

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4756**

BY DELEGATE STORCH

[Passed March 12, 2022; in effect from passage.]



1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §8-12-24; to amend and reenact §8-22-19 and §8-22-20 of said code; to  
3 amend and reenact §8-33-4 of said code; to amend said code by adding thereto two new  
4 sections, designated §8-33-4a and §8-33-4b; and to amend and reenact §33-3-14d of said  
5 code, all relating to authorizing Class I, Class II and Class III municipalities to create  
6 pension funding programs to reduce the unfunded liability of policemen's pension and  
7 relief funds and firemen's pension and relief funds; authorizing a municipality's allocable  
8 portion of funds from the Municipal Pensions Security Fund created in §8-22-18b to be  
9 paid to the trustee of an issue of pension funding revenue bonds to be used for the purpose  
10 of paying debt service on such bonds until such bonds are paid in full; authorizing  
11 municipal building commissions to use the proceeds from pension funding revenue bonds  
12 to fund the costs of a municipality's pension funding program; authorizing a municipal  
13 building commission to use rentals from real property owned or leased by such  
14 commission to pay debt service and administrative expenses associated with outstanding  
15 pension funding revenue bonds; authorizing a municipal building commission to issue  
16 pension funding revenue bonds to fund a municipality's pension funding program;  
17 requiring that each issuance of pension funding revenue bonds provide for a contingency  
18 reserve fund in an amount equal to at least 10 percent of the original principal amount of  
19 such bonds; requiring that an issue of pension funding revenue bonds be in a principal  
20 amount at least equal to the then unfunded liability of such applicable policemen's or  
21 firemen's pension and relief fund; providing for the use of excess moneys held by a bond  
22 trustee upon the payment in full of pension funding revenue bonds; requiring the approval  
23 of the Municipal Pension Oversight Board of the issuance of certain pension funding  
24 revenue bonds and requiring the submission of information relating to such bonds to the  
25 Joint Committee on Government and Finance.

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

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 12. GENERAL CORPORATE POWERS OF MUNICIPALITIES**

#### **§8-12-24. Authorizing certain municipalities to create a pension funding program.**

1           In addition to all other powers and duties conferred by law upon municipalities, Class I,  
2           Class II and Class III municipalities are empowered and authorized to create pension funding  
3           programs as defined in §8-33-4a of this code.

### **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.**

#### **§8-22-19. Levy to maintain fund**

1           (a)(1) In order for a municipal policemen's or firemen's pension and relief fund or the  
2           trustee of an issue of pension funding revenue bonds issued by the building commission of a  
3           municipality, as the case may be, to receive the allocable portion of moneys from the Municipal  
4           Pensions Security Fund created in § 8-22-18b of this code, the governing body of the municipality  
5           shall levy annually and in the manner provided by law for other municipal levies and include within  
6           the maximum levy or levies permitted by law and, if necessary, in excess of any charter provision,  
7           a tax at such rate as will, after crediting: (A) The amount of the contributions received during the  
8           year from the members of the respective paid police department or paid fire department; and (B)  
9           the allocable portion of the funds from the Municipal Pensions Security Fund created in §8-22-  
10          18b of this code payable to such municipality's municipal policemen's and firemen's pension and  
11          relief funds, provide funds equal to the amount necessary to meet the minimum standards for  
12          actuarial soundness as provided in § 8-22-20 of this code. The amount deposited in a municipal  
13          policemen's or firemen's pension and relief fund shall be irrevocably contributed, accumulated,  
14          and invested as fund assets as described in §8-22-22 and §8-22-22a of this code. The amount

15 deposited with the trustee of an issue of pension funding revenue bonds shall be used for the  
16 purpose of paying debt service on such bonds. One 12th of each municipality's annual  
17 contributions shall be deposited with the municipality's pension trust funds as fund assets on at  
18 least a monthly basis and any revenues received from any source by a municipality which are  
19 specifically collected for the purpose of allocation for deposit into the policemen's pension and  
20 relief fund or firemen's pension and relief fund shall be so deposited within five days of receipt by  
21 the municipality. A municipality may prepay its monthly required contributions in increments  
22 greater than 1/12. Heretofore surplus reserves accumulated before the effective date of this  
23 section shall be irrevocably contributed, aggregated, and invested as fund assets described in §8-  
24 22-22 and §8-22-22a of this code. Any actuarial deficiency arising under this section and §8-22-  
25 20 of this code shall not be the obligation of the State of West Virginia.

26 (2) The levies authorized under the provisions of this section, or any part of them, may by  
27 the governing body be laid in addition to all other municipal levies and, to that extent, beyond the  
28 limit of levy imposed by the charter of the municipality; and the levies shall supersede and if  
29 necessary exclude levies for other purposes, where other purposes have not already attained  
30 priority, and within the limitations on taxes or tax levies imposed by the constitution and laws.

31 (b) The public corporations are authorized to take by gift, grant, devise, or bequest any  
32 money or real or personal property on such terms as to the investment and expenditures thereof  
33 as may be fixed by the grantor or determined by the trustees.

