

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

House Bill 4756

BY DELEGATE STORCH

[Originating in the Committee on Finance; February 24,
2022]

1 A BILL 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 amend
3 and reenact §8-33-4 of said code; to amend said code by adding thereto two new sections,
4 designated §8-33-4a and §8-33-4b; and to amend and reenact §33-3-14d of said code, all
5 relating to authorizing Class I, Class II and Class III municipalities to create pension funding
6 programs to reduce the unfunded liability of policemen's pension and relief funds and firemen's
7 pension and relief funds; authorizing a municipality's allocable portion of funds from the
8 Municipal Pensions Security Fund created in §8-22-18b to be paid to the trustee of an issue
9 of pension funding revenue bonds to be used for the purpose of paying debt service on such
10 bonds until such bonds are paid in full; authorizing municipal building commissions to use the
11 proceeds from pension funding revenue bonds to fund the costs of a municipality's pension
12 funding program; authorizing a municipal building commission to use rentals from real property
13 owned or leased by such commission to pay debt service and administrative expenses
14 associated with outstanding pension funding revenue bonds; authorizing a municipal building
15 commission to issue pension funding revenue bonds to fund a municipality's pension funding
16 program; requiring that each issuance of pension funding revenue bonds provide for a
17 contingency reserve fund in an amount equal to at least 10 percent of the original principal
18 amount of such bonds; requiring that an issue of pension funding revenue bonds be in a
19 principal amount at least equal to the then unfunded liability of such applicable policemen's or
20 firemen's pension and relief fund; providing for the use of excess moneys held by a bond
21 trustee upon the payment in full of pension funding revenue bonds; requiring the approval of
22 the Municipal Pension Oversight Board of the issuance of certain pension funding revenue
23 bonds and requiring the submission of information relating to such bonds to the Joint
24 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, Class
2 II and Class III municipalities are empowered and authorized to create pension funding programs as
3 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 trustee
2 of an issue of pension funding revenue bonds issued by the building commission of a municipality, as
3 the case may be, to receive the allocable portion of moneys from the Municipal Pensions Security
4 Fund created in § 8-22-18b of this code, the governing body of the municipality shall levy annually and
5 in the manner provided by law for other municipal levies and include within the maximum levy or levies
6 permitted by law and, if necessary, in excess of any charter provision, a tax at such rate as will, after
7 crediting: (A) The amount of the contributions received during the year from the members of the
8 respective paid police department or paid fire department; and (B) the allocable portion of the funds
9 from the Municipal Pensions Security Fund created in §8-22-18b of this code payable to such
10 municipality’s municipal policemen’s and firemen’s pension and relief funds, provide funds equal to
11 the amount necessary to meet the minimum standards for actuarial soundness as provided in § 8-22-
12 20 of this code. The amount deposited in a municipal policemen’s or firemen’s pension and relief fund
13 shall be irrevocably contributed, accumulated, and invested as fund assets as described in ~~§8-22-~~
14 ~~21 and~~ §8-22-22 and §8-22-22a of this code. The amount deposited with the trustee of an issue of
15 pension funding revenue bonds shall be used for the purpose of paying debt service on such bonds.
16 One 12th of each municipality’s annual contributions shall be deposited with the municipality’s pension
17 trust funds as fund assets on at least a monthly basis and any revenues received from any source by

18 a municipality which are specifically collected for the purpose of allocation for deposit into the
19 policemen's pension and relief fund or firemen's pension and relief fund shall be so deposited within
20 five days of receipt by the municipality. A municipality may prepay its monthly required contributions
21 in increments greater than 1/12. Heretofore surplus reserves accumulated before the effective date of
22 this section shall be irrevocably contributed, aggregated, and invested as fund assets described in ~~§8-~~
23 ~~22-21 and §8-22-22 and §8-22-22a~~ of this code. Any actuarial deficiency arising under this section
24 and §8-22-20 of this code shall not be the obligation of the State of West Virginia.

