

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 612

BY SENATORS BROWN AND WELD

[Introduced February 10, 2022; referred
to the Committee on Pensions]

1 A BILL to amend and reenact §8-16-1 and §8-16-4 of the Code of West Virginia, 1931, as
 2 amended; to amend and reenact §8-22-19 and §8-22-20 of said code; to amend and
 3 reenact §8-33-4 of said code; and to amend and reenact §33-3-14d of said code, all
 4 generally relating to pension obligation bonds for municipalities; providing for a definition
 5 of “pension funding program”; providing updates to the purview of a governing body
 6 relating to pensions; permitting payment of debt service from allocable monies from the
 7 Municipal Pensions Security Fund; including the possibility of no pension funding
 8 obligations being outstanding; providing specific powers to cities relating to Certificates of
 9 Participation; and providing for revenue allocation termination.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

PART I. DEFINITIONS; AUTHORIZATION

OF MUNICIPAL PUBLIC WORKS.

§8-16-1. Definitions.

1 As used in this article, the following terms shall have the following meanings unless the
 2 text clearly indicates otherwise.

3 (a) “Municipal public works” or “works” or “projects” means the construction,
 4 reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement,
 5 increase, equipment, maintenance, repair (including replacements) and operation of jails, jail
 6 facilities, municipal buildings, police stations, fire stations, libraries, museums, other public
 7 buildings, incinerator plants, land fill or other garbage disposal systems, hospitals, piers, docks,
 8 terminals, airports, drainage systems, flood control systems, stormwater systems and associated
 9 stormwater management program, flood walls, culverts, bridges (including approaches,
 10 causeways, viaducts, underpasses and connecting roadways), public markets, cemeteries, motor

11 vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and
12 other facilities considered necessary, appropriate, useful, convenient or incidental to the
13 regulation, control and parking of motor vehicles), farms, dormitories, apartments and other
14 housing facilities for the students and faculties of institutions of higher education; facilities
15 providing housing for the elderly, including, but not limited to, life care facilities, congregate living
16 facilities and adult residential facilities, stadiums, gymnasiums, sports arenas, Auditoriums, public
17 recreation centers, public recreation parks, swimming pools, roller skating rinks, ice skating rinks,
18 tennis courts, golf courses, polo grounds, or the grading, regrading, paving, repaving, surfacing,
19 resurfacing, curbing, recurbing, widening or otherwise improving of any street, avenue, road, alley
20 or way, or the building or renewing of sidewalks, where works or projects will be made self-
21 supporting, and the cost thereof, together with the interest thereon, will be returned within a
22 reasonable period, not exceeding forty years, by means of tolls, fees, rents, special assessments
23 or charges other than taxation; and the terms shall also mean any works or project as a whole,
24 and all integral parts thereof, including all necessary, appropriate, useful, convenient or incidental
25 appurtenances and equipment in connection with any one or more of the above.

26 (b) "Pension funding program" means a program meant to issue pension obligation bonds
27 with the intent to refinance unfunded pension liability.

28 ~~(b)~~ (c) "Stormwater systems" means a stormwater system in its entirety or any integral part
29 thereof used to collect and dispose of stormwater and an associated stormwater management
30 program. It includes all facilities, structures and natural water courses used for collecting and
31 conducting stormwater to, through and from drainage areas to the points of final outlet including,
32 but not limited to, any and all of the following: Inlets, conduits, outlets, channels, ponds, drainage
33 easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts,
34 siphons, retention or detention basins, dams, floodwalls, pipes, flood control systems, levies and
35 pumping stations. The term "stormwater systems" shall not include highways, road and drainage
36 easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia

37 Division of Highways.

38 ~~(e)~~ (d) “Stormwater management program” means those activities associated with the
39 management, operation, maintenance and control of stormwater and stormwater systems, and
40 shall include, but not be limited to, public education, stormwater and surface runoff water quality
41 improvement, mapping, planning, flood control, inspection, enforcement and any other activities
42 required by state and federal law. The term “stormwater management program” shall not include
43 those activities associated with the management, operation, maintenance and control of
44 highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or
45 operated by the West Virginia Division of Highways without the express agreement of the
46 commissioner of highways.