34 (c) In addition to all other sums provided for pensions in this section, it is the duty of every  
35 municipality in which any fund or funds have been or shall be established to assess and collect  
36 from each member of the paid police department or paid fire department or both each month, the  
37 sum of seven percent of the actual salary or compensation of such member; and the amount so  
38 collected shall become a regular part of the policemen's pension and relief fund, if collected from  
39 a policeman, and of the firemen's pension and relief fund, if collected from a  
40 fireman: *Provided*, That for members of the funds who are police officers or firefighters newly

41 hired on or after January 1, 2010, the municipality shall assess and collect nine and one-half  
42 percent of the actual salary or compensation. Only those funds for which the board of trustees  
43 has collected and paid the contributions as herein provided and meeting minimum standards for  
44 actuarial soundness shall be eligible to receive moneys from the additional fire and casualty  
45 insurance premium tax as provided in §33-3-14d of this code: *Provided, however,* That the board  
46 of trustees for each pension and relief fund may assess and collect from each member of the paid  
47 police department or paid fire department or both each month not more than an additional two  
48 and one-half percent of the actual salary or compensation of each member, but not to exceed  
49 nine and one-half percent total contribution: *Provided further,* That if any board of trustees decides  
50 to assess and collect any additional amount pursuant to this subdivision above the member  
51 contribution required by this section, then that board of trustees may not reduce the additional  
52 amount until the respective pension and relief fund no longer has any actuarial deficiency: *And*  
53 *provided further,* That if any board of trustees decides to assess and collect any additional  
54 amount, any board of trustees decision and any additional amount is not the liability of the State  
55 of West Virginia. Member contributions shall be deposited in the pension and relief fund within  
56 five days of being collected. In the event that a municipality's building commission has issued  
57 pension funding revenue bonds, then the trustee for such bonds shall only be eligible to receive  
58 money from the additional fire and casualty insurance premium tax in §33-3-14d of this code if  
59 the board of trustees for the policemen's and firemen's pension and relief funds for which such  
60 bonds have been issued has collected and paid the contributions as herein provided and is  
61 meeting minimum standards for actuarial soundness.

62 (d)(1) For the fiscal year beginning on July 1, 2010, and subject to provisions of §8-22-  
63 18b and §33-3-14d of this code and for each fiscal year thereafter, the Municipal Pensions  
64 Oversight Board shall receive and retain the moneys allocated to the Municipal Pensions Security  
65 Fund until such time as the treasurer of the municipality applies for the allocable portion and  
66 certifies in writing to Municipal Pensions Oversight Board that:

67           (A) The municipality has irrevocably contributed the amount required under this section  
68 and §8-22-20 of this code to the pension and relief fund for the required period; and, as applicable,  
69 the trustee for the pension funding revenue bonds has filed with the governing body of the  
70 municipality and the oversight board a report showing all debt service payments have been made  
71 with previously received proceeds from the municipality and the allocable portion of the premium  
72 tax allocation received from the Municipal Pensions Security Fund for the preceding twelve  
73 months: and

74           (B) The board of trustees of the pension and relief fund has made a report to the governing  
75 body of the municipality and to the oversight board on the condition of its fund with respect to the  
76 fiscal year.

77           (2) When the aforementioned application and certification are made, the allocable portion  
78 of moneys from the Municipal Pensions Security Fund shall be paid to the corresponding  
79 policemen's or firemen's pension and relief fund or, if pension funding revenue bonds have been  
80 issued by such municipality's building commission and remain outstanding, to the trustee for such  
81 pension funding revenue bonds. Payment to a municipal pension and relief fund or to the trustee  
82 for pension funding revenue bonds, as applicable, shall be made by electronic funds transfer.

83           (e) The State Auditor and the oversight board have the power, and the duty as each  
84 considers necessary, to perform or review audits on the pension and relief funds or to employ an  
85 independent consulting actuary or accountant to determine the compliance of the aforementioned  
86 certification with the requirements of this section and §8-22-20 of this code. The expense of the  
87 audit or determination shall be paid from the Municipal Pensions Security Fund pursuant to  
88 provisions of §8-22-18b of this code. If the allocable portion of the Municipal Pensions Security  
89 Fund is not paid to the pension and relief fund or to the trustee for pension funding revenue bonds,  
90 as applicable, within 18 months, the portion is forfeited by the pension and relief fund and is  
91 allocable to other eligible municipal policemen's and firemen's pension and relief funds in  
92 accordance with §33-3-14d of this code.