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

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

33 (c) In addition to all other sums provided for pensions in this section, it is the duty of every
34 municipality in which any fund or funds have been or shall be established to assess and collect from
35 each member of the paid police department or paid fire department or both each month, the sum of
36 seven percent of the actual salary or compensation of such member; and the amount so collected
37 shall become a regular part of the policemen's pension and relief fund, if collected from a policeman,
38 and of the firemen's pension and relief fund, if collected from a fireman: *Provided*, That for members
39 of the funds who are police officers or firefighters newly hired on or after January 1, 2010, the
40 municipality shall assess and collect nine and one-half percent of the actual salary or compensation.
41 Only those funds for which the board of trustees has collected and paid the contributions as herein
42 provided and meeting minimum standards for actuarial soundness shall be eligible to receive moneys
43 from the additional fire and casualty insurance premium tax as provided in § 33-3-14d of this
44 code: *Provided, however*, That the board of trustees for each pension and relief fund may assess and

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

60 (d)(1) For the fiscal year beginning on July 1, 2010, and subject to provisions of §8-22-
61 18b and §33-3-14d of this code and for each fiscal year thereafter, the Municipal Pensions Oversight
62 Board shall receive and retain the moneys allocated to the Municipal Pensions Security Fund until
63 such time as the treasurer of the municipality applies for the allocable portion and certifies in writing
64 to Municipal Pensions Oversight Board that:

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

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

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

80 (e) The State Auditor and the oversight board have the power, and the duty as each considers
81 necessary, to perform or review audits on the pension and relief funds or to employ an independent
82 consulting actuary or accountant to determine the compliance of the aforementioned certification with
83 the requirements of this section and §8-22-20 of this code. The expense of the audit or determination
84 shall be paid from the Municipal Pensions Security Fund pursuant to provisions of §8-22-18b of this
85 code. If the allocable portion of the Municipal Pensions Security Fund is not paid to the pension and
86 relief fund or to the trustee for pension funding revenue bonds, as applicable, within 18 months, the
87 portion is forfeited by the pension and relief fund and is allocable to other eligible municipal policemen's
88 and firemen's pension and relief funds in 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. The
3 selection of contract vendors to provide actuarial services, including the reviewing actuary as provided
4 in subsection (c) of this section, shall be by competitive bid process but is specifically exempt from the
5 purchasing provisions of ~~article three, chapter five a~~ §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 to
9 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 and
12 how the objective is to be attained; (2) the progress being made toward realization of the financial
13 objective; (3) recent changes in the nature of the fund, benefits provided or actuarial assumptions or
14 methods; (4) the frequency of actuarial valuation reports and the date of the most recent actuarial
15 valuation report; (5) the method used to value fund assets; (6) the extent to which the qualified actuary
16 relies on the data provided and whether the data was certified by the fund's auditor or examined by
17 the qualified actuary for reasonableness; (7) a description and explanation of the actuarial
18 assumptions and methods; (8) an evaluation of each plan using the alternative funding method, to
19 assess advantages of changing to other funding methods as provided in this article; and (9) any other
20 information required in §8-22-20a of this code or that the qualified actuary feels is necessary or would
21 be useful in fully and fairly disclosing the actuarial condition of the fund.

22 (c)(1) Except as provided in subsections (e) and (f) of this section, beginning June 30, 1991,
23 and thereafter, the financial objective of each municipality shall not be less than to contribute to the
24 fund annually an amount which, together with the contributions from the members and, if no pension
25 funding revenue bonds of a building commission of such municipality are outstanding, the allocable
26 portion of the Municipal Pensions and Protection Fund for municipal pension and relief funds
27 established under §33-3-14d of this code or a municipality's allocation from the Municipal Pensions
28 Security Fund created in §8-22-18b of this code and other income sources as authorized by law will
29 be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period
30 of not more than forty years beginning from July 1, 1991: *Provided*, That in the fiscal year ending June
31 30, 1991, the municipality may elect to make its annual contribution to the fund using an alternative
32 contribution in an amount not less than: (i) One hundred seven percent of the amount contributed for
33 the fiscal year ending June 30, 1990; or (ii) an amount equal to the average of the contribution
34 payments made in the five highest fiscal years beginning with the fiscal year ending 1984, whichever