PART II. CONTROL OF GOVERNING BODY OR BOARD.

§8-16-4. Construction, etc., to be under control of governing body or appointed board, etc.

1 The construction, reconstruction, establishment, acquisition, improvement, renovation,
2 extension, enlargement, increase, equipment, repair (including replacements), custody,
3 maintenance and operation of any such works, and the collection of revenues therefrom, shall be
4 under the supervision and control of the governing body, or of a committee, by whatever name
5 called, composed of all or a portion of the governing body when only one municipality is involved,
6 or of a board or commission appointed by such governing body when only one municipality is
7 involved or appointed by the governing bodies when two or more municipalities take joint action
8 under the provisions of this article, as may be provided by the governing body or bodies.

9 When such supervision and control are vested in a committee, board or commission, the
10 governing body or bodies, as the case may be, may provide, by ordinance or ordinances, for said
11 committee, board or commission to exercise such of the functions of the governing body or bodies
12 in connection with the matter as it or they deem proper, and may provide for said committee,
13 board or commission to receive such compensation as such body or bodies may deem proper,
14 all of which authority and compensation shall be specifically provided for by ordinance or

15 ordinances. Any such committee, board or commission shall consist of the number of members
16 fixed in the ordinance or ordinances creating the same, and the manner and mode of the selection
17 and appointment of the members of any such board or commission shall be stated in such
18 ordinance or ordinances. The members of any such board or commission appointed by the
19 governing body or bodies shall be chosen without regard to their political affiliations, but with
20 regard to their business and professional experience or standing as citizens in the community. All
21 compensation and expenses, including attorney's fees, of such committee, board or commission
22 shall be paid solely from funds provided under the authority of this article. Any such committee,
23 board or commission shall have the power to establish bylaws, rules and regulations for its own
24 government.

25 When hereinafter used in this article, the term "board" shall be construed to mean the
26 governing body or committee composed of all or a portion of the governing body when only one
27 municipality is involved, or a board or commission appointed by the governing body when only
28 one municipality is involved or appointed by the governing bodies when two or more municipalities
29 take joint action under the provisions of this article, as the case may be. When two or more
30 municipalities take joint action under the provisions of this article each governing body shall
31 appoint to the board the number of members which the governing bodies have agreed shall be
32 appointed by each such governing body.

33 The governing body or bodies also, in its or their discretion, may provide by ordinance or
34 ordinances for the leasing of a municipal public works and provide for the custody, maintenance
35 and operation thereof by a lessee in accordance with the provisions of such ordinance or
36 ordinances and lease contract executed pursuant thereto: *Provided*, That the lessee shall pay to
37 the municipality or municipalities for the use and occupancy of such municipal public works so
38 leased an amount sufficient to provide a sinking fund for the payment of the bonds and the interest
39 thereon and all other charges mentioned in section seventeen of this article.

40 The governing body or bodies may provide for the establishment and maintenance of any

41 pension funding program, as defined in §8-16-1 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 to receive
 2 the allocable portion of moneys from the Municipal Pensions Security Fund created in §8-22-18b
 3 of this code, the governing body of the municipality shall levy annually and in the manner provided
 4 by law for other municipal levies and include within the maximum levy or levies permitted by law
 5 and, if necessary, in excess of any charter provision, a tax at such rate as will, after crediting: (A)
 6 The amount of the contributions received during the year from the members of the respective paid
 7 police department or paid fire department; and (B) the allocable portion of the funds from the
 8 Municipal Pensions Security Fund created in §8-22-18b of this code, provide funds equal to the
 9 amount necessary to meet the minimum standards for actuarial soundness as provided in §8-22-
 10 20 of this code. The amount shall be irrevocably contributed, accumulated, and invested as fund
 11 assets as described in §8-22-21 and §8-22-22 of this code. One 12th of each municipality's annual
 12 contributions shall be deposited with the municipality's pension trust funds as fund assets on at
 13 least a monthly basis and any revenues received from any source by a municipality which are
 14 specifically collected for the purpose of allocation for deposit into the policemen's pension and
 15 relief fund or firemen's pension and relief fund shall be so deposited within five days of receipt by
 16 the municipality. A municipality may prepay its monthly required contributions in increments
 17 greater than one-twelfth. Heretofore surplus reserves accumulated before the effective date of
 18 this section shall be irrevocably contributed, aggregated, and invested as fund assets described
 19 in §8-22-21 and §8-22-22 of this code. Any actuarial deficiency arising under this section and §8-