**§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 the purchasing provisions of §5A-3-1 *et seq.* of this code. The expense of the  
6 actuarial report shall be paid from moneys in the Municipal Pensions Security Fund. Uses of the  
7 actuarial valuations from the qualified actuary shall include, but not be limited to, determining a  
8 municipal policemen's or firemen's pension and relief fund's eligibility to receive state money and  
9 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 fund's  
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 §8-22-20a of this code 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, if no pension funding revenue bonds of a building commission of such municipality  
27 are outstanding, the allocable portion of the Municipal Pensions and Protection Fund for municipal  
28 pension and relief funds established under §33-3-14d of this code or a municipality's allocation  
29 from the Municipal Pensions Security Fund created in §8-22-18b of this code and other income  
30 sources as authorized by law will be sufficient to meet the normal cost of the fund and amortize  
31 any actuarial deficiency over a period of not more than forty years beginning from July 1,  
32 1991: *Provided*, That in the fiscal year ending June 30, 1991, the municipality may elect to make  
33 its annual contribution to the fund using an alternative contribution in an amount not less than: (i)  
34 One hundred seven percent of the amount contributed for the fiscal year ending June 30, 1990;  
35 or (ii) an amount equal to the average of the contribution payments made in the five highest fiscal  
36 years beginning with the fiscal year ending 1984, whichever is greater: *Provided, however*, That  
37 contribution payments in subsequent fiscal years under this alternative contribution method may  
38 not be less than 107 percent of the amount contributed in the prior fiscal year: *Provided*  
39 *further*, That in order to avoid penalizing municipalities and to provide flexibility when making  
40 contributions, municipalities using the alternative contribution method may exclude a one-time  
41 additional contribution made in any one year in excess of the minimum required by this  
42 section: *And provided further*, That the governing body of any municipality may elect to provide  
43 an employer continuing contribution of one percent more than the municipality's required  
44 minimum under the alternative contribution plan authorized in this subsection: *And provided*  
45 *further*, That if any municipality decides to contribute an additional one percent, then that  
46 municipality may not reduce the additional contribution until the respective pension and relief fund  
47 no longer has any actuarial deficiency: *And provided further*, That any decision and any  
48 contribution payment by the municipality is not the liability of the State of West Virginia: *And*  
49 *provided further*, That if any municipality or any pension fund board of trustees makes a voluntary  
50 election and thereafter fails to contribute the voluntarily increase as provided in this section and

51 in §8-22-19(c) of this code, then the board of trustees is not eligible to receive funds allocated  
52 under §33-3-14d of this code: *And provided further*, That prior to using this alternative contribution  
53 method the actuary of the fund shall certify in writing that the fund is projected to be solvent under  
54 the alternative contribution method for the next consecutive 15-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 25 percent of  
63 fund assets, may, beginning September 1, 2003, elect to revert to the standard funding method,  
64 which is to contribute to the fund annually an amount which is not less than an amount which,  
65 together with the contributions from the members and, if no pension funding revenue bonds of a  
66 building commission of such municipality are outstanding, the allocable portion of the Municipal  
67 Pensions and Protection Fund for municipal pension and relief funds established under §33-3-  
68 14d of this code and other income sources as authorized by law, will be sufficient to meet the  
69 normal cost of the fund and amortize any actuarial deficiency over a period of not more than 40  
70 years, beginning from July 1, 1991.

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

74 (3) Notwithstanding any other provision of this section or article to the contrary, each  
75 municipality shall contribute annually to its policemen's pension and relief fund and its firemen's  
76 pension and relief fund an amount which may not be less than the normal cost, as determined by

77 the annual actuarial valuation report required by this section: *Provided*, That in any fiscal year in  
78 which the actuarial valuation report determines that a municipality's policemen's pension and  
79 relief fund or firemen's pension and relief fund is funded at 125 percent or higher and the Municipal  
80 Pensions Oversight Board's actuary provides an actuarial recommendation that the normal cost  
81 does not need to be paid by the employer for that fiscal year, that municipality may elect to make  
82 no contribution for that fiscal year. A municipality's election not to contribute the normal cost in  
83 any year does not affect the payments required by §8-22-19 of this code by members to a pension  
84 and relief fund and these payments are 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, if no  
105 pension funding revenue bonds of a building commission of such municipality are outstanding,  
106 the allocable portion of the Municipal Pensions Security Fund created in §8-22-18b of this code,  
107 and other income sources as authorized by law, will be sufficient to meet the normal cost of the  
108 fund and amortize any actuarial deficiency over a period of not more than 40 years beginning  
109 January 1, 2010: *Provided*, That those municipalities using the standard method of financing in  
110 2009 shall continue to amortize their actuarial deficiencies over a period of not more than 40 years  
111 beginning July 1, 1991. The required contribution shall be determined each plan year as described  
112 above by the actuary retained by the oversight board, based on an actuarial valuation reflecting  
113 actual demographic and investment experience and consistent with the Actuarial Standards of  
114 Practice published by the Actuarial 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 §8-22A-1 et  
119 seq., of this code.

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 100 percent a part of each plan member's employee contribution to the fund equal to  
126 one and one-half percent of the employee's compensation, shall be deposited into and remain in  
127 the trust and accumulate investment return. In addition, until a plan is funded at 100 percent and

128 all pension funding revenue bonds issued by a municipality's building commission are paid in full,  
129 an actuarially determined portion of the premium tax allocation to each fund provided in  
130 accordance with §33-3-14d and §33-12C-7 of this code shall also be deposited into and remain  
131 in the trust and accumulate investment return. This variable percentage of premium tax allocation  
132 to be retained in each fund shall be determined annually by the qualified actuary provided  
133 pursuant to subsection (a) of this section to be an amount required, along with other assets of the  
134 fund as necessary to reach a funded level of 100 percent in 35 years from the time of adoption of  
135 the conservation financing method. The variable percentage shall be calculated using a  
136 prospective 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 §8-22A-1 et seq., of this code.