35 is greater: *Provided, however,* That contribution payments in subsequent fiscal years under this
36 alternative contribution method may not be less than 107 percent of the amount contributed in the prior
37 fiscal year: *Provided further,* That in order to avoid penalizing municipalities and to provide flexibility
38 when making contributions, municipalities using the alternative contribution method may exclude a
39 one-time additional contribution made in any one year in excess of the minimum required by this
40 section: *And provided further,* That the governing body of any municipality may elect to provide an
41 employer continuing contribution of one percent more than the municipality's required minimum under
42 the alternative contribution plan authorized in this subsection: *And provided further,* That if any
43 municipality decides to contribute an additional one percent, then that municipality may not reduce the
44 additional contribution until the respective pension and relief fund no longer has any actuarial
45 deficiency: *And provided further,* That any decision and any contribution payment by the municipality
46 is not the liability of the State of West Virginia: *And provided further,* That if any municipality or any
47 pension fund board of trustees makes a voluntary election and thereafter fails to contribute the
48 voluntarily increase as provided in this section and in §8-22-19(c) of this code, then the board of
49 trustees is not eligible to receive funds allocated under §33-3-14d of this code: *And provided*
50 *further,* That prior to using this alternative contribution method the actuary of the fund shall certify in
51 writing that the fund is projected to be solvent under the alternative contribution method for the next
52 consecutive 15-year period. For purposes of determining this minimum financial objective: (i) The
53 value of the fund's assets shall be determined on the basis of any reasonable actuarial method of
54 valuation which takes into account fair market value; and (ii) all costs, deficiencies, rate of interest and
55 other factors under the fund shall be determined on the basis of actuarial assumptions and methods
56 which, in aggregate, are reasonable (taking into account the experience of the fund and reasonable
57 expectations) and which, in combination, offer the qualified actuary's best estimate of anticipated
58 experience under the fund: *And provided further,* That any municipality which elected the alternative
59 funding method under this section and which has an unfunded actuarial liability of not more than 25
60 percent of fund assets, may, beginning September 1, 2003, elect to revert to the standard funding
61 method, which is to contribute to the fund annually an amount which is not less than an amount which,

62 together with the contributions from the members and, if no pension funding revenue bonds of a
63 building commission of such municipality are outstanding, the allocable portion of the Municipal
64 Pensions and Protection Fund for municipal pension and relief funds established under §33-3-14d of
65 this code and other income sources as authorized by law, will be sufficient to meet the normal cost of
66 the fund and amortize any actuarial deficiency over a period of not more than 40 years, beginning from
67 July 1, 1991.

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

70 (3) Notwithstanding any other provision of this section or article to the contrary, each
71 municipality shall contribute annually to its policemen's pension and relief fund and its firemen's
72 pension and relief fund an amount which may not be less than the normal cost, as determined by the
73 annual actuarial valuation report required by this section: *Provided*, That in any fiscal year in which the
74 actuarial valuation report determines that a municipality's policemen's pension and relief fund or
75 firemen's pension and relief fund is funded at 125 percent or higher and the Municipal Pensions
76 Oversight Board's actuary provides an actuarial recommendation that the normal cost does not need
77 to be paid by the employer for that fiscal year, that municipality may elect to make no contribution for
78 that fiscal year. A municipality's election not to contribute the normal cost in any year does not affect
79 the payments required by §8-22-19 of this code by members to a pension and relief fund and these
80 payments are to continue as required by that section.

81 (4) The actuarial process, which includes the selection of methods and assumptions, shall be
82 reviewed by the qualified actuary no less than once every five years. Furthermore, the qualified actuary
83 shall provide a report to the oversight board with recommendations on any changes to the actuarial
84 process.

85 (5) The oversight board shall hire an independent reviewing actuary to perform an actuarial
86 audit of the work performed by the qualified actuary no less than once every seven years.

87 (d) For purposes of this section, the term "qualified actuary" means only an actuary who is a
88 member of the Society of Actuaries or the American Academy of Actuaries. The qualified actuary shall

89 be designated a fiduciary and shall discharge his or her duties with respect to a fund solely in the
90 interest of the members and members' beneficiaries of that fund. In order for the standards of this
91 section to be met, the qualified actuary shall certify that the actuarial valuation report is complete and
92 accurate and that in his or her opinion the technique and assumptions used are reasonable and meet
93 the requirements of this section.