20 22-20 of this code shall not be the obligation of the State of West Virginia.

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

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

29 (c) In addition to all other sums provided for pensions in this section, it is the duty of every
30 municipality in which any fund or funds have been or shall be established to assess and collect
31 from each member of the paid police department or paid fire department or both each month, the
32 sum of seven percent of the actual salary or compensation of such member; and the amount so
33 collected shall become a regular part of the policemen's pension and relief fund, if collected from
34 a policeman, and of the firemen's pension and relief fund, if collected from a fireman: *Provided,*
35 That for members of the funds who are police officers or firefighters newly hired on or after
36 January 1, 2010, the municipality shall assess and collect nine and one-half percent of the actual
37 salary or compensation. Only those funds for which the board of trustees has collected and paid
38 the contributions as herein provided and meeting minimum standards for actuarial soundness
39 shall be eligible to receive moneys from the additional fire and casualty insurance premium tax
40 as provided in §33-3-14d of this code: *Provided, however,* That the board of trustees for each
41 pension and relief fund may assess and collect from each member of the paid police department
42 or paid fire department or both each month not more than an additional two and one-half percent
43 of the actual salary or compensation of each member, but not to exceed nine and one-half percent
44 total contribution: *Provided further,* That if any board of trustees decides to assess and collect any
45 additional amount pursuant to this subdivision above the member contribution required by this

46 section, then that board of trustees may not reduce the additional amount until the respective
47 pension and relief fund no longer has any actuarial deficiency: *And provided further*, That if any
48 board of trustees decides to assess and collect any additional amount, any board of trustees
49 decision and any additional amount is not the liability of the State of West Virginia. Member
50 contributions shall be deposited in the pension and relief fund within five days of being collected.

51 (d)(1) For the fiscal year beginning on July 1, 2010, and subject to provisions of §8-22-
52 18b and §33-3-14d of this code and for each fiscal year thereafter, the Municipal Pensions
53 Oversight Board shall receive and retain the moneys allocated to the Municipal Pensions Security
54 Fund until such time as the treasurer of the municipality applies for the allocable portion and
55 certifies in writing to Municipal Pensions Oversight Board that:

56 (A) The municipality has irrevocably contributed the amount required under this section
57 and §8-22-20 of this code to the pension and relief fund for the required period; and

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

61 (2) When the aforementioned application and certification are made, the allocable portion
62 of moneys from the Municipal Pensions Security Fund shall be paid to the corresponding
63 policemen's or firemen's pension and relief fund. Payment to a municipal pension and relief fund
64 shall be made by electronic funds transfer.

65 (e) The State Auditor and the oversight board have the power, and the duty as each
66 considers necessary, to perform or review audits on the pension and relief funds or to employ an
67 independent consulting actuary or accountant to determine the compliance of the aforementioned
68 certification with the requirements of this section and §8-22-20 of this code. The expense of the
69 audit or determination shall be paid from the Municipal Pensions Security Fund pursuant to
70 provisions of §8-22-18b of this code. If the allocable portion of the Municipal Pensions Security
71 Fund is not paid to the pension and relief fund within 18 months, the portion is forfeited by the

72 pension and relief fund and is allocable to other eligible municipal policemen's and firemen's
73 pension and relief funds in accordance with §33-3-14d of this code.