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

152 (5) If a municipality using the conservation method fully funds its pension and relief fund  
153 or funds by a pension funding program authorized by §8-33-4a, then the trustees of the

154 policemen's or firemen's pension and relief fund are to pay pension obligations out of the pension  
155 and relief fund; and the minimum standard for annual municipality contributions to each  
156 policemen's or firemen's pension and relief fund shall be an amount which, together with member  
157 contributions and other income sources as authorized by law, is sufficient to meet the normal cost  
158 of the fund.

159 (g) Beginning with the July 1, 2020, actuarial valuation, the existing actuarial deficiency,  
160 prior to reflecting any new gains or losses as of July 1, 2020, such as those due to investment  
161 experience, differences between actual and expected contributions, demographic experience,  
162 and changes to actuarial assumptions, shall continue to be amortized as required by subsections  
163 (c) and (e) of this section: *Provided*, That on July 1, 2020, and each successive annual valuation  
164 date thereafter, the annual impacts on the funding deficiency due to: (i) New gains or losses on  
165 assets and liabilities; and (ii) changes in actuarial assumptions, shall each be amortized over a  
166 closed period of 15 years, thereby creating layers of amortization bases rather than amortizing  
167 the entire actuarial deficiency over the same single and decreasing period: *Provided*,  
168 *however*, That impacts on the funding deficiency due to plan changes shall be amortized over  
169 closed five year periods. The management of these amortization bases by the actuary should  
170 entail the consideration, at least every five years, of whether to implement strategies, such as the  
171 synchronization of certain amortization layers, to help avoid volatility to the sum of the  
172 amortization payments generally resulting from the expiration of charge and credit layers at  
173 different times. The required contribution shall be determined each plan year as described above  
174 by the actuary retained by the oversight board, based on an actuarial valuation reflecting actual  
175 demographic and investment experience and consistent with the Actuarial Standards of Practice  
176 published by the Actuarial Standards Board.

177 (h) Notwithstanding the foregoing until any pension funding revenue bonds issued by a  
178 municipality's building commission are paid in full, the allocable portion of money from the  
179 Municipal Pension Security Fund from the premium tax allocation for such municipality's

180 policemen's and firemen's pension and relief funds, as applicable, shall be deposited pursuant to  
181 §8-22-19(d)(2) with the trustee for the pension funding revenue bonds and shall not be deposited  
182 into the applicable policemen's or firemen's pension and relief funds of such municipality.

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 33 INTERGOVERNMENTAL RELATIONS – BUILDING COMMISSIONS.**

#### **§8-33-4. Powers.**

1 Each commission shall have plenary power and authority to:

2 (a) Sue and be sued;

3 (b) Contract and be contracted with;

4 (c) Adopt, use and alter a common seal;

5 (d) Make and adopt all necessary, appropriate and lawful bylaws and rules and regulations  
6 pertaining to its affairs;

7 (e) Elect such officers, appoint such committees and agents and employ and fix the  
8 compensation of such employees and contractors as may be necessary for the conduct of the  
9 affairs and operations of the commission;

10 (f) (1) Acquire, purchase, own and hold any property, real or personal, and (2) acquire,  
11 construct, equip, maintain and operate public buildings, structures, projects and appurtenant  
12 facilities, of any type or types for which the governmental body or bodies creating such  
13 commission are permitted by law to expend public funds (all hereinafter in this article referred to  
14 as facilities);

15 (g) Apply for, receive and use grants-in-aid, donations and contributions from any source  
16 or sources, including, but not limited to, the United States of America, or any department or  
17 agency thereof, and accept and use bequests, devises, gifts and donations from any source  
18 whatsoever;

19 (h) Sell, encumber or dispose of any property, real or personal;

20 (i) Issue negotiable bonds, notes, debentures or other evidences of indebtedness and  
21 provide for the rights of the holders thereof, incur any proper indebtedness and issue any  
22 obligations and give any security therefor, including security interests in any real property owned  
23 or leased by the commission regardless of whether such real property is being improved with the  
24 proceeds of such indebtedness, which it may deem necessary or advisable in connection with  
25 exercising powers as provided herein;

26 (j) Raise funds by the issuance and sale of revenue bonds in the manner provided by the  
27 applicable provisions of §8-16-7, §8-16-10, §8-16-12 and §8-16-16 of this code, without regard to  
28 the extent provided in §8-33-5 of this code, to the limitations specified in §8-16-12 of this code, it  
29 being hereby expressly provided that for the purpose of the issuance and sale of revenue bonds,  
30 each commission is a “governing body” as that term is used in §8-16-1 *et seq.* of this code only;

31 (k) Subject to such reasonable limitations and conditions as the governmental body or all  
32 of the governmental bodies creating and establishing such building commission may prescribe by  
33 ordinance or by order, exercise the power of eminent domain in the manner provided in §54-1-1  
34 *et seq.* of this code for business corporations, for the purposes set forth in subdivision (f) of this  
35 section, which purposes are hereby declared public purposes for which private property may be  
36 taken or damaged;

37 (l) Lease its property or any part thereof, for public purposes, to such persons and upon  
38 such terms as the commission deems proper, but when any municipality or county commission is  
39 a lessee under any such lease, such lease must contain a provision granting to such municipality  
40 or county commission the option to terminate such lease during any fiscal year covered thereby;