94 (e)(1) Beginning January 1, 2010, municipalities may choose the optional method of financing
95 municipal policemen's or firemen's pension and relief funds as outlined in this subsection in lieu of the
96 standard or alternative methods as provided in subdivision (1), subsection (c) of this section.

97 (2) For those municipalities choosing the optional method of finance, the minimum standard
98 for annual municipality contributions to each policemen's or firemen's pension and relief fund shall be
99 an amount which, together with the contributions from the members and, if no pension funding revenue
100 bonds of a building commission of such municipality are outstanding, the allocable portion of the
101 ~~Municipal Pensions and Protection Fund~~ or Municipal Pensions Security Fund created in §8-22-18b
102 of this code, and other income sources as authorized by law, will be sufficient to meet the normal cost
103 of the fund and amortize any actuarial deficiency over a period of not more than 40 years beginning
104 January 1, 2010: *Provided*, That those municipalities using the standard method of financing in 2009
105 shall continue to amortize their actuarial deficiencies over a period of not more than 40 years beginning
106 July 1, 1991. The required contribution shall be determined each plan year as described above by the
107 actuary retained by the oversight board, based on an actuarial valuation reflecting actual demographic
108 and investment experience and consistent with the Actuarial Standards of Practice published by the
109 Actuarial Standards Board.

110 (3) A municipality choosing the optional method of financing a policemen's or firemen's
111 pension and relief fund as provided in this subsection shall close the fund to police officers or fire
112 fighters newly hired on or after January 1, 2010, and provide for those employees to be members of
113 the Municipal Police Officers and Firefighters Retirement System as established in §8-22A-1 *et seq.*,
114 of this code.

115 (f)(1) Beginning April 1, 2011, any municipality using the alternative method of financing may
116 choose a conservation method of financing its municipal policemen's and firemen's pension and relief
117 funds as outlined in this subsection, in lieu of the alternative method as provided in subdivision (1),
118 subsection (c), or the optional method as provided in subsection (e) of this section.

119 (2) For those municipalities choosing the conservation method of finance, until a plan is funded
120 at 100 percent a part of each plan member's employee contribution to the fund equal to one and one-
121 half percent of the employee's compensation, shall be deposited into and remain in the trust and
122 accumulate investment return. In addition, until a plan is funded at 100 percent and all pension funding
123 revenue bonds issued by a municipality's building commission are paid in full, an actuarially
124 determined portion of the premium tax allocation to each fund provided in accordance with ~~section~~
125 ~~fourteen d, article three, and section seven, article twelve c of chapter thirty three~~ §33-3-14d and §33-
126 12C-7 of this code shall also be deposited into and remain in the trust and accumulate investment
127 return. This variable percentage of premium tax allocation to be retained in each fund shall be
128 determined annually by the qualified actuary provided pursuant to subsection (a) of this section to be
129 an amount required, along with other assets of the fund as necessary to reach a funded level of 100
130 percent in 35 years from the time of adoption of the conservation financing method. The variable
131 percentage shall be calculated using a prospective four-year rolling average.

132 (3) Upon adoption of the conservation method of finance, the municipality shall close its
133 pension and relief funds to new members and shall place police officers and firefighters newly hired
134 after adoption of the conservation method into the Municipal Police Officers and Firefighters
135 Retirement System created in §8-22A-1 *et seq.*, of this code.

136 (4) Upon adoption of the conservation method of financing, the minimum standard for annual
137 municipality contributions to each policemen's or firemen's pension and relief fund shall be an amount
138 which, together with member contributions and premium tax proceeds not required to be retained in
139 the trust pursuant to this subsection, and if no pension funding revenue bonds of a building commission
140 of such municipality are outstanding, and other income sources as authorized by law, is sufficient to
141 meet the annual benefit and administrative expense payments from the funds on a pay-as-you-go

142 basis: *Provided*, That at the time the actuarial report required by this section indicates no actuarial
143 deficiency in the municipal policemen's or firemen's pension and relief fund, the minimum annual
144 required contribution of the municipality may not be less than an amount which together with all
145 member contributions and other income authorized by law, is sufficient to pay normal cost.