74 (f) The governing body or bodies may permit payment of debt service from allocable
75 moneys from the Municipal Pensions Security Fund.

**§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 actuary

21 feels is necessary or would be useful in fully and fairly disclosing the actuarial condition of the
22 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 the allocable portion of the Municipal Pensions and Protection Fund for municipal
27 pension and relief funds established under §33-3-14d of this code or a municipality's allocation
28 from the Municipal Pensions Security Fund created in §8-22-18b of this code and other income
29 sources as authorized by law will be sufficient to meet the normal cost of the fund and amortize
30 any actuarial deficiency over a period of not more than 40 years beginning from July 1, 1991:
31 *Provided, That* in the fiscal year ending June 30, 1991, the municipality may elect to make its
32 annual contribution to the fund using an alternative contribution in an amount not less than: (i)
33 One hundred seven percent of the amount contributed for the fiscal year ending June 30, 1990;
34 or (ii) an amount equal to the average of the contribution payments made in the five highest fiscal
35 years beginning with the fiscal year ending 1984, whichever is greater: *Provided, however, That*
36 contribution payments in subsequent fiscal years under this alternative contribution method may
37 not be less than 107 percent of the amount contributed in the prior fiscal year: *Provided further,*
38 *That* in order to avoid penalizing municipalities and to provide flexibility when making
39 contributions, municipalities using the alternative contribution method may exclude a one-time
40 additional contribution made in any one year in excess of the minimum required by this section:
41 *And provided further, That* the governing body of any municipality may elect to provide an
42 employer continuing contribution of one percent more than the municipality's required minimum
43 under the alternative contribution plan authorized in this subsection: *And provided further, That* if
44 any municipality decides to contribute an additional one percent, then that municipality may not
45 reduce the additional contribution until the respective pension and relief fund no longer has any
46 actuarial deficiency: *And provided further, That* any decision and any contribution payment by the

47 municipality is not the liability of the State of West Virginia: *And provided further*, That if any
48 municipality or any pension fund board of trustees makes a voluntary election and thereafter fails
49 to contribute the voluntarily increase as provided in this section and in §8-22-19(c) of this code,
50 then the board of trustees is not eligible to receive funds allocated under §33-3-14d of this code:
51 *And provided further*, That prior to using this alternative contribution method the actuary of the
52 fund shall certify in writing that the fund is projected to be solvent under the alternative contribution
53 method for the next consecutive 15 year period. For purposes of determining this minimum
54 financial objective: (i) The value of the fund's assets shall be determined on the basis of any
55 reasonable actuarial method of valuation which takes into account fair market value; and (ii) all
56 costs, deficiencies, rate of interest and other factors under the fund shall be determined on the
57 basis of actuarial assumptions and methods which, in aggregate, are reasonable (taking into
58 account the experience of the fund and reasonable expectations) and which, in combination, offer
59 the qualified actuary's best estimate of anticipated experience under the fund: *And provided*
60 *further*, That any municipality which elected the alternative funding method under this section and
61 which has an unfunded actuarial liability of not more than 25 percent of fund assets, may,
62 beginning September 1, 2003, elect to revert to the standard funding method, which is to
63 contribute to the fund annually an amount which is not less than an amount which, together with
64 the contributions from the members and the allocable portion of the Municipal Pensions and
65 Protection Fund for municipal pension and relief funds established under §33-3-14d of this code
66 and other income sources as authorized by law, will be sufficient to meet the normal cost of the
67 fund and amortize any actuarial deficiency over a period of not more than 40 years, beginning
68 from July 1, 1991.

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

72 (3) Notwithstanding any other provision of this section or article to the contrary, each

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

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

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

89 (d) For purposes of this section, the term "qualified actuary" means only an actuary who
90 is a member of the Society of Actuaries or the American Academy of Actuaries. The qualified
91 actuary shall be designated a fiduciary and shall discharge his or her duties with respect to a fund
92 solely in the interest of the members and members' beneficiaries of that fund. In order for the
93 standards of this section to be met, the qualified actuary shall certify that the actuarial valuation
94 report is complete and accurate and that in his or her opinion the technique and assumptions
95 used are reasonable and meet the requirements of this section.