41 (m) Use the proceeds from the sale of pension funding revenue bonds issued pursuant to  
42 §8-33-4a of this code to pay the costs of a pension funding program as described in §8-33-4a(c) of  
43 this code;

44 (n) Use the proceeds of rentals for the use of real property owned or leased by the  
45 commission and any amounts received pursuant to §8-22-19(d)(2) of this code by the trustee for



46 outstanding pension funding revenue bonds to, among other things, pay the principal, interest,  
47 any reserve requirement obligations and administrative expenses of any pension funding revenue  
48 bonds issued in connection with any lease by the commission to the municipality which created  
49 the commission; any amount received pursuant to §8-22-19(d)(2) of this code shall be used only  
50 to pay principal and interest of outstanding pension obligation bonds; and

51 (o) Do all things reasonable and necessary to carry out the foregoing powers.

**§8-33-4a. Issuance of pension funding revenue bonds to fund a pension funding program.**

1 (a) In addition to the powers set forth in §8-33-4 of this code and subject to the  
2 requirements set forth in this section and in §8-33-4b of this code, a commission formed by a  
3 Class I, Class II or Class III municipality may issue pension funding revenue bonds to raise funds  
4 for the funding of a pension funding program in the manner provided by this section. A “pension  
5 funding program” means a program established by a municipality for reducing the unfunded  
6 actuarial accrued liability of a policemen’s or firemen’s pension and relief fund of the municipality  
7 with the proceeds of pension funding revenue bonds issued pursuant to this section.

8 (b) Before any commission shall fund any pension funding program through the issuance  
9 of pension funding revenue bonds, the commission shall enact an ordinance or ordinances, which  
10 shall (1) set forth a brief and general description of the pension funding program; (2) set forth the  
11 estimated cost thereof; (3) order the funding of the pension funding program; (4) direct that  
12 pension funding revenue bonds be issued pursuant to this section, in such amount as may be  
13 found necessary to pay the cost of the pension funding program; (5) contain such provisions as  
14 the commission determines are necessary or desirable with regard to the establishment and  
15 setting aside of a debt service reserve fund if deemed beneficial to the commission and for the  
16 administration and disposition of the debt service reserve fund; (6) contain provisions establishing  
17 and setting aside a debt service contingency reserve fund with the municipality in an amount at  
18 least equal to 10 percent of the original principal amount of the pension funding revenue bonds  
19 from cash contributed by the municipality or from the proceeds of the pension funding revenue

20 bonds, providing for the replenishment of any amounts drawn from the debt service contingency  
21 reserve fund in a reasonable time period, and for the administration and disposition of the debt  
22 service contingency reserve fund; and (7) contain such other provisions as may be necessary or  
23 proper in the premises. Before any such ordinance shall become effective, an abstract of the  
24 ordinance, determined by the commission to contain sufficient information as to give notice of the  
25 contents of such ordinance, together with the following described notice, shall be published as a  
26 Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and  
27 the publication area for such publication shall be the municipality which formed the commission.  
28 The notice to be published with the abstract of the ordinance shall specify a date, time and place  
29 for a public hearing, the date being not less than 10 days after the first publication of the abstract  
30 and notice and not prior to the last publication of the abstract and notice, at which time and place  
31 all parties and interests may appear before the commission and may be heard as to whether or  
32 not said ordinance shall be put into effect, and said notice shall also identify the office in which a  
33 certified copy of such ordinance shall be on file for review by interested persons during the office  
34 hours of the office. At the public hearing all objections and suggestions shall be heard, and the  
35 commission shall take such action as it deems proper in the premises.

36 (c) (1) The cost of a pension funding program shall include the cost of providing funding  
37 of all of the unfunded liability of a policemen's or firemen's pension plan; the costs of issuance of  
38 pension funding revenue bonds issued to fund a pension funding program, the amount of any  
39 debt service reserve and debt service contingency reserve funds funded from the proceeds of  
40 pension funding revenue bonds; actuarial, financial advisory and legal expenses associated with  
41 the pension funding program and the issuance of the pension funding revenue bonds; expenses  
42 for estimates of cost and of revenues; expenses for actuarial studies; and such other expenses  
43 as may be necessary or incidental to the financing authorized pursuant to this section, the pension  
44 funding program and the performance of the actions required or permitted in connection with any  
45 thereof.

46           (2) Actuarial studies must be performed by a contracted actuary of the Municipal Pension  
47 Oversight Board as required by §8-22-20 of this code.