146 (5) If a municipality using the conservation method fully funds its pension and relief fund or
147 funds by a pension funding program authorized by §8-33-4a, then the trustees of the policemen's or
148 firemen's pension and relief fund are to pay pension obligations out of the pension and relief fund; and
149 the minimum standard for annual municipality contributions to each policemen's or firemen's pension
150 and relief fund shall be an amount which, together with member contributions and other income
151 sources as authorized by law, is sufficient to meet the normal cost of the fund.

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

169 (h) Notwithstanding the foregoing until any pension funding revenue bonds issued by a
170 municipality's building commission are paid in full, the allocable portion of money from the Municipal
171 Pension Security Fund from the premium tax allocation for such municipality's policemen's and
172 firemen's pension and relief funds, as applicable, shall be deposited pursuant to §8-22-19(d)(2) with
173 the trustee for the pension funding revenue bonds and shall not be deposited into the applicable
174 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 affairs
- 9 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 facilities,
- 12 of any type or types for which the governmental body or bodies creating such commission are
- 13 permitted by law to expend public funds (all hereinafter in this article referred to as facilities);
- 14 (g) Apply for, receive and use grants-in-aid, donations and contributions from any source or
- 15 sources, including, but not limited to, the United States of America, or any department or agency
- 16 thereof, and accept and use bequests, devises, gifts and donations from any source whatsoever;
- 17 (h) Sell, encumber or dispose of any property, real or personal;

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

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

31 (k) Subject to such reasonable limitations and conditions as the governmental body or all of
32 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 ~~chapter 54~~
34 §54-1-1 et seq. of this code for business corporations, for the purposes set forth in subdivision (f) of
35 this 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 such
38 terms as the commission deems proper, but when any municipality or county commission is a lessee
39 under any such lease, such lease must contain a provision granting to such municipality or county
40 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 §8-
42 33-4a of this code to pay the costs of a pension funding program as described in §8-33-4a(c) of this
43 code;

44 (n) Use the proceeds of rentals for the use of real property owned or leased by the commission
45 and any amounts received pursuant to §8-22-19(d)(2) of this code by the trustee for outstanding
46 pension funding revenue bonds to, among other things, pay the principal, interest, any reserve
47 requirement obligations and administrative expenses of any pension funding revenue bonds issued in
48 connection with any lease by the commission to the municipality which created the commission; any
49 amount received pursuant to §8-22-19(d)(2) of this code shall be used only to pay principal and interest
50 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 requirements
2 set forth in this section and in §8-33-4b of this code, a commission formed by a Class I, Class II or
3 Class III municipality may issue pension funding revenue bonds to raise funds for the funding of a
4 pension funding program in the manner provided by this section. A “pension funding program” means
5 a program established by a municipality for reducing the unfunded actuarial accrued liability of a
6 policemen’s or firemen’s pension and relief fund of the municipality with the proceeds of pension
7 funding revenue bonds issued pursuant to this section.

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

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

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

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

46 (d) Pension funding revenue bonds shall be in an amount at least equal to the applicable
47 policemen's and/or firemen's pension and relief funds then unfunded liability based upon the most
48 recent actuarial valuation reports prepared by an actuary contracted with or employed by the oversight
49 board as required by §8-22-20 of this code for the applicable funds with appropriate adjustments for
50 timing, experience and other factors. The pension funding revenue bonds shall bear interest at not
51 more than 12 percent per annum, payable semiannually, or at shorter intervals, and the bonds
52 allocable to a specific policemen's or firemen's relief fund shall mature over a period of time not
53 exceeding the then estimated amortization period for the municipality's unfunded actuarial accrued
54 liability as set forth in the municipality's most recent actuarial valuation reports prepared by an actuary
55 contracted with or employed by the oversight board relating to the applicable funds with appropriate
56 adjustments for timing, experience and other factors, as may be determined by the ordinance or
57 ordinances authorizing the issuance of such bonds. The annual principal and interest payments on
58 pension funding revenue bonds shall, to the extent possible, provide for level debt service and be
59 proportionate to the funding requirements for the applicable policemen's or firemen's pension and
60 relief funds as shown on the municipality's most recent actuarial valuation report for the policemen's
61 or firemen's pension and relief funds prepared by an actuary contracted with or employed by the
62 oversight board with appropriate adjustments for timing, experience and other factors, as applicable.
63 The bonds may be made redeemable before maturity, at the option of the commission issuing the
64 bonds, to be exercised by the commission, at not more than the par value thereof, and at a premium
65 of not more than five percent, under terms and conditions as may be fixed by the ordinance or
66 ordinances authorizing the issuance of the bonds. The principal and interest of the bonds may be
67 made payable in any lawful medium. The ordinance or ordinances shall determine the form of the
68 bonds, shall set forth any registration or conversion privileges, and shall fix the denomination or
69 denominations of such bonds, and the place or places of the payment of the principal and interest
70 thereof, which may be at any banking institution or trust company within or without the state and which
71 is a vendor of the state. All such bonds shall be, shall have and are hereby declared to have all the
72 qualities and incidents of negotiable instruments, under the Uniform Commercial Code of this state.

