these taxes at a rate projected to generate sufficient
73 revenue to meet the principal, interest and any reserve require-
74 ment and arbitrage rebate obligations on the bonds, subject to
75 the following:

76 (A) This requirement is void after the qualifying municipal-
77 ity loses its authority to impose those taxes pursuant to subsec-
78 tions (b) or (c), section nine of this article; and

79 (B) If the revenue generated by a pension relief municipal
80 occupational tax, a pension relief municipal sales and service
81 tax and a pension relief municipal use tax is insufficient to meet
82 the principal, interest, and any reserve requirement and arbi-
83 trage rebate obligations on the bonds, the qualifying municipal-
84 ity shall not issue the bonds;

85 (5) If the qualifying municipality elects to issue bonds
86 pursuant to subdivision (3), subsection (a) of this section, all
87 proceeds from the taxes shall be dedicated solely to paying the
88 principal, interest and any reserve requirement and arbitrage
89 rebate obligations on the bonds;

90 (6) If the qualifying municipality elects to close an existing
91 pension and relief fund plan for policemen and firemen
92 pursuant to subdivision (1), subsection (a) of this section, all
93 current and retired employees in the existing pension and relief
94 fund plans for policemen and firemen shall remain in that plan
95 and shall be paid all benefits of that plan in accordance with
96 Part III, article twenty-two of this chapter;

97 (7) Any such revenue bonds or refunding bonds shall bear
98 interest at not more than twelve percent per annum, payable
99 semiannually, or at shorter intervals, and shall mature at such
100 time or times, not exceeding thirty years, as may be determined
101 by the ordinance authorizing the issuance of such bonds. Such
102 bonds may be made redeemable before maturity, at the option
103 of the municipality at not more than the par value thereof, plus
104 a premium of not more than five percent, under such terms and
105 conditions as may be fixed by the ordinance authorizing the
106 issuance of the bonds. The principal and interest of the bonds
107 may be made payable in any lawful medium. The ordinance
108 shall determine the form of the bonds and shall set forth any
109 registration or conversion privileges, and shall fix the denomi-
110 nation or denominations of such bonds, and the place or places
111 of the payment of principal and interest thereof, which may be

112 at any banking institution or trust company within or without
113 the state. The bonds shall contain a statement on their face that
114 the municipality shall not be obligated to pay the same, or the
115 interest thereon, except from the special fund derived from
116 revenues collected by the municipality from the imposition of
117 a pension relief municipal occupational tax, a pension relief
118 municipal sales and service tax, a pension relief municipal use
119 tax or any permitted combination of these taxes and which the
120 municipality may pledge as security for such bonds. All such
121 bonds shall be, and shall have and are hereby declared to have
122 all the qualities and incidents of negotiable instruments, under
123 the Uniform Commercial Code of the state. The bonds shall be
124 executed in such manner as the governing body of the munici-
125 pality may direct. The bonds shall be sold by municipality in
126 such manner as may be determined to be for the best interest of
127 the municipality. Any surplus of the bond proceeds over and
128 above the cost of paying the unfunded liability, plus any
129 amount required for reserves, capitalized interest and costs of
130 issuance thereof or in the case of refunding bonds over and
131 above the amount necessary to refund the existing bonds being
132 refunded by such issue, plus any amount required for reserves,
133 capitalized interest and costs of issuance thereof, shall be paid
134 into the debt service fund for such bonds; and

135 (8) The defined contribution plan established by the
136 municipality shall:

137 (A) Meet the federal qualification requirements of 26
138 U.S.C. §401 and related sections of the Internal Revenue Code
139 as applicable to governmental plans;

140 (B) Set the amount of each employee's contribution and the
141 amount of each employer's contribution;

142 (C) Require that the amount of annuity payments a retired
143 member receives be based solely upon the balance in the

144 member's annuity account at the date of retirement, the
145 retirement option selected, or in the event of an annuity option
146 being selected, the actuarial life expectancy of the member of
147 any other factors that normally govern annuity payments;

148 (D) Include detailed provisions that require the prudent and
149 safe handling of the retirement funds;

150 (E) Provide retirement options; and

151 (F) Include any other provision and authorize any policy
152 that the qualifying municipality determines is necessary or
153 incidental to the establishment and operation of the defined
154 contribution plan. The other provisions may include, but are not
155 limited to, the authorization to contract with one or more
156 private pension, insurance, annuity, mutual fund or other
157 qualified company or companies to administer the day-to-day
158 operations of the plan and to provide investments.

159 (c) The right of any person to a benefit provided under a
160 defined contribution plan established by a qualifying municipal-
161 ity pursuant to this section shall not be subjected to execution,
162 attachment, garnishment, the operation of bankruptcy or
163 insolvency laws, or other process whatsoever nor shall any
164 assignment thereof be enforceable in any court with the
165 exception that the benefits or contributions under the plan shall
166 be subject to "qualified domestic relations orders" as that term
167 is defined in 26 U.S.C. §414 with respect to governmental
168 plans.

169 (d) The interest earned on any bonds issued under the
170 authority granted in this section is exempt from any tax
171 imposed under the provisions of this code.

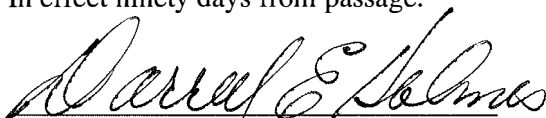
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

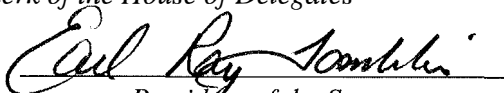

Chairman House Committee

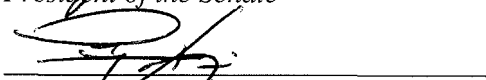
Originating in the House.

In effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is disapproved this the 4th
day of May, 2005.


Governor

PRESENTED TO THE
GOVERNOR

MAY 2 2005

Time 4:10 pm