48           (d) Pension funding revenue bonds shall be in an amount at least equal to the applicable  
49 policemen's and/or firemen's pension and relief funds then unfunded liability based upon the most  
50 recent actuarial valuation reports prepared by an actuary contracted with or employed by the  
51 oversight board as required by §8-22-20 of this code for the applicable funds with appropriate  
52 adjustments for timing, experience and other factors. The pension funding revenue bonds shall  
53 bear interest at not more than 12 percent per annum, payable semiannually, or at shorter intervals,  
54 and the bonds allocable to a specific policemen's or firemen's relief fund shall mature over a  
55 period of time not exceeding the then estimated amortization period for the municipality's  
56 unfunded actuarial accrued liability as set forth in the municipality's most recent actuarial valuation  
57 reports prepared by an actuary contracted with or employed by the oversight board relating to the  
58 applicable funds with appropriate adjustments for timing, experience and other factors, as may  
59 be determined by the ordinance or ordinances authorizing the issuance of such bonds. The  
60 annual principal and interest payments on pension funding revenue bonds shall, to the extent  
61 possible, provide for level debt service and be proportionate to the funding requirements for the  
62 applicable policemen's or firemen's pension and relief funds as shown on the municipality's most  
63 recent actuarial valuation report for the policemen's or firemen's pension and relief funds prepared  
64 by an actuary contracted with or employed by the oversight board with appropriate adjustments  
65 for timing, experience and other factors, as applicable. The bonds may be made redeemable  
66 before maturity, at the option of the commission issuing the bonds, to be exercised by the  
67 commission, at not more than the par value thereof, and at a premium of not more than five  
68 percent, under terms and conditions as may be fixed by the ordinance or ordinances authorizing  
69 the issuance of the bonds. The principal and interest of the bonds may be made payable in any  
70 lawful medium. The ordinance or ordinances shall determine the form of the bonds, shall set forth  
71 any registration or conversion privileges, and shall fix the denomination or denominations of such

72 bonds, and the place or places of the payment of the principal and interest thereof, which may be  
73 at any banking institution or trust company within or without the state and which is a vendor of the  
74 state. All such bonds shall be, shall have and are hereby declared to have all the qualities and  
75 incidents of negotiable instruments, under the Uniform Commercial Code of this state. The bonds  
76 shall be executed in the manner the commission may direct. The bonds shall be sold by the  
77 commission in a manner as may be determined to be in the best interest of the municipality which  
78 created the commission. Any surplus of the bond proceeds over and above the cost of the pension  
79 funding program shall be paid into the sinking fund established for the payment of such bonds.

80 (e) The bonds shall be secured by a trust indenture by and between the commission and  
81 a corporate trustee, which may be a trust company or banking institution having powers of a trust  
82 company within or without the state and which is a vendor of the state. The ordinance or  
83 ordinances authorizing the issuance of the pension funding revenue bonds, and fixing the details  
84 thereof, may provide that the trust indenture may contain provisions for protecting and enforcing  
85 the rights and remedies of bondholders as may be reasonable and proper, including security  
86 interests in any real property owned or leased by the commission regardless of whether such real  
87 property is being improved with the proceeds of such indebtedness, not in violation of law. The  
88 indenture may set forth the rights and remedies of the bondholders or the trustee, or both. The  
89 commission may provide by ordinance or ordinances or in the trust indenture for the payment of  
90 the proceeds of the sale of the bonds and the revenues received by the commission with respect  
91 to the pension funding program to a depository, as the commission may determine for the custody  
92 thereof, and for the method of distribution thereof, with such safeguards and restrictions as the  
93 commission may determine. The trust indenture shall provide for a subaccount of the debt service  
94 fund into which all premium tax allocations received by the trustee shall, upon receipt, be  
95 deposited into for use solely in paying principal and interest on any outstanding pension funding  
96 revenue bonds. All interest earnings on the subaccount shall be credited to the subaccount and

97 used solely for the payment of principal and interest on any outstanding pension funding revenue  
98 bonds.

99 (f) Upon the payment in full of an issue of pension funding revenue bonds (other than with  
100 the proceeds of refunding bonds) and any final costs related thereto, any amounts remaining in  
101 any debt service reserve or contingency reserve funds shall be paid by the trustee of the bonds  
102 to the municipality which formed the commission. Any excess moneys held in the subaccount of  
103 the debt service fund into which premium tax allocations have been deposited shall be paid to the  
104 Municipal Pension Oversight Board. Any other excess moneys held by the trustee at that time  
105 shall be paid to the municipality.

**§8-33-4b. Approval of municipal pension oversight board of certain pension funding revenue bonds.**

1 (a) In addition to the requirements otherwise provided in this article, any issuance of  
2 pension funding revenue bonds by a building commission (1) for a Class III municipality or (2) for  
3 a Class I or Class II municipality with either a policemen's or firemen's pension and relief fund if  
4 the municipality only has one such pension and relief fund, or with both policemen's and firemen's  
5 pension and relief funds that are not funded at a funding ratio of 40 percent or greater based on  
6 the most recent actuarial valuation reports prepared by an actuary contracted with or employed  
7 by the municipal pensions oversight board for such funds, with appropriate adjustments for timing,  
8 experience and other factors, as applicable, shall, prior to such issuance, be approved by the  
9 municipal pension oversight board and provided to the Joint Committee on Government and  
10 Finance for prior review.

11 (b) The applicable building commission shall, at least 90 days prior to the proposed  
12 issuance date of the pension funding revenue bonds, provide the following to the municipal  
13 pension oversight board:

14 (1) A report setting forth a detailed summary of the then projected terms of the proposed  
15 bond issuance and projected impact on the unfunded pension liability of the applicable fund or  
16 funds; and

17 (2) A copy of the municipality's most recent actuarial valuation reports prepared by an  
18 actuary contracted with or employed by the oversight board relating to its policemen's and  
19 firemen's pension and relief funds.