73 The bonds shall be executed in the manner the commission may direct. The bonds shall be sold by
74 the commission in a manner as may be determined to be in the best interest of the municipality which
75 created the commission. Any surplus of the bond proceeds over and above the cost of the pension
76 funding program shall be paid into the sinking fund established for the payment of such bonds.

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

95 (f) Upon the payment in full of an issue of pension funding revenue bonds (other than with the
96 proceeds of refunding bonds) and any final costs related thereto, any amounts remaining in any debt
97 service reserve or contingency reserve funds shall be paid by the trustee of the bonds to the
98 municipality which formed the commission. Any excess moneys held in the subaccount of the debt
99 service fund into which premium tax allocations have been deposited shall be paid to the Municipal

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

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

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

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

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

23 (d) Should the municipal pension oversight board approve the issuance of pension funding
24 revenue bonds by a building commission, then it shall promptly provide a copy of its decision and the
25 supporting documents, including a copy of the municipality's most recent actuarial valuation reports
26 prepared by an actuary contracted with or employed by the oversight board relating to its policemen's
27 and firemen's pension and relief funds, to the Joint Committee on Government and 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 firemen's
2 pension and relief funds and the Teachers Retirement System Reserve Fund and for volunteer and
3 part-volunteer fire companies and departments, there is hereby levied and imposed an additional
4 premium tax equal to one percent of taxable premiums for fire insurance and casualty insurance
5 policies. For purposes of this section, casualty insurance does not include insurance on the life of a
6 debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on a
7 debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction
8 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 and
10 paid by him or her into a special account in the State Treasury, designated the Municipal Pensions
11 and Protection Fund: *Provided*, That on or after January 1, 2010, the commissioner shall pay 10
12 percent of the amount collected to the Teachers Retirement System Reserve Fund created in §18-7A-
13 18 of this code, 25 percent of the amount collected to the Fire Protection Fund created in ~~section 33~~
14 ~~of this article~~ §33-3-33 of this code for allocation by the Treasurer to volunteer and part-volunteer fire
15 companies and departments and 65 percent of the amount collected to the Municipal Pensions and
16 Protection Fund: *Provided, however*, That upon notification by the Municipal Pensions Oversight
17 Board pursuant to the provisions of §8-22-18b this code, on or after January 1, 2010, or as soon

18 thereafter as the Municipal Pensions Oversight Board is prepared to receive the funds, 65 percent of
19 the amount collected by the commissioner shall be deposited in the Municipal Pensions Security Fund
20 created in §8-22-18b of this code. The net proceeds of this tax after appropriation thereof by the
21 Legislature is distributed in accordance with the provisions of this section, except for distribution from
22 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 the
25 average monthly number of members who worked at least one hundred hours per month and the
26 average monthly number of retired members of municipal policemen's or firemen's pension and relief
27 fund or the Municipal Police Officers and Firefighters Retirement System during the preceding fiscal
28 year: *Provided*, That beginning in the year 2010 and continuing thereafter, the report shall be made to
29 the oversight board created in §8-22-18a of this code. These reports received by the oversight board
30 shall be provided annually to the State Treasurer by September 1.

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

45 building commission the net proceeds of which were used to fund either or both of a municipality's
46 policemen's or firemen's pension and relief fund or bonds issued to refinance such bonds.