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

99 (c) of this section.

100 (2) For those municipalities choosing the optional method of finance, the minimum
101 standard for annual municipality contributions to each policemen's or firemen's pension and relief
102 fund shall be an amount which, together with the contributions from the members and allocable
103 portion of the Municipal Pensions and Protection Fund or Municipal Pensions Security Fund
104 created in §8-22-18b of this code, and other income sources as authorized by law, will be sufficient
105 to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not
106 more than 40 years beginning January 1, 2010: *Provided*, That those municipalities using the
107 standard method of financing in 2009 shall continue to amortize their actuarial deficiencies over
108 a period of not more than 40 years beginning July 1, 1991. The required contribution shall be
109 determined each plan year as described above by the actuary retained by the oversight board,
110 based on an actuarial valuation reflecting actual demographic and investment experience and
111 consistent with the Actuarial Standards of Practice published by the Actuarial Standards Board.

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

117 (4) Municipalities may choose that pension funding obligations are not to be considered
118 outstanding.

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

123 (2) For those municipalities choosing the conservation method of finance, until a plan is
124 funded at 100 percent, a part of each plan member's employee contribution to the fund equal to

125 one and one-half percent of the employee's compensation, shall be deposited into and remain in
126 the trust and accumulate investment return. In addition, until a plan is funded at 100 percent, an
127 actuarially determined portion of the premium tax allocation to each fund provided in accordance
128 with §33-3-14d and §33-12C-7 of this code shall also be deposited into and remain in the trust
129 and accumulate investment return. This variable percentage of premium tax allocation to be
130 retained in each fund shall be determined annually by the qualified actuary provided pursuant to
131 subsection (a) of this section to be an amount required, along with other assets of the fund as
132 necessary to reach a funded level of 100 percent in 35 years from the time of adoption of the
133 conservation financing method. The variable percentage shall be calculated using a prospective
134 four-year rolling average.

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

139 (4) Upon adoption of the conservation method of financing, the minimum standard for
140 annual municipality contributions to each policemen's or firemen's pension and relief fund shall
141 be an amount which, together with member contributions and premium tax proceeds not required
142 to be retained in the trust pursuant to this subsection, and other income sources as authorized by
143 law, is sufficient to meet the annual benefit and administrative expense payments from the funds
144 on a pay-as-you-go basis: *Provided*, That at the time the actuarial report required by this section
145 indicates no actuarial deficiency in the municipal policemen's or firemen's pension and relief fund,
146 the minimum annual required contribution of the municipality may not be less than an amount
147 which together with all member contributions and other income authorized by law, is sufficient to
148 pay normal cost.

149 (g) Beginning with the July 1, 2020, actuarial valuation, the existing actuarial deficiency,
150 prior to reflecting any new gains or losses as of July 1, 2020, such as those due to investment

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

ARTICLE 33. INTERGOVERNMENTAL RELATIONS -- BUILDING COMMISSIONS.

PART II. POWERS OF 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 which it may deem necessary or advisable in connection
23 with exercising powers as provided herein;

24 (j) Raise funds by the issuance and sale of revenue bonds in the manner provided by the
25 applicable provisions of §8-16-7, §8-16-10, §8-16-12, and §8-16-16 of this code, without regard
26 to the extent provided in section five of this article, to the limitations specified in said section
27 twelve, article sixteen, it being hereby expressly provided that for the purpose of the issuance and
28 sale of revenue bonds, each commission is a "governing body" as that term is used in said article
29 16 only;

30 (k) Subject to such reasonable limitations and conditions as the governmental body or all
31 of the governmental bodies creating and establishing such building commission may prescribe by
32 ordinance or by order, exercise the power of eminent domain in the manner provided in §54-1-1