20 (c) The municipal pension oversight board shall meet, review the information provided  
21 pursuant to subsection (b) of this section and provide its approval or rejection of the proposed  
22 issuance of pension funding revenue bonds within 60 days of receipt of the reports required in  
23 subsection (b) of this section. The municipal pension oversight board shall issue a written  
24 decision within 30 days of the meeting.

25 (d) Should the municipal pension oversight board approve the issuance of pension funding  
26 revenue bonds by a building commission, then it shall promptly provide a copy of its decision and  
27 the supporting documents, including a copy of the municipality's most recent actuarial valuation  
28 reports prepared by an actuary contracted with or employed by the oversight board relating to its  
29 policemen's and firemen's pension and relief funds, to the Joint Committee on Government and  
30 Finance.

## **CHAPTER 33. INSURANCE.**

### **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  
4 an additional premium tax equal to one percent of taxable premiums for fire insurance and

5 casualty insurance policies. For purposes of this section, casualty insurance does not include  
6 insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit  
7 transaction or insurance on a debtor to provide indemnity for payments becoming due on a  
8 specific loan or other credit transaction while the debtor is disabled as defined in the policy.

9 (2) All moneys collected from this additional tax shall be received by the commissioner  
10 and paid by him or her into a special account in the State Treasury, designated the Municipal  
11 Pensions and Protection Fund: *Provided*, That on or after January 1, 2010, the commissioner  
12 shall pay 10 percent of the amount collected to the Teachers Retirement System Reserve Fund  
13 created in §18-7A-18 of this code, 25 percent of the amount collected to the Fire Protection Fund  
14 created in §33-3-33 of this code for allocation by the Treasurer to volunteer and part-volunteer  
15 fire companies and departments and 65 percent of the amount collected to the Municipal  
16 Pensions and Protection Fund: *Provided, however*, That upon notification by the Municipal  
17 Pensions Oversight Board pursuant to the provisions of §8-22-18b this code, on or after January  
18 1, 2010, or as soon thereafter as the Municipal Pensions Oversight Board is prepared to receive  
19 the funds, 65 percent of the amount collected by the commissioner shall be deposited in the  
20 Municipal Pensions Security Fund created in §8-22-18b of this code. The net proceeds of this tax  
21 after appropriation thereof by the Legislature is distributed in accordance with the provisions of  
22 this section, except for distribution from proceeds pursuant to §8-22-18a(d) of this code.

23 (b)(1) Before August 1 of each year, the treasurer of each municipality in which a municipal  
24 policemen's or firemen's pension and relief fund is established shall report to the State Treasurer  
25 the average monthly number of members who worked at least one hundred hours per month and  
26 the average monthly number of retired members of municipal policemen's or firemen's pension  
27 and relief fund or the Municipal Police Officers and Firefighters Retirement System during the  
28 preceding fiscal year: *Provided*, That beginning in the year 2010 and continuing thereafter, the  
29 report shall be made to the oversight board created in §8-22-18a of this code. These reports

30 received by the oversight board shall be provided annually to the State Treasurer by September  
31 1.

32 (2) Before September 1 of each calendar year, the State Treasurer, or the Municipal  
33 Pensions Oversight Board, once in operation, shall allocate and authorize for distribution the  
34 revenues in the Municipal Pensions and Protection Fund which were collected during the  
35 preceding calendar year for the purposes set forth in this section. Before September 1 of each  
36 calendar year and after the Municipal Pensions Oversight Board has notified the Treasurer and  
37 commissioner pursuant to §8-22-18b of this code, the Municipal Pensions Oversight Board shall  
38 allocate and authorize for distribution the revenues in the Municipal Pensions Security Fund which  
39 were collected during the preceding calendar year for the purposes set forth in this section. In any  
40 year the actuarial report required by §8-22-20 of this code indicates that no actuarial deficiency  
41 exists in the municipal policemen's or firemen's pension and relief fund and that no pension  
42 funding revenue bonds of the building commission of such municipality remain outstanding, no  
43 revenues may be allocated from the Municipal Pensions and Protection Fund or the Municipal  
44 Pensions Security Fund to that fund. The revenues from the Municipal Pensions and Protection  
45 Fund shall then be allocated to all other pension and relief funds which have an actuarial  
46 deficiency. Pension funding revenue bonds include bonds of a municipality's building commission  
47 the net proceeds of which were used to fund either or both of a municipality's policemen's or  
48 firemen's pension and relief fund or bonds issued to refinance such bonds.

49 (3) The Municipal Pensions Oversight Board shall annually review the investment  
50 performance of each municipal policemen's or firemen's pension and relief fund. If the municipal  
51 pension and relief fund's board fails for three consecutive years to comply with the investment  
52 provisions established §8-22-22a of this code, the oversight board may require the municipal  
53 policemen's or firemen's pension and relief fund to invest with the Investment Management Board  
54 to continue to receive its allocation of funds from the premium tax. If the municipal pension and  
55 relief fund fails to move its investments to the Investment Management Fund within the 18-month



56 drawdown period, provided in §8-22-19(e) of this code, the revenues shall be reallocated to all  
57 other municipal policemen's or firemen's pension and relief funds that have drawn down one  
58 hundred percent of their allocations.

59 (4) The moneys, and the interest earned thereon, in the Municipal Pensions and Protection  
60 Fund allocated to volunteer and part-volunteer fire companies and departments shall be allocated  
61 and distributed quarterly to the volunteer fire companies and departments. Before each  
62 distribution date, the State Fire Marshal shall report to the State Treasurer the names and  
63 addresses of all volunteer and part-volunteer fire companies and departments within the state  
64 which meet the eligibility requirements established in §8-15-8A of this code.

65 (c)(1) Each municipal pension and relief fund shall have allocated and authorized for  
66 distribution a pro rata share of the revenues allocated to municipal policemen's and firemen's  
67 pension and relief funds based on the corresponding municipality's average monthly number of  
68 police officers and firefighters who worked at least one hundred hours per month during the  
69 preceding fiscal year. On and after July 1, 1997, from the growth in any moneys collected pursuant  
70 to the tax imposed by this section and interest thereon there shall be allocated and authorized for  
71 distribution to each municipal pension and relief fund, a pro rata share of the revenues allocated  
72 to municipal policemen's and firemen's pension and relief funds based on the corresponding  
73 municipality's average number of police officers and firefighters who worked at least 100 hours  
74 per month and average monthly number of retired police officers and firefighters. For the purposes  
75 of this subsection, the growth in moneys collected from the tax collected pursuant to this section  
76 is determined by subtracting the amount of the tax collected during the fiscal year ending June  
77 30, 1996, from the tax collected during the fiscal year for which the allocation is being made and  
78 interest thereon. All moneys received by municipal pension and relief funds under this section  
79 may be expended only for those purposes described in sections 16 through 28a, inclusive, article  
80 22, chapter eight of this code. Notwithstanding the foregoing provision of this subdivision, if a  
81 municipality has outstanding pension funding revenue bonds and continues to pay the normal

82 cost of its policemen's and firemen's pension and relief funds, then the allocable share of  
83 revenues to be allocated which would otherwise have been allocated to a municipal policemen's  
84 or firemen's pension and relief fund shall instead be allocated to the trustee of any outstanding  
85 pension funding revenue bonds.

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

88 (3) In addition to the share allocated and distributed in accordance with subdivision (1) of  
89 this subsection, each municipal fire department composed of full-time paid members and  
90 volunteers and part-volunteer fire companies and departments shall receive a share equal to the  
91 share distributed to volunteer fire companies under subdivision (2) of this subsection reduced by  
92 an amount equal to the share multiplied by the ratio of the number of full-time paid fire department  
93 members who are also members of a municipal firemen's pension and relief fund or the Municipal  
94 Police Officers and Firefighters Retirement System to the total number of members of the fire  
95 department. If a municipality has outstanding pension funding revenue bonds and continues to  
96 pay the normal cost of its policemen's and firemen's pension and relief funds, then the share that  
97 would otherwise be payable to the municipality's firemen's pension and relief fund pursuant to  
98 this subsection shall be paid to the trustee of such outstanding pension funding revenue bonds.

99 (d) The allocation and distribution of revenues provided in this section are subject to the  
100 provisions of §8-22-20 of this code and §8-15-8a and §8-15-8b of this code.

101 (e) Based upon the findings of an audit by the Treasurer, the Legislature hereby finds and  
102 declares that during the period of 1982 through April 27, 2012, allocations from the Municipal  
103 Pensions and Protection Fund were miscalculated and errors were made in amounts transferred,  
104 resulting in overpayments and underpayments to the relief and pension funds and to the Teachers  
105 Retirement System, and that the relief and pension funds and the Teachers Retirement System  
106 were not at fault for any of the overpayments and underpayments. The Legislature hereby further  
107 finds and declares that any attempt by the Municipal Pension Oversight Board or other entity to

108 recover any of the overpayments would be unjust and create economic hardship for the entities  
109 that received overpayments. No entity, including, without limitation, the Municipal Pension  
110 Oversight Board, may seek to recover from a relief or pension fund, the Teachers Retirement  
111 System or the state any overpayments received from the Municipal Pensions and Protection Fund  
112 and the overpayments are not subject to recovery, offset or litigation. Pursuant to the audit by the  
113 Treasurer, the amount of \$3,631,846.55 is determined owed to specific relief and pension funds  
114 through the period of April 27, 2012. The Treasurer is hereby authorized to transfer the amount  
115 of \$3,631,846.55 from the Unclaimed Property Trust Fund to the Municipal Pensions and  
116 Protection Fund, which is hereby reopened for the sole purpose of the transfer and remittances  
117 pursuant to this subsection, and to use the amount transferred to remit the amounts due to the  
118 pension and relief funds. The payment of \$3,631,846.55 to the pension and relief funds is  
119 complete satisfaction of any amounts due and no entity, including, without limitation, the Municipal  
120 Pension Oversight Board and any pension or relief fund, may seek to recover any further amounts.



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

.....  
*Chairman, House Committee*

.....  
*Chairman, Senate Committee*

Originating in the House.

In effect from passage.

.....  
*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

.....  
*Speaker of the House of Delegates*

.....  
*President of the Senate*

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

.....  
*Governor*