47 (3) The Municipal Pensions Oversight Board shall annually review the investment performance
48 of each municipal policemen's or firemen's pension and relief fund. If the municipal pension and relief
49 fund's board fails for three consecutive years to comply with the investment provisions established by
50 ~~section twenty-two-a, article twenty-two, chapter eight~~ §8-22-22a of this code, the oversight board may
51 require the municipal policemen's or firemen's pension and relief fund to invest with the Investment
52 Management Board to continue to receive its allocation of funds from the premium tax. If the municipal
53 pension and relief fund fails to move its investments to the Investment Management Fund within the
54 18-month drawdown period, provided in §8-22-19(e) of this code, the revenues shall be reallocated to
55 all other municipal policemen's or firemen's pension and relief funds that have drawn down one
56 hundred percent of their allocations.

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

63 (c)(1) Each municipal pension and relief fund shall have allocated and authorized for
64 distribution a pro rata share of the revenues allocated to municipal policemen's and firemen's pension
65 and relief funds based on the corresponding municipality's average monthly number of police officers
66 and firefighters who worked at least one hundred hours per month during the preceding fiscal year.
67 On and after July 1, 1997, from the growth in any moneys collected pursuant to the tax imposed by
68 this section and interest thereon there shall be allocated and authorized for distribution to each
69 municipal pension and relief fund, a pro rata share of the revenues allocated to municipal policemen's
70 and firemen's pension and relief funds based on the corresponding municipality's average number of
71 police officers and firefighters who worked at least 100 hours per month and average monthly number

72 of retired police officers and firefighters. For the purposes of this subsection, the growth in moneys
73 collected from the tax collected pursuant to this section is determined by subtracting the amount of the
74 tax collected during the fiscal year ending June 30, 1996, from the tax collected during the fiscal year
75 for which the allocation is being made and interest thereon. All moneys received by municipal pension
76 and relief funds under this section may be expended only for those purposes described in sections 16
77 through 28a, inclusive, article 22, chapter eight of this code. Notwithstanding the foregoing provision
78 of this subdivision, if a municipality has outstanding pension funding revenue bonds and continues to
79 pay the normal cost of its policemen's and firemen's pension and relief funds, then the allocable share
80 of revenues to be allocated which would otherwise have been allocated to a municipal policemen's or
81 firemen's pension and relief fund shall instead be allocated to the trustee of any outstanding pension
82 funding revenue bonds.

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

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

96 (d) The allocation and distribution of revenues provided in this section are subject to the
97 provisions of §8-22-20 of this code and ~~sections eight a and eight b, article 15 of said chapter §8-15-~~
98 8a and §8-15-8b of this code.

99 (e) Based upon the findings of an audit by the Treasurer, the Legislature hereby finds and
100 declares that during the period of 1982 through April 27, 2012, allocations from the Municipal Pensions
101 and Protection Fund were miscalculated and errors were made in amounts transferred, resulting in
102 overpayments and underpayments to the relief and pension funds and to the Teachers Retirement
103 System, and that the relief and pension funds and the Teachers Retirement System were not at fault
104 for any of the overpayments and underpayments. The Legislature hereby further finds and declares
105 that any attempt by the Municipal Pension Oversight Board or other entity to recover any of the
106 overpayments would be unjust and create economic hardship for the entities that received
107 overpayments. No entity, including, without limitation, the Municipal Pension Oversight Board, may
108 seek to recover from a relief or pension fund, the Teachers Retirement System or the state any
109 overpayments received from the Municipal Pensions and Protection Fund and the overpayments are
110 not subject to recovery, offset or litigation. Pursuant to the audit by the Treasurer, the amount of
111 \$3,631,846.55 is determined owed to specific relief and pension funds through the period of April 27,
112 2012. The Treasurer is hereby authorized to transfer the amount of \$3,631,846.55 from the Unclaimed
113 Property Trust Fund to the Municipal Pensions and Protection Fund, which is hereby reopened for the
114 sole purpose of the transfer and remittances pursuant to this subsection, and to use the amount
115 transferred to remit the amounts due to the pension and relief funds. The payment of \$3,631,846.55
116 to the pension and relief funds is complete satisfaction of any amounts due and no entity, including,
117 without limitation, the Municipal Pension Oversight Board and any pension or relief fund, may seek to
118 recover any further amounts.