33 *et seq.* of this code for business corporations, for the purposes set forth in subdivision (f) of this
 34 section, which purposes are hereby declared public purposes for which private property may be
 35 taken or damaged;

36 (l) Use proceeds from Certificates of Participation (COPs) to pay down pension Unfunded
 37 Actuarial Accrued Liability (UAAL):

38 (m) Pay debt service on Certificates of Participation (COPs);

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

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

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 section 33 of this article 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 of this code, on or after
18 January 1, 2010, or as soon thereafter as the Municipal Pensions Oversight Board is prepared to
19 receive the funds, 65 percent of the amount collected by the commissioner shall be deposited in
20 the Municipal Pensions Security Fund created §8-22-18b of this code. The net proceeds of this
21 tax after appropriation thereof by the Legislature is distributed in accordance with the provisions
22 of 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
24 municipal policemen's or firemen's pension and relief fund is established shall report to the State
25 Treasurer the average monthly number of members who worked at least one hundred hours per
26 month and the average monthly number of retired members of municipal policemen's or firemen's
27 pension and relief fund or the Municipal Police Officers and Firefighters Retirement System during
28 the preceding fiscal year: *Provided*, That beginning in the year 2010 and continuing thereafter,
29 the 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 no actuarial deficiency in the
41 municipal policemen's or firemen's pension and relief fund, no revenues may be allocated from
42 the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund to that fund.
43 The revenues from the Municipal Pensions and Protection Fund shall then be allocated to all other
44 pension and relief funds which have an actuarial deficiency.

45 (3) The Municipal Pensions Oversight Board shall annually review the investment
46 performance of each municipal policemen's or firemen's pension and relief fund. If the municipal
47 pension and relief fund's board fails for three consecutive years to comply with the investment
48 provisions established by §8-22-22a of this code, the oversight board may require the municipal
49 policemen's or firemen's pension and relief fund to invest with the Investment Management Board
50 to continue to receive its allocation of funds from the premium tax. If the municipal pension and
51 relief fund fails to move its investments to the Investment Management Fund within the 18-month
52 drawdown period, provided in §8-22-19(e) of this code, the revenues shall be reallocated to all
53 other municipal policemen's or firemen's pension and relief funds that have drawn down 100
54 percent of their allocations.

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

61 (c) (1) Each municipal pension and relief fund shall have allocated and authorized for

62 distribution a pro rata share of the revenues allocated to municipal policemen's and firemen's
63 pension and relief funds based on the corresponding municipality's average monthly number of
64 police officers and firefighters who worked at least 100 hours per month during the preceding
65 fiscal year. On and after July 1, 1997, from the growth in any moneys collected pursuant to the
66 tax imposed by this section and interest thereon there shall be allocated and authorized for
67 distribution to each municipal pension and relief fund, a pro rata share of the revenues allocated
68 to municipal policemen's and firemen's pension and relief funds based on the corresponding
69 municipality's average number of police officers and firefighters who worked at least 100 hours
70 per month and average monthly number of retired police officers and firefighters. For the purposes
71 of this subsection, the growth in moneys collected from the tax collected pursuant to this section
72 is determined by subtracting the amount of the tax collected during the fiscal year ending June
73 30, 1996, from the tax collected during the fiscal year for which the allocation is being made and
74 interest thereon. All moneys received by municipal pension and relief funds under this section
75 may be expended only for those purposes described in §8-22-16 through §8-22-28 of this code.

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

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

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

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

108 (f) Revenue allocation shall be considered terminated upon the condition of elimination of
109 an actuarial deficiency, and on the condition that all related bonds are fully paid off.

NOTE: The purpose of this bill is to generally provide for pension obligation bonds for municipalities. The bill provides a definition of "Pension Funding Program." The bill provides updates to the purview of a governing body relating to pensions. The bill permits payment of debt service from allocable moneys from the Municipal Pensions Security Fund. The bill includes the possibility of no pension funding obligations being outstanding.

The bill provides specific powers to cities relating to Certificates of Participation. Finally, the bill provides for revenue allocation termination